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Presidential Documents

Title 3—

The President

Memorandum of May 21, 2012

Designation of Officers of the Millennium Challenge Corporation To Act as Chief Executive Officer of the Millennium Challenge Corporation

Memorandum for the Chief Executive Officer of the Millennium Challenge Corporation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 et seq. (the ''Act''), it is hereby ordered that:

Section 1. *Order of Succession.* Subject to the provisions of section 2 of this memorandum and to the limitations set forth in the Act, the following officers of the Millennium Challenge Corporation (MCC), in the order listed, shall act as and perform the functions and duties of the Chief Executive Officer (CEO) of the MCC during any period in which the CEO of the MCC has died, resigned, or otherwise becomes unable or unavailable to perform the functions and duties of the office of the CEO of the MCC:

(a) Deputy Chief Executive Officer;

(b) Vice President, Department of Policy and Evaluation;

(c) Chief of Staff;

(d) Vice President, Department of Compact Operations;

(e) Senior Advisor;

(f) Vice President, Department of Congressional and Public Affairs;

(g) Vice President, General Counsel and Corporate Secretary; and

(h) Vice President, Department of Administration and Finance.

Sec. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1(a)–(h) of this memorandum in an acting capacity shall, by virtue of so serving, act as CEO of the MCC pursuant to this memorandum.

(b) No individual who is serving in an office listed in section 1(a)–(h) of this memorandum shall act as CEO of the MCC unless that individual is otherwise eligible to so serve under the Act.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting CEO of the MCC.

Sec. 3. *Judicial Review.* 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.

Sec. 4. *Publication.* You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, May 21, 2012

[FR Doc. 2012–12945
Filed 5–24–12; 8:45 am]
Billing code 9211–03–P

Presidential Documents

Memorandum of May 21, 2012

Designation of Officers of the National Archives and Records Administration To Act as Archivist of the United States

Memorandum for the Archivist of the United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.* (the ''Act''), it is hereby ordered that:

Section 1. *Order of Succession.* Subject to the provision of section 2 of this memorandum, and the limitations set forth in the Act, the following officials of the National Archives and Records Administration, in the order listed, shall act as and perform the functions and duties of the office of the Archivist of the United States (Archivist), during any period in which the Archivist or the Deputy Archivist has died, resigned, or otherwise become unable to perform the functions and duties of the office of the Archivist:

(a) Chief Operating Officer;

(b) Executive for Agency Services;

(c) Director, National Personnel Records Center; and

(d) Director, George W. Bush Library.

Sec. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1(a)–(d) of this memorandum in an acting capacity shall, by virtue of so serving, act as Archivist pursuant to this memorandum.

(b) No individual listed in section 1(a)–(d) of this memorandum shall act as Archivist unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998, as amended.

(c) Notwithstanding the provision of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Archivist.

Sec. 3. *Prior Memorandum Revoked.* The Memorandum for the Archivist of the United States of March 22, 2006 (Designation of Officers of the National Archives and Records Administration), is hereby revoked.

Sec. 4. *Judicial Review.* 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.

Sec. 5. *Publication.* The Archivist is authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, May 21, 2012

[FR Doc. 2012–12946
Filed 5–24–12; 8:45 am]
Billing code 7515–01–P

Presidential Documents

Memorandum of May 21, 2012

Designation of Officers of the Office of Personnel Management To Act as Director of the Office of Personnel Management

Memorandum for the Director of the Office of Personnel Management

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.* (the ''Act''), it is hereby ordered that:

Section 1. *Order of Succession.* Subject to the provisions of section 2 of this memorandum, and to the limitations set forth in the Act, the following officials of the Office of Personnel Management, in the order listed, shall act as and perform the functions and duties of the office of Director, during any period in which both the Director and the Deputy Director of the Office of Personnel Management, have died, resigned, or are otherwise unable to perform the functions and duties of the office of Director:

(a) General Counsel;

(b) Chief of Staff;

(c) Associate Director, Retirement Services;

(d) Associate Director, Employee Services;

(e) Director, Office of Congressional and Legislative Affairs;

(f) Associate Director, Federal Investigative Services;

(g) Chief Financial Officer;

(h) Associate Director, Human Resources Solutions;

(i) Director, Healthcare and Insurance; and

(j) Director, Planning and Policy Analysis.

Sec. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1 of this memorandum in an acting capacity, by virtue of so serving, shall act as Director pursuant to this memorandum.

(b) No individual listed in section 1 of this memorandum shall act as Director unless that individual is otherwise eligible to so serve under the Act.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Director.

Sec. 3. *Prior Memorandum Superseded.* This memorandum supersedes the President's Memorandum of May 5, 2005 (Designation of Officers of the Office of Personnel Management to Act as Director of the Office of Personnel Management).

Sec. 4. *Judicial Review.* 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.

Sec. 5. *Publication.* You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
May 21, 2012

[FR Doc. 2012–12948
Filed 5–24–12; 8:45 am]
Billing code 6325–01–P

Rules and Regulations

Federal Register
Vol. 77, No. 102
Friday, May 25, 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–2011–1259; Directorate Identifier 2011–NM–181–AD; Amendment 39–17059; AD 2012–10–10]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777 airplanes. This AD was prompted by reports of corrosion damage on the outer diameter chrome surface of the horizontal stabilizer pivot pins. Micro-cracks in the chrome plating of the pivot pin, some of which extended into the base metal, were also reported. This condition, if not corrected, could result in a fractured horizontal stabilizer pivot pin. This AD requires replacing the existing horizontal stabilizer pivot pins with new or reworked pivot pins having improved corrosion resistance, doing repetitive inspections after installing the pivot pins, and doing corrective actions if necessary. We are issuing this AD to prevent a fractured horizontal stabilizer pivot pin, which may cause excessive horizontal stabilizer freeplay and structural damage significant enough to result in loss of control of the airplane.

DATES: This AD is effective June 29, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 29, 2012.

ADDRESSES: 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 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: James Sutherland, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6533; fax: 425–917–6590; email: *james.sutherland@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on December 6, 2011 (76 FR 76066). That NPRM proposed to replace the existing horizontal stabilizer pivot pins with new or reworked pivot pins having improved corrosion resistance, doing repetitive inspections after installing the pivot pins, and doing corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (76 FR 76066, December 6, 2011) and the FAA's response to each comment.

Request To Delay Rule Due to Pending Service Information

FedEx and All Nippon Airways (ANA) requested that the release date of the AD be postponed until Revision 1 of Boeing Alert Service Bulletin 777–55A0018 is issued. FedEx stated that the horizontal stabilizer jacking tool used for the pivot pin removal/installation procedure, as specified in Boeing Alert Service Bulletin 777–55A0018, dated July 27, 2011, is being re-designed, and suggested that the release date of the AD be postponed until re-design of the tool is completed and Revision 1 is issued. ANA noted that Boeing does not recommend accomplishing Boeing Alert Service Bulletin 777–55A0018, dated July 27, 2011, until the anti-rotation plates and jacking tool are available.

We do not agree to postpone issuing the final rule, because Boeing has issued Alert Service Bulletin 777–55A0018, Revision 1, dated March 6, 2012. That service bulletin includes the new anti-rotation plates, and, as an alternative to having the new anti-rotation plates, a procedure for reworking the existing anti-rotation plates. The pin removal tool is an optional tool allowing operators an alternate method to remove the horizontal stabilizer pivot pins without the jacking tool. The existing tool is applicable to line numbers 1 through 40, and Boeing has issued rework instructions for the operators to modify existing tools for all Model 777 airplanes. The scope of this AD has not been expanded. We have updated the references in paragraphs (c), (g), (h), and (i) of this AD accordingly. In paragraph (j) of this AD, we are giving credit for actions done using Boeing Alert Service Bulletin 777–55A0018, dated July 27, 2011.

Other Changes to NPRM (76 FR 76066, December 6, 2011)

The Repeat Interval columns of tables 2 and 3 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–55A0018, Revision 1, dated March 6, 2012, are corrected to include the phrase ''after the most recent inspection.'' Therefore, we have removed the exception stated in paragraph (i)(1) of the NPRM (76 FR 76066, December 6, 2011).

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (76 FR 76066, December 6, 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 76066, December 6, 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 affects 155 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement of horizontal stabilizer pivot pins.	16 work-hours × $85 per hour = $1,360.	$11,452	$12,812	$1,985,860
Repetitive inspections	22 work-hours × $85 per hour = $1,870 per inspection cycle.	0	$1,870 per inspection cycle	$289,850 per inspection cycle.

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspections. We have no way of determining the number of aircraft that might need these replacements.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Pivot pin or spacer replacement	16 work-hours × $85 per hour = $1,360	$11,452	$12,812

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–10–10 The Boeing Company: Amendment 39–17059; Docket No. FAA–2011–1259; Directorate Identifier 2011–NM–181–AD.

(a) Effective Date

This AD is effective June 29, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 777–55A0018, Revision 1, dated March 6, 2012.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by reports of corrosion damage on the outer diameter chrome surface of the horizontal stabilizer pivot pins. Micro-cracks in the chrome plating of the pivot pins, some of which extended into the base metal, were also reported. We are issuing this AD to prevent a fractured horizontal stabilizer pivot pin, which may cause excessive horizontal stabilizer freeplay and structural damage significant enough to result in loss of control of the airplane.

(f) Compliance

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

(g) Pivot Pin Replacement

At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–55A0018, Revision 1, dated March 6, 2012, except as required by paragraph (i) of this AD: Replace the pivot pins of the horizontal stabilizer with new or reworked pivot pins, including replacing the spacer with a new spacer or with one that has been determined to be without corrosion damage or other irregularities; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0018, Revision 1, dated March 6, 2012.

(h) Repetitive Inspections

At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–55A0018, Revision 1, dated March 6, 2012: Do detailed inspections for cracks, corrosion damage, or other irregularity of the outer and inner pivot pins; and an ultrasonic inspection for cracking of the outer pivot pins; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0018, Revision 1, dated March 6, 2012. Corrective actions must be done before further flight. Repeat the inspections at the applicable interval specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–55A0018, Revision 1, dated March 6, 2012.

(i) Exception

Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–55A0018, Revision 1, dated March 6, 2012, specifies a compliance time ''after the Revision 1 date of this service bulletin,'' this AD requires compliance within the specified compliance time ''after the effective date of this AD.''

(j) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 777–55A0018, dated July 27, 2011.

(k) 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(l) Related Information

For more information about this AD, contact James Sutherland, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6533; fax: 425–917–6590; email: *james.sutherland@faa.gov.*

(m) Material Incorporated by Reference

You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51:

(1) Boeing Alert Service Bulletin 777–55A0018, Revision 1, dated March 6, 2012.

(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.*

(3) You may review copies of the 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.

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

Issued in Renton, Washington, on May 11, 2012.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–12087 Filed 5–24–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0251; Directorate Identifier 2012–CE–002–AD; Amendment 39–17058; AD 2012–10–09]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain Piper Aircraft, Inc. (type certificate previously held by The New Piper Aircraft Inc.) Models PA–31T and PA–31T1 airplanes. That AD currently requires correcting a model identification error on the aircraft data plate. Since we issued that AD, we have become aware that some owner/operators of the affected airplanes modified the aircraft data plate in error because of confusion in the serial number applicability. Because of the confusion, the manufacturer has issued new service information to clarify affected airplane serial numbers. This new AD requires determining the airplane model based on the serial number and modifying the aircraft data plate to properly identify the airplane model. This new AD also requires doing a detailed search for all applicable airworthiness related documents that apply to any airplane that has an incorrectly marked data plate and take necessary corrective actions based on the search findings. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective June 29, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 29, 2012.

ADDRESSES: For service information identified in this AD, contact Piper Aircraft, Inc., 926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; Internet: *www.piper.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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 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: Gregory ''Keith'' Noles, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5551; fax: (404) 474–5606; email: *gregory.noles@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 80–11–06, amendment 39–3776 (45 FR 35309, May 27, 1980). That AD applies to the specified products. The NPRM published in the **Federal Register** on March 9, 2012 (77 FR 14316). The NPRM proposed to retain all requirements of AD 80–11–06, amendment 39–3776 (45 FR 35309, May 27, 1980) and clarify the serial number applicability of the affected model airplanes. The NPRM also proposed to require a detailed search for all applicable airworthiness related documents that apply to any airplane that has an incorrectly marked aircraft data plate and take necessary corrective actions.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 14316, March 9, 2012) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 14316, March 9, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 14316, March 9, 2012).

Costs of Compliance

We estimate that this AD affects 158 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect the aircraft data plate	1 work-hour × $85 per hour = $85	Not applicable	$85	$13,430

We estimate the following costs to do any necessary modification and/or records search that will be required based on the results of the inspection. We have no way of determining the number of aircraft that might need modification:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Modify the aircraft data plate	1 work-hour × $85 per hour = $85	Not applicable	$85
Detailed search for all applicable airworthiness related documents that apply to any airplane that has an incorrectly marked aircraft data plate.	4 work-hours × $85 per hour = $340	Not applicable	$340

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 80–11–06, amendment 39–3776 (45 FR 35309, May 27, 1980), and adding the following new AD:

2012–10–09 Piper Aircraft, Inc. (Type Certificate Previously Held by The New Piper Aircraft Inc.): Amendment 39–17058; Docket No. FAA–2012–0251; Directorate Identifier 2012–CE–002–AD.

(a) Effective Date

This airworthiness directive (AD) is effective June 29, 2012.

(b) Affected ADs

This AD supersedes AD 80–11–06, Amendment 39–3776 (45 FR 35309, May 27, 1980).

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) *Model PA–31T airplanes,* serial numbers 31T–7820001, 31T–7820002, 31T–7820003, 31T–7820004, 31T–7820005, 31T–7820006, 31T–7820007, 31T–7820008, 31T–7820009, 31T–7820010, 31T–7820011, 31T–7820012, 31T–7820013, 31T–7820014, 31T–7820015, 31T–7820016, 31T–7820017, 31T–7820018, 31T–7820019, 31T–7820020, 31T–7820021, 31T–7820022, 31T–7820023, 31T–7820024, 31T–7820025, 31T–7820026, 31T–7820027, 31T–7820028, 31T–7820029, 31T–7820030, 31T–7820031, 31T–7820032, 31T–7820033, 31T–7820034, 31T–7820035, 31T–7820036, 31T–7820037, 31T–7820038, 31T–7820039, 31T–7820040, 31T–7820041, 31T–7820042, 31T–7820043, 31T–7820044, 31T–7820045, 31T–7820046, 31T–7820047, 31T–7820048, 31T–7820049, 31T–7820050, 31T–7820051, 31T–7820052, 31T–7820053, 31T–7820054, 31T–7820055, 31T–7820056, 31T–7820057, 31T–7820058, 31T–7820059, 31T–7820060, 31T–7820061, 31T–7820062, 31T–7820063, 31T–7820064, 31T–7820065, 31T–7820066, 31T–7820067, 31T–7820068, 31T–7820069, 31T–7820070, 31T–7820071, 31T–7820072, 31T–7820073, 31T–7820074, 31T–7820075, 31T–7820076, 31T–7820077, 31T–7820078, 31T–7820079, 31T–7820080, 31T–7820081, 31T–7820082, 31T–7820083, 31T–7820084, 31T–7820085, 31T–7820086, 31T–7820087, 31T–7820088, 31T–7820089, 31T–7820090, 31T–7820091, 31T–7820092; and

(2) *Model PA–31T1 airplanes,* serial numbers 31T–7804001, 31T–7804002, 31T–7804003, 31T–7804004, 31T–7804005, 31T–7804006, 31T–7804007, 31T–7804008, 31T–7804009, 31T–7804010, 31T–7804011, 31T–7904001, 31T–7904002, 31T–7904003, 31T–7904004, 31T–7904005, 31T–7904006, 31T–7904007, 31T–7904008, 31T–7904009, 31T–7904010, 31T–7904011, 31T–7904012, 31T–7904013, 31T–7904014, 31T–7904015, 31T–7904016, 31T–7904017, 31T–7904018, 31T–7904019, 31T–7904020, 31T–7904021, 31T–7904022, 31T–7904023, 31T–7904024, 31T–7904025, 31T–7904026, 31T–7904027, 31T–7904028, 31T–7904029, 31T–7904030, 31T–7904031, 31T–7904032, 31T–7904033, 31T–7904034, 31T–7904035, 31T–7904036, 31T–7904037, 31T–7904038, 31T–7904039, 31T–7904040, 31T–7904041, 31T–7904042, 31T–7904043, 31T–7904044, 31T–7904045, 31T–7904046, 31T–7904047, 31T–7904048, 31T–7904049, 31T–7904050, 31T–7904051, 31T–7904052, 31T–7904053, 31T–7904056, 31T–7904057.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 1100, Placards and Markings.

(e) Unsafe Condition

This AD was prompted by reports that some owner/operators of the affected airplanes modified the aircraft data plate in error because of confusion in the serial number applicability. We are issuing this AD to correct the unsafe condition on these products.

(f) Compliance

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

(g) Inspect the Aircraft Data Plate

Within the next 100 hours after June 29, 2012 (the effective date of this AD), inspect the markings on the aircraft data plate. Do the inspection following Part I of Piper Aircraft, Inc. Mandatory Service Bulletin No. 1235, dated November 3, 2011.

(1) If the aircraft data plate is correctly marked, make a logbook entry showing compliance with this AD, and no further action is required.

(2) If the aircraft data plate is incorrectly marked, continue with paragraphs (h) and (i) of this AD.

(h) Modify the Aircraft Data Plate

Before further flight after the inspection required in paragraph (g) of this AD, modify the aircraft data plate following Part II of Piper Aircraft, Inc. Mandatory Service Bulletin No. 1235, dated November 3, 2011.

(i) Detailed Aircraft Records Search

Before further flight after the modification required in paragraph (h) of this AD:

(1) Do a detailed search of the aircraft maintenance records and documents to include, but not limited to, ADs, special airworthiness information bulletins (SAIBs), service bulletins (SBs), and other service documents; installed supplemental type certificates (STCs) and parts manufacturing approval (PMAs); and instructions for continued airworthiness (ICAs). Each document found must be assessed to ensure proper actions have been made to maintain airworthiness as affected by the model number of the aircraft. Part 135 operators and other operators utilizing FAA-approved maintenance programs will need to address changes to their inspection programs and related documents.

Note 1 to paragraph (i)(1) of this AD: Although some of the above documents may not be mandatory for compliance, it is still necessary to evaluate them to ensure that any voluntary compliance does not negatively affect the airworthiness of the airplane.

(2) Identify all discrepant conditions for misidentified aircraft and coordinate with the geographic Flight Standards District Office (FSDO) and the Atlanta Aircraft Certification Office (ACO) to determine necessary corrective actions. Also, coordinate with the geographic FSDO to arrange for revisions to the airworthiness certificate, registration, and other potential document/certificate revisions. The following is a list of example discrepant conditions that may be found during the records search:

(i) An AD was complied with that was applicable to the incorrect model, but not applicable to the corrected model.

(ii) A required AD for the corrected model was not complied with.

(iii) A maintenance action was performed that was recommended, but not mandatory, for the incorrect model, but not applicable to the corrected model.

(iv) A PMA part was installed that was applicable for the incorrect model, but not for the corrected model.

(v) An STC was installed that was applicable for the incorrect model, but not for the corrected model.

(vi) An STC was installed that was applicable for both the incorrect and corrected model, but all related, applicable ADs for the corrected model were not complied with.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta Aircraft Certification Office (ACO), 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.

(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.

(3) AMOCs approved for AD 80–11–06 (45 FR 35309, May 27, 1980), are approved as AMOCs for this AD.

(k) Related Information

For more information about this AD, contact Gregory ''Keith'' Noles, Aerospace Engineer, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5551; fax: (404) 474–5606; email: *gregory.noles@faa.gov.*

(l) Material Incorporated by Reference

(1) You must use Piper Aircraft, Inc. Mandatory Service Bulletin No. 1235, dated November 3, 2011, to do the actions required by this AD, unless the AD specifies otherwise. The Director of the **Federal Register** approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Piper Aircraft, Inc., 926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; Internet: *www.piper.com.*

(3) You may review copies of the service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and

Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr_locations.html.*

Issued in Kansas City, Missouri, on May 14, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–12092 Filed 5–24–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0084; Directorate Identifier 2010–SW–089–AD; Amendment 39–17050; AD 2012–10–01]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Bell Helicopter Textron Canada Limited (BHTC) Model 427 helicopters which requires replacing certain tailboom attachment hardware and at certain intervals thereafter, determining the torque of that tailboom attachment hardware. This AD was prompted by a review of the tailboom attachment installation, which revealed that the torque value of the bolts specified in the BHTC Model 427 Maintenance Manual and applied during manufacturing was incorrect and exceeded the torque range recommended for the bolts. The actions are intended to prevent an over-torque of the tailboom attachment bolt (bolt), bolt failure, loss of the tailboom, and subsequent loss of control of the helicopter.

DATES: This AD is effective June 29, 2012.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of June 29, 2012.

ADDRESSES: For service information identified in this AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

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: Sharon Miles, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *sharon.y.miles@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On February 3, 2012, at 77 FR 5425, the **Federal Register** published our Notice of Proposed Rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to BHTC Model 427 helicopters, serial numbers 56001 through 56084. That NPRM proposed to require within 150 hours time-in-service (TIS) or 90 days, whichever occurs first, the following actions:

- Remove the left upper bolt, washers, and nut. Install the new bolt, part number (P/N) NAS627–27; washers, P/N 140–007–29S25E6 and P/N NAS1149G0732P; and new nut, P/N 42FLW–720. Run the nut onto the threads of the mating bolt with a torque wrench and measure the existing tare torque. Any bolt and nut used must have a minimum tare torque value of 14 inch/lbs. Torque the nut and coat the bolt head, nut, and washers with appropriate corrosion preventive compound to seal the joint. Repeat these actions at the three remaining bolt locations.
- After installation of the new attachment hardware, at intervals of not less than 1 hour TIS but not exceeding 5 hours TIS, determine the torque of each nut until torque stabilizes at each attachment location. Thereafter, determine the torque of each nut at intervals not to exceed 300 hours TIS.

The proposed requirements were intended to prevent an over-torque of the bolt, bolt failure, loss of the tailboom, and subsequent loss of control of the helicopter.

Transport Canada (TC), which is the aviation authority for Canada, issued Canadian AD CF–2010–32, dated September 30, 2010 (AD CF–2010–32), to correct an unsafe condition for the BHTC Model 427 helicopters, serial numbers (S/Ns) 56001 through 56084, and S/Ns 58001 and 58002. TC advises that a review of the tailboom attachment installation determined that the torque value of the bolts specified in the BHTC Model 427 Maintenance Manual and applied during manufacturing exceeded the torque range recommended for the bolts. They state that this situation, if not corrected, could lead to a bolt failure, detachment of the tailboom, and loss of control of the helicopter.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM.

FAA's Determination

This helicopter model has been approved by the aviation authority of Canada and is approved for operation in the United States. Pursuant to our bilateral agreement with Canada, TC, its technical representative, has notified us of the unsafe condition described in the TC AD. We are issuing this AD because we evaluated all information provided by TC and determined the unsafe condition exists and is likely to exist or develop on other helicopters of this same type design and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between This AD and the TC AD

The differences between this AD and the TC AD are as follows:

- The TC AD applies to the BHTC Model 427 helicopter, serial numbers 58001 and 58002; however, this AD is not applicable to the BHTC Model 427 helicopters with these serial numbers because they are not eligible for an FAA Certificate of Airworthiness.

Related Service Information

BHTC has issued Alert Service Bulletin No. 427–10–31, dated March 1, 2010 (ASB), which specifies installing new attachment hardware with a reduced torque value. This ASB specifies determining the torque of the newly installed bolts and nuts every 1 to 5 flight hours until torque stabilizes at all locations, and thereafter at intervals not to exceed 300 flight hours. TC classified this ASB as mandatory and issued AD CF–2010–32 to ensure

the continued airworthiness of these helicopters.

Costs of Compliance

We estimate that this AD will affect 28 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD. It will take about 2.0 work-hours per helicopter to replace the hardware and 1.0 work-hour per helicopter to determine the recurring torque value at an average labor rate of $85 per work-hour. Required parts will cost about $488 per helicopter. Based on these figures, we estimate the first year total cost per helicopter to be $913, and the total cost impact on U.S. operators to be $25,564. This estimated total cost assumes attachment hardware will be replaced on all affected helicopters, the torque will be considered stabilized after one torquing, and the recurring 300 hour TIS torque determination will be accomplished twice a year.

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 helicopters identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–10–01 Bell Helicopter Textron Canada Limited (BHTC): Amendment 39–17050; Docket No. FAA–2012–0084; Directorate Identifier 2010–SW–089–AD.

(a) Applicability

This AD applies to Model 427 helicopters, serial numbers 56001 through 56084, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as an over-torque of the tailboom attachment bolt (bolt). This condition could result in bolt failure, loss of the tailboom, and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective June 29, 2012.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 150 hours time-in-service (TIS) or 90 days, whichever occurs first, replace the tailboom attachment hardware (attachment hardware) as follows:

(i) Remove the left upper bolt, washers, and nut.

(ii) Install a new bolt, part number (P/N) NAS627–27; washer, P/N 140–007–29S25E6; washer(s), P/N NAS1149G0732P; and new nut, P/N 42FLW–720 in accordance with paragraphs 5.a) through 5.d) of the Accomplishment Instructions in BHTC Alert Service Bulletin No. 427–10–31, dated March 1, 2010 (ASB).

(iii) Run the nut onto the threads of the mating bolt with a torque wrench and measure the existing tare torque. Any bolt and nut used must have a minimum tare torque value of 14 inch/lbs.

(iv) Torque the nut in accordance with paragraphs 5.f) and 5.g) of the ASB.

(v) Coat the bolt head, nut, and washers with appropriate corrosion preventive compound to seal the joint.

(vi) At each remaining attachment location, remove the bolt, washers, and nut, and install the attachment hardware in accordance with paragraphs (e)(1)(ii) through (e)(1)(v) of this AD.

(2) After installation of the new attachment hardware, at intervals of not less than 1 hour TIS but not exceeding 5 hours TIS, determine the torque of each nut until the torque stabilizes at each attachment location. Thereafter, at intervals not to exceed 300 hours TIS, determine the torque of each nut. When determining the torque, it is acceptable to use the minimum tare torque of 14 inch/lbs (1.58 Nm) added to the minimum torque range of 550–560 inch/lbs (62.1 to 63.3 Nm). If you remove corrosion preventative compound during the torquing, recoat the bolt head, nut, and washers with appropriate corrosion preventive compound to seal the joint.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Sharon Miles, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *sharon.y.miles@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

The subject of this AD is addressed in Transport Canada AD CF–2010–32, dated September 30, 2010.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 5302, Rotorcraft Tailboom.

(i) Material Incorporated by Reference

(1) You must use the specified portions of BHTC Alert Service Bulletin No. 427–10–31, dated March 1, 2010, to do the specified actions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–

0272; or at *http://www.bellcustomer.com/files/*.

(3) You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Fort Worth, Texas, on May 10, 2012.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–12399 Filed 5–24–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1416; Directorate Identifier 2011–NM–156–AD; Amendment 39–17056; AD 2012–10–07]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702); CL–600–2D15 (Regional Jet Series 705); CL–600–2D24 (Regional Jet Series 900); and CL–600–2E25 (Regional Jet Series 1000) airplanes. This AD was prompted by reports of deformation of the pressure regulator on the oxygen cylinder, which was attributed to batches of raw material that did not meet required tensile strength. This AD requires an inspection to determine if certain oxygen pressure regulators are installed, and replacement of oxygen cylinder and regulator assemblies (CRAs) containing pressure regulators that do not meet required material properties. We are issuing this AD to prevent elongation of the pressure regulator neck, which could result in rupture of the oxygen cylinder, and in the case of cabin depressurization, oxygen would not be available when required.

DATES: This AD becomes effective June 29, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 29, 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: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

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 January 19, 2012 (77 FR 2662). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> During a routine inspection, deformation was found at the neck of the pressure regulator body on the oxygen Cylinder and Regulator Assemblies (CRA) of a BD–700–1A11 aeroplane.
>
> An investigation by the vendor, Avox Systems Inc., revealed that the deformation was attributed to two (2) batches of raw material that did not meet the required tensile strength. This may cause elongation of the pressure regulator neck, which could result in rupture of the oxygen cylinder, and in the case of cabin depressurization, oxygen would not be available when required.
>
> Although there have been no reported failures to date on any CL–600–2C10, CL–600–2D15, CL–600–2D24 or CL–600–2E25 aeroplanes, similar oxygen pressure regulators, Part Number (P/N) 806370–06, could also be installed on the aeroplanes listed in the Applicability section of this [Transport Canada Civil Aviation (TCCA)] directive.
>
> This [TCCA] directive mandates [an inspection for certain serial numbers, and if necessary, replacement of the affected oxygen CRA in accordance with the accomplishment instructions of Bombardier Service Bulletin 670BA–35–011, dated July 5, 2011; and] the replacement of oxygen CRAs containing pressure regulators that do not meet the required material properties.

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 (77 FR 2662, January 19, 2012) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 2662, January 19, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 2662, January 19, 2012).

Costs of Compliance

We estimate that this AD will affect 263 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $44,710, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 1 work-hour and require parts costing $0, for a cost of $85 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States,

or on the distribution of power and responsibilities among the various levels of government.

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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 (77 FR 2662, January 19, 2012), 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:

2012–10–07 Bombardier, Inc.: Amendment 39–17056. Docket No. FAA–2011–1416; Directorate Identifier 2011–NM–156–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective June 29, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category.

(1) Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10002 through 10999 inclusive.

(2) Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15990 inclusive.

(3) Bombardier, Inc. Model CL–600–2E25 (Regional Jet Series 1000) airplanes, serial numbers 19001 through 19990 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 35: Oxygen.

(e) Reason

This AD was prompted by reports of deformation of the pressure regulator on the oxygen cylinder, which was attributed to batches of raw material that did not meet required tensile strength. We are issuing this AD to prevent elongation of the pressure regulator neck, which could result in rupture of the oxygen cylinder, and in the case of cabin depressurization, oxygen would not be available when required.

(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) Actions

Within 1,800 flight hours or 6 months after the effective date of this AD, whichever occurs first: Inspect the serial number of each oxygen pressure regulator, part number (P/N) 806370–06, to determine if the serial number of the regulator is listed in ''Table 2: Regulators'' of paragraph 1.A.(1) of Bombardier Service Bulletin 670BA–35–011, dated July 5, 2011. If the serial number of the oxygen pressure regulator, P/N 806370–06, is listed in ''Table 2: Regulators'' of paragraph 1.A.(1) of Bombardier Service Bulletin 670BA–35–011, dated July 5, 2011: Before further flight, replace the affected oxygen cylinder and regulator assembly (CRA), in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–35–011, dated July 5, 2011.

(h) Parts Installation

As of the effective date of this AD, no person may install an oxygen pressure regulator, P/N 806370–06, having a serial number listed in ''Table 2: Regulators'' of paragraph 1.A.(1) of Bombardier Service Bulletin 670BA–35–011, dated July 5, 2011, on any airplane unless the serial number of the CRA and pressure regulator have a suffix ''A'' beside the serial number.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *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

Refer to MCAI Canadian Airworthiness Directive CF–2011–28, dated July 28, 2011; and Bombardier Service Bulletin 670BA–35–011, dated July 5, 2011; for related information.

(k) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51:

(i) Bombardier Service Bulletin 670BA–35–011, dated July 5, 2011.

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

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on May 10, 2012.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–12333 Filed 5–24–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28059; Directorate Identifier 2007–NE–13–AD; Amendment 39–17061; AD 2012–10–12]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc (RR) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for all RR RB211–Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 556B2–61, 560–61, 560A2–61, 768–60, 772–60, 772B–60, 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17 turbofan engines. That AD currently requires inspecting the intermediate-pressure (IP) compressor rotor shaft rear balance land for cracks. This new AD continues to require initial inspections, adds additional inspections, and a mandatory terminating action. This AD was prompted by additional cracking on RB211–Trent 700 and RB211–Trent 800 IP compressor rotor shafts found since the existing AD was issued. We are issuing this AD to detect cracking on the IP compressor rotor rear balance land. IP compressor rotor rear balance land cracking can lead to uncontained failure of the rotor and damage to the airplane.

DATES: This AD is effective June 29, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 29, 2012.

ADDRESSES: For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–245418; or email from *http://www.rolls-royce.com/contact/civil_team.jsp*. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7121.

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 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: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA; phone: 781–238–7143; fax: 781–238–7199; email: *alan.strom@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to supersede AD 2008–18–08, Amendment 39–15665 (73 FR 52201, September 9, 2008). That AD applies to the specified products. The SNPRM published in the **Federal Register** on January 20, 2012 (77 FR 2932). The original NPRM (76 FR 64283, October 18, 2011) proposed to continue to require initial inspections, add additional inspections, and an optional terminating action. The SNPRM proposed to continue to require initial inspections, add additional inspections, and a mandatory terminating action.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Request To Correct the Type of Inspection Called Out

One commenter, Rolls-Royce plc, requested that we change ''Since we issued that NPRM, RR has ceased efforts to develop an on-wing ECI'' to ''Since we issued that NPRM, RR has ceased efforts to develop an on-wing ultrasonic inspection.'' The commenter stated that they were developing an ultrasonic inspection, not an ECI.

We agree that we called out the wrong type of inspection in that part of the SNPRM preamble. However, that information is not repeated in the final rule. We did not change the AD.

Request To Correct Reference Errors

Two commenters, The Boeing Company and Rolls-Royce plc, requested that we change the service bulletin number in paragraph (k)(2)(iii), from RR Alert Service Bulletin (ASB) No. RB.211–72–AG401, Revision 2, dated July 5, 2011, to RR ASB No. RB.211–72–AG402, Revision 1, dated January 11, 2011. They also requested that we correct the paragraph (j)(1) to (j)(2) in that same paragraph.

We partially agree. We agree that we misnumbered the service bulletins. We do not agree to correct them because we deleted paragraph (k)(2)(iii) from the final AD.

Request To Clarify That Re-Balancing Eliminates the Requirement for All Repetitive Inspections

Rolls-Royce plc requested that we clarify that re-balancing eliminates the requirement for all repetitive inspections.

We agree. We changed the AD so that the mandatory terminating action eliminates the requirements for both on-wing and in-shop repetitive inspections.

Request for Clarification of Inspections Acceptable for Use

American Airlines requested that we make it clear that the inspections required in paragraph 2(f)(1) of the SNPRM are acceptable for use whether the engine is on-wing (installed on an airplane) or in-shop, but not during maintenance defined as a shop visit by the AD. American also recommended that we re-arrange the inspections in paragraphs (f)(1) and (f)(2) so that they are aligned with on-wing and off-wing maintenance activities.

We agree. We clarified the AD by eliminating the headings of ''On-Wing Inspections'' and ''In-Shop Inspections'' from paragraphs (f)(1), (f)(2), (g)(1), and (g)(2) of the AD. We also re-numbered the sub-paragraphs under paragraph (f), to (1), (2) and (3), without sub-headings. We also re-numbered the sub-paragraphs under paragraph (g) to (1), (2) and (3), without sub-headings.

Request To Delete the Re-Balance Requirement

American Airlines requested that in the Mandatory Terminating Action paragraph (j) of the SNPRM, we delete the requirement to re-balance the engines in accordance with ASBs No. RB.211–72–AG401 and No. RB.211–72–AG402. Instead, require inspection of the IP compressor rear shaft balance land, prohibit re-installation of balance weights on the IP compressor rear shaft balance land, simplify paragraph (k) to combine the previous credit inspection paragraphs, and delete the re-balancing paragraph.

The commenter stated that removal of the unsafe condition is accomplished by removal of the IP compressor balance weights from the rear balance land, which stops the fretting that causes the compressor rear shaft to crack.

We partially agree. We agree with eliminating the requirement to re-balance the engine in accordance with ASBs No. RB.211–72–AG401 and No. RB.211–72–AG402, and removing the associated previous credit paragraphs because permanently removing the existing balance weights from the IP compressor rotor rear shaft balance land eliminates the unsafe condition. Accordingly, we changed the AD by eliminating the requirement to re-balance the engine in accordance with ASBs No. RB.211–72–AG401 and No. RB.211–72–AG402. We do not agree with further simplifying paragraph (k) because we maintained all of the sub-paragraphs for paragraph (f) and (g).

We also added the following Prohibition Statement: ''Once you have accomplished paragraphs (j)(1) or (j)(2) of this AD, do not re-install balance weights on the compressor rear shaft balance land.''

We also deleted previous credit for re-balancing paragraphs (k)(1)(iii) and (k)(2)(iii) from the AD.

Conclusion

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

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 about 136 engines installed on airplanes of U.S. registry. We also estimate that it will take about 3.5 work-hours per engine to perform the on-wing/in-shop visual inspections, about 2.5 work-hours per engine to perform the in-shop eddy current inspections, and about 8 work-hours to rebalance the IP compressor. The average labor rate is $85 per work-hour. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $470,696.

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2008–18–08, Amendment 39–15665 (73 FR 52201, September 9, 2008), and adding the following new AD:

2012–10–12 Rolls-Royce plc: Amendment 39–17061; Docket No. FAA–2007–28059; Directorate Identifier 2007–NE–13–AD.

(a) Effective Date

This AD is effective June 29, 2012.

(b) Affected ADs

This AD supersedes AD 2008–18–08, Amendment 39–15665, (73 FR 52201, September 9, 2008).

(c) Applicability

This AD applies to Rolls-Royce plc (RR) RB211–Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 556B2–61, 560–61, 560A2–61, 768–60, 772–60, 772B–60, 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17 turbofan engines.

(d) Unsafe Condition

This AD was prompted by additional cracking on RB211–Trent 700 and RB211–Trent 800 IP compressor rotor shafts found since the existing AD 2008–18–08, Amendment 39–15665, (73 FR 52201, September 9, 2008) was issued. We are issuing this AD to detect cracking on the IP compressor rotor rear balance land. IP compressor rotor rear balance land cracking can lead to uncontained failure of the rotor and damage to the airplane.

(e) Compliance

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

(f) RB211–Trent 700 Series Engines—Rear Balance Land Inspections

(1) Within 625 cycles-in-service (CIS) after the effective date of this AD, borescope inspect the IP compressor rotor shaft rear balance land. Use RB211 Trent 700 Series Propulsion System Non-Modification Alert Service Bulletin (NMASB) No. RB.211–72–AG270, Revision 4, dated March 21, 2011, sections 3.A.(2)(a) through 3.A.(2)(c) and 3.A.(3)(a) through 3.A.(3)(c), or 3.B.(2)(a) through 3.B.(2)(c) and 3.B.(4)(a) through 3.B.(4)(c), to do the inspection.

(2) Thereafter, repeat the inspection within every 625 cycles-since-last inspection (CSLI). You may count CSLI from the last borescope inspection or the last eddy current inspection (ECI), whichever has occurred last.

(3) At each shop visit after the effective date of this AD, perform an ECI and visually inspect the IP compressor rotor rear shaft balance land, and visually inspect the balance weights. Use RB211 Trent 700 and 800 Series Propulsion Systems NMASB No. RB.211–72–AG085, Revision 2, dated July 7, 2011, sections 3.A. through 3.D.(3)(b)(v), except paragraphs 3.D.(3)(a)(ii) and 3.D.(3)(b)(iii), to do the inspections.

(g) RB211–Trent 800 Series Engines—Rear Balance Land Inspections

(1) Within 475 CIS after the effective date of this AD, borescope inspect the IP compressor rotor shaft rear balance land. Use RB211 Trent 800 Series Propulsion System NMASB No. RB.211–72–AG264, Revision 5, dated March 21, 2011, sections 3.A.(2)(b) through 3.A.(2)(c) and 3.A.(3)(a) through 3.A.(3)(c), or 3.B.(2)(a) through 3.B.(2)(c) and 3.B.(4)(a) through 3.B.(4)(c), to do the inspection.

(2) Thereafter, repeat the inspection within every 475 CSLI. You may count CSLI from the last borescope inspection or the last ECI, whichever has occurred last.

(3) At each shop visit, perform an ECI and visually inspect the IP compressor rotor rear shaft balance land, and visually inspect the balance weights. Use RB211 Trent 700 and 800 Series Propulsion Systems NMASB No.

RB.211–72–AG085, Revision 2, dated July 7, 2011, sections 3.A. through 3.D.(3)(b)(v), except paragraphs 3.D.(3)(a)(ii) and 3.D.(3)(b)(iii), to do the inspections.

(h) RB211–Trent 500 Series Engines—In-Shop Rear Balance Land Inspections

At each shop visit, perform an ECI of the IP compressor rotor shaft and visually inspect the balance weights. Use RB211 Trent 500 Series Propulsion System NMASB No. RB.211–72–AF260, Revision 5, dated July 7, 2011 sections 3.A. through 3.B.(3)(a)(iii) to do the visual inspection, or RB211 Trent 500 and 900 Series Propulsion Systems Non-Modification Service Bulletin (NMSB) No. RB.211–72–G448, Revision 3, dated July 7, 2011 section 3.D.(1) through 3.D.(14) to do the ECI.

(i) Definition

For the purposes of this AD, a shop visit is defined as introduction of an engine into a shop, and disassembly sufficient to expose the IP compressor module rear face.

(j) Mandatory Terminating Action for RB211–Trent 700 and RB211–Trent 800 Engines

(1) Perform mandatory terminating action to the in-shop repetitive inspections in paragraph (f)(2) and (f)(3) of this AD. At the next shop visit in which any level of inspection or strip is scheduled to be carried out on the IP compressor, modify RB211–Trent 700 engines by removing the existing IP compressor balance weights.

(2) Perform mandatory terminating action to the in-shop repetitive inspections in paragraph (g)(2) and (g)(3) of this AD. At the next shop visit in which any level of inspection or strip is scheduled to be carried out on the IP compressor, modify RB211–Trent 800 engines by removing the existing IP compressor balance weights.

(3) Once you have accomplished paragraph (j)(1) or (j)(2) of this AD, do not re-install balance weights on the IP compressor rear shaft balance land.

(k) Credit for Previous Actions

(1) For RB211–Trent 700 series engines:

(i) If you borescope inspected your RB211–Trent 700 series engine using RB211 Trent 700 Series Propulsion System NMASB No. RB.211–72–AG270, Revision 1, dated December 14, 2009, or Revision 2, dated December 21, 2010, or Revision 3, dated February 25, 2011, before the effective date of this AD, you have satisfied the requirements of paragraph f(1) of this AD.

(ii) If you performed the ECI and visual inspection of your RB211–Trent 700 series engines using RB211 Trent 700 and 800 Series Propulsion Systems NMASB No. RB.211–72–AG085, Revision 1, dated September 27, 2010, before the effective date of this AD, you have satisfied the ECI and visual inspections required by paragraph (f)(3) of this AD.

(2) For RB211–Trent 800 series engines:

(i) If you borescope inspected your RB211–Trent 800 series engine using RB211 Trent 800 Series Propulsion System NMASB No. RB.211–72–AG264, Revision 3, dated December 21, 2010, or Revision 4, dated February 25, 2011, before the effective date of this AD, you have satisfied the requirements of paragraph (g)(1) of this AD.

(ii) If you performed the ECI and visual inspection of your RB211–Trent 800 series engines using RB211 Trent 700 and 800 Series Propulsion Systems NMASB No. RB.211–72–AG085, Revision 1, dated September 27, 2010, before the effective date of this AD, you have satisfied the ECI and visual inspections required by paragraph (g)(3) of this AD.

(3) For RB211–Trent 500 series engines:

(i) If you performed the ECI of your RB211–Trent 500 series engines using RB211 Trent 500 Series Propulsion System NMASB No. RB.211–72–AF260, Revision 4, dated July 28, 2009, before the effective date of this AD, you have satisfied the ECIs required by paragraph (h) of this AD.

(ii) If you performed the in-shop visual inspection of your RB211–Trent 500 series engines using RB211 Trent 500 and 900 Series Propulsion Systems NMSB No. RB.211–72–G448, Revision 2, dated December 23, 2010, before the effective date of this AD, you have satisfied the in-shop visual inspections required by paragraph (h) of this AD.

(l) Alternative Methods of Compliance (AMOCs)

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

(m) Related Information

(1) For more information about this AD, contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA; phone: 781–238–7143; fax: 781–238–7199; email: *alan.strom@faa.gov.*

(2) European Aviation Safety Agency AD 2011–0221, dated November 14, 2011, also pertains to the subject of this AD.

(n) Material Incorporated by Reference

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

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

(i) Rolls-Royce plc RB211 Trent 700 Series Propulsion System Non-Modification Alert Service Bulletin No. RB.211–72–AG270, Revision 4, dated March 21, 2011.

(ii) Rolls-Royce plc RB211 Trent 700 and 800 Series Propulsion Systems Non-Modification Alert Service Bulletin No. RB.211–72–AG085, Revision 2, dated July 7, 2011.

(iii) Rolls-Royce plc RB211 Trent 800 Series Propulsion System Non-Modification Alert Service Bulletin No. RB.211–72–AG264, Revision 5, dated March 21, 2011.

(iv) Rolls-Royce plc RB211 Trent 500 Series Propulsion System Non-Modification Alert Service Bulletin No. RB.211–72–AF260, Revision 5, dated July 7, 2011.

(v) Rolls-Royce plc RB211 Trent 500 and 900 Series Propulsion Systems Non-Modification Service Bulletin No. RB.211–72–G448, Revision 3, dated July 7, 2011.

(3) For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–245418; or email from *http://www.rolls-royce.com/contact/civil_team.jsp.*

(4) You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

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

Issued in Burlington, Massachusetts, on May 15, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–12726 Filed 5–24–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30843; Amdt. No. 3479]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective May 25, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 25, 2012.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; or

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

Availability—All SIAPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

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

The Rule

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

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on May 11, 2012.

Ray Towles,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC Date	Subject
28–Jun–12	FL	Miami	Miami Intl	2/2277	5/8/12	ILS OR LOC RWY 8R, Amdt 30B.
28–Jun–12	TX	Dallas	Dallas Love Field	2/3938	5/8/12	ILS OR LOC RWY 31L, Amdt 21A.
28–Jun–12	OH	Columbus	Rickenbacker Intl	2/4597	5/8/12	ILS OR LOC RWY 5R, Amdt 3.
28–Jun–12	GA	Jekyll Island	Jekyll Island	2/5532	5/8/12	VOR A, Amdt 10.
28–Jun–12	AL	Pell City	St Clair County	2/5579	5/8/12	RNAV (GPS) RWY 3, Amdt 2A.
28–Jun–12	AL	Pell City	St Clair County	2/5581	5/8/12	RNAV (GPS) RWY 21, Amdt 2.
28–Jun–12	IL	De Kalb	De Kalb Taylor Muni	2/5711	5/8/12	ILS OR LOC RWY 2, Orig-B.
28–Jun–12	IL	Chicago/West Chicago	Dupage	2/6836	5/8/12	RNAV (GPS) RWY 20R, Amdt 1.
28–Jun–12	IA	Des Moines	Des Moines Intl	2/6965	5/8/12	ILS OR LOC RWY 31, Amdt 23.
28–Jun–12	IA	Des Moines	Des Moines Intl	2/6966	5/8/12	RNAV (GPS) RWY 13, Amdt 1A.
28–Jun–12	IA	Des Moines	Des Moines Intl	2/6967	5/8/12	ILS OR LOC RWY 5, Orig-A.
28–Jun–12	IA	Des Moines	Des Moines Intl	2/6968	5/8/12	RNAV (GPS) RWY 5, Amdt 1.
28–Jun–12	IA	Des Moines	Des Moines Intl	2/6970	5/8/12	RNAV (GPS) RWY 31, Amdt 1A.
28–Jun–12	IA	Des Moines	Des Moines Intl	2/6971	5/8/12	ILS OR LOC RWY 13, Amdt 9.
28–Jun–12	AR	Monticello	Monticello Muni/Ellis Field	2/6972	5/8/12	VOR A, Amdt 6.
28–Jun–12	AR	Monticello	Monticello Muni/Ellis Field	2/6973	5/8/12	RNAV (GPS) RWY 3, Amdt 1.
28–Jun–12	AR	Monticello	Monticello Muni/Ellis Field	2/6974	5/8/12	RNAV (GPS) RWY 21, Orig.
28–Jun–12	OK	Oklahoma City	Sundance Airpark	2/6987	5/8/12	LOC RWY 17, Orig-D.
28–Jun–12	TX	Houston	Ellington Field	2/7012	5/8/12	RNAV (GPS) RWY 17R, Amdt 1.
28–Jun–12	TX	Snyder	Winston Field	2/7605	5/8/12	NDB RWY 35, Amdt 2A.

[FR Doc. 2012–12325 Filed 5–24–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30842; Amdt. No. 3478]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective May 25, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 25, 2012.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

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

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal

Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

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

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

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on May 11, 2012.

Ray Towles,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 31 MAY 2012

Forest, VA, New London, RNAV (GPS) RWY 18, Orig
Forest, VA, New London, RNAV (GPS) RWY 36, Orig
Forest, VA, New London, Takeoff Minimums and Obstacle DP, Orig

Effective 28 JUNE 2012

Arcata/Eureka, CA, Arcata, ILS Y OR LOC/DME RWY 32, Amdt 2A
Arcata/Eureka, CA, Arcata, RNAV (GPS) RWY 32, Amdt 1A
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, VOR RWY 27L, Amdt 4C, CANCELLED
Eagle Grove, IA, Eagle Grove Muni, NDB RWY 13, Amdt 2, CANCELLED
Fort Madison, IA, Fort Madison Muni, RNAV (GPS) RWY 35, Orig-A
Moline, IL, Quad City Intl, LOC RWY 10, Orig, CANCELLED
Moline, IL, Quad City Intl, RNAV (GPS) RWY 28, Orig, CANCELLED
Hutchinson, KS, Hutchinson Muni, ILS OR LOC RWY 13, Amdt 16B
Hutchinson, KS, Hutchinson Muni, RNAV (GPS) RWY 13, Orig-B
Hutchinson, KS, Hutchinson Muni, RNAV (GPS) RWY 31, Amdt 1
Glasgow, KY, Glasgow Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Orange, MA, Orange Muni, VOR–A, Amdt 7
Worcester, MA, Worcester Rgnl, ILS OR LOC RWY 11, Amdt 23
Worcester, MA, Worcester Rgnl, ILS OR LOC RWY 29, Amdt 4
Worcester, MA, Worcester Rgnl, NDB RWY 11, Amdt 21, CANCELLED
Worcester, MA, Worcester Rgnl, RNAV (GPS) RWY 11, Amdt 1
Worcester, MA, Worcester Rgnl, RNAV (GPS) RWY 29, Amdt 1
Oak Island, NC, Cape Fear Rgnl Jetport/ Howie Franklin Fld, RNAV (GPS) RWY 23, Orig
Oak Island, NC, Cape Fear Rgnl Jetport/ Howie Franklin Fld, Takeoff Minimums and Obstacle DP, Amdt 1
Imperial, NE., Imperial Muni, NDB RWY 31, Amdt 3B, CANCELLED
Athens/Albany, OH, Ohio University Snyder Field, RNAV (GPS) RWY 25, Amdt 1A
Hamilton, OH, Butler Co Rgnl, ILS OR LOC RWY 29, Amdt 1A
Dallas, TX, Dallas Love Field, RNAV (GPS) RWY 31L, Amdt 1A
Dallas, TX, Dallas Love Field, RNAV (GPS) RWY 31R, Amdt 1A

Effective 26 JULY 2012

Talkeetna, AK, Talkeetna, NDB RWY 36, Amdt 3
Marion, AL, Vaiden Field, RNAV (GPS) RWY 16, Orig

Marion, AL, Vaiden Field, RNAV (GPS) RWY 34, Orig
Marion, AL, Vaiden Field, Takeoff Minimums and Obstacle DP, Orig
Marina, CA, Marina Muni, VOR/DME RWY 29, Amdt 2A
Mason City, IA, Mason City Muni, ILS OR LOC RWY 36, Amdt 6D
Mason City, IA, Mason City Muni, LOC/DME BC RWY 18, Amdt 7
Mason City, IA, Mason City Muni, VOR RWY 36, Amdt 6C
Mason City, IA, Mason City Muni, VOR/DME RWY 18, Amdt 5
Galesburg, IL, Galesburg Muni, ILS OR LOC/DME RWY 3, Amdt 10
Galesburg, IL, Galesburg Muni, RNAV (GPS) RWY 3, Orig
Galesburg, IL, Galesburg Muni, RNAV (GPS) RWY 21, Orig
Galesburg, IL, Galesburg Muni, VOR RWY 3, Amdt 7
Galesburg, IL, Galesburg Muni, VOR RWY 21, Amdt 7
Louisville, KY, Bowman Field, RNAV (GPS) RWY 24, Amdt 2
Trenton, MO, Trenton Muni, GPS RWY 18, Orig, CANCELLED
Trenton, MO, Trenton Muni, GPS RWY 36, Orig, CANCELLED
Trenton, MO, Trenton Muni, NDB RWY 36, Amdt 10
Trenton, MO, Trenton Muni, RNAV (GPS) RWY 18, Orig
Trenton, MO, Trenton Muni, RNAV (GPS) RWY 36, Orig
Lumberton, NJ, Flying W, RNAV (GPS) RWY 1, Amdt 1
Lumberton, NJ, Flying W, RNAV (GPS) RWY 19, Amdt 1
Lumberton, NJ, Flying W, Takeoff Minimums and Obstacle DP, Amdt 1
Lumberton, NJ, Flying W, VOR–A, Amdt 4
Norwich, NY, Lt Warren Eaton, Takeoff Minimums and Obstacle DP, Amdt 3
Antlers, OK, Antlers Muni, GPS RWY 35, Amdt 1, CANCELLED
Antlers, OK, Antlers Muni, NDB RWY 35, Amdt 3, CANCELLED
Antlers, OK, Antlers Muni, RNAV (GPS) RWY 35, Orig
Antlers, OK, Antlers Muni, Takeoff Minimums and Obstacle DP, Orig
Belle Fourche, SD, Belle Fourche Muni, RNAV (GPS) RWY 32, Amdt 1
Knoxville, TN, Mc Ghee Tyson, ILS OR LOC RWY 23R, ILS RWY 23R (SA CAT I), ILS RWY 23R (CAT II), Amdt 12
Hamilton, TX, Hamilton Muni, RNAV (GPS) RWY 18, Amdt 1
Hamilton, TX, Hamilton Muni, RNAV (GPS) RWY 36, Amdt 1

[FR Doc. 2012–12332 Filed 5–24–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 336

19 CFR Part 357

[Docket No. 120117047–2421–02]

RIN 0625–AA90

Final Withdrawal of Regulations Pertaining to Imports of Cotton Woven Fabric and Short Supply Procedures

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: Import Administration (''IA'') issues this final rule withdrawing regulations pertaining to imports of cotton woven fabric and short supply procedures. Both sets of regulations are obsolete: The tariff quota on cotton woven fabric expired in 2009, and the short supply voluntary restraints have not affected U.S. trade for over 19 years. The removal of these regulations will simplify research into the trade laws and eliminate confusion for both United States importers and foreign exporters.

DATES: *Effective Date:* This Final Withdrawal of Regulations will become effective June 25, 2012.

FOR FURTHER INFORMATION CONTACT: Robert Goodyear, Director, Office of Operations Support, Import Administration, U.S. Department of Commerce, at 202–482–5194 or Scott McBride, Senior Attorney, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, at (202) 482–6292.

SUPPLEMENTARY INFORMATION:

Background

President Barack Obama issued Executive Order 13563 on January 18, 2011, titled ''Improving Regulation and Regulatory Review.'' The Executive Order directed all agencies, to ''develop and submit'' to the Office of Information and Regulatory Affairs plans under which agencies, ''consistent with law and [their] resources and regulatory priorities,'' will ''periodically review [their] existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.'' The Executive Order states that one of the purposes of implementing a program to perform a ''retrospective analysis of existing rules'' is to withdraw regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome.''

In August 2011, the U.S. Department of Commerce issued its Plan for Retrospective Analysis of Existing Rules. < *http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules*>. Within the Department's Plan, International Trade Administration (ITA) indicated that IA, a subagency of ITA, intended to withdraw two groups of regulations which it determined are obsolete. On February 3, 2012, IA published a notice proposing the withdrawal of those two groups of regulations and requested public comment. *See Proposed Withdrawal of Regulations Pertaining to Imports of Cotton Woven Fabric and Short Supply Procedures: Opportunity for Public Comment, 77 FR 5440 (Feb. 3, 2012).* No comments were received within the time set forth in the notice.

The regulatory provisions titled ''Imports of Cotton Woven Fabric,'' codified at 15 CFR 336.1–336.5, are no longer relevant. They were implemented pursuant to the Tax Relief and Health Care Act of 2006, at Division C, Title IV, Section 406(b)(1) (Pub. L. 109–432) (codified in the Harmonized Tariff Schedule of the United States, per 19 U.S.C. 3004) (2006). The Tax Relief and Health Care Act of 2006 set forth tariff rate quotas for cotton woven fabric and the regulatory provisions at issue provide for the administration of allocations of those quotas by IA. The interim regulations were issued in 2007, and then adopted without change, with an effective date of July 10, 2008. *Imports of Certain Cotton Shirting Fabric: Implementation of Tariff Rate Quota Established Under the Tax Relief and Health Care Act of 2006* (*Interim Final Rule*), 72 FR 40235 (July 24, 2007); *Imports of Certain Cotton Shirting Fabric: Implementation of Tariff Rate Quota Established Under the Tax Relief and Health Care Act of 2006* (*Final Rule*), 73 FR 39585 (July 10, 2008). However, the tariff rate quota on cotton woven fabric expired on December 31, 2009. Accordingly, these regulations are obsolete and are therefore withdrawn.

The regulations pertaining to ''Short Supply Procedures,'' which are codified at 19 CFR 357.101–111, are also no longer relevant. These regulations were issued pursuant to Section 4(b) of the Steel Trade Liberalization Program Implementation Act (Pub. L. 101–221) (1989). *Short Supply Procedures* (*Interim—Final Rules*), 55 FR 1348 (Jan. 12, 1990). They pertain to voluntary restraints on certain steel imports from October 1, 1989 through March 31,

1992, and IA was tasked with making short supply determinations under these regulations. IA has determined to withdraw these regulations because they are obsolete, as the associated import restraints have not affected U.S. trade for over 19 years.

Classification

Executive Order 12866

It has been determined that this final rule is not significant for purposes of Executive Order 12866.

Paperwork Reduction Act of 1995

This final rule contains no new collection of information subject to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Executive Order 13132

This final rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255) (August 10, 1999).

Environmental Impact

ITA has determined pursuant to 21 CFR 25.30 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The Department of Commerce Chief Counsel for Regulation certified at the proposed rule stage that this rule will have no impact on small entities. This rule simply makes a technical correction by withdrawing obsolete regulations. No comments were received on that certification. Accordingly, no Regulatory Flexibility Analysis is required and none has been prepared.

List of Subjects

15 CFR Part 336

Imports, Quotas, Reporting and recordkeeping, Tariffs, Textiles.

19 CFR Part 357

Imports, Reporting and recordkeeping requirements, Steel.

PART 336—IMPORTS OF COTTON WOVEN FABRIC

■ Accordingly, under the authority given pursuant to the Tax Relief and Health Care Act of 2006, at Division C, Title IV, Section 406(a)(1) (Pub. L. 109–432) (2006) (titled ''Temporary Duty Reductions for Certain Cotton Shirting Fabric'' and listing 12/31/2009 as the end date for the tariff rate quota), ITA amends 15 CFR chapter III by removing part 336.

PART 357—SHORT SUPPLY PROCEDURES

■ Accordingly, under the authority given by Section 4(b) of the Steel Trade Liberalization Program Implementation Act (Pub. L. 101–221), which by its terms was limited to imports through March 31, 1992, ITA amends 19 CFR chapter III by removing part 357.

Dated: May 21, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–12791 Filed 5–24–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0097]

RIN 1625–AA00

Safety Zone, Temporary Change for Recurring Fireworks Display Within the Fifth Coast Guard District, Pamlico River and Tar River; Washington, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the enforcement period and location of safety zone regulations for a recurring fireworks display within the Fifth Coast Guard District. This regulation applies to two recurring fireworks display events that take place at Washington, NC. Safety zone regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the Pamlico River and Tar River near Washington, NC, during the event.

DATES: This rule will be effective from June 8, 2012 until July 5, 2012 and enforced on June 8, 2012 and July 4, 2012 from 7:30 p.m. to 10:30 p.m.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2012–0097 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0097 in the ''Search'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Chief Warrant Officer Joseph Edge, Prevention Department, Coast Guard Sector North Carolina, Atlantic Beach, NC; telephone 252–247–4525, email *Joseph.M.Edge@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 13, 2012, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone, Temporary Change for Recurring Fireworks Display within the Fifth Coast Guard District, Pamlico River and Tar River; Washington, NC in the **Federal Register** (77 FR 14703). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Given the timing of the event, it would be impracticable to allow 30 days after publication before enforcing this safety zone.

Background and Purpose

Fireworks display events are frequently held on or adjacent to navigable waters within the boundary of

the Fifth Coast Guard District. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

This regulation temporarily changes the enforcement period and geographic location for a safety zone for two annually recurring fireworks events, described at (d)(7) of the Table to 33 CFR 165.506, that are normally scheduled to occur each year on the second Saturday in June and on the first Saturday after July 4th. This regulation applies to only the fireworks events listed in the Table to § 165.506, section (d)7.

On June 8, 2012 and July 4, 2012, the Town of Washington, NC will sponsor their annual fireworks events. These events will take place in Washington, NC on the waters of the Pamlico River. The regulation at 33 CFR 165.506 is enforced annually for this event. Also, a fleet of spectator vessels is expected to gather near the event site to view the fireworks. To provide for the safety of participants, spectators, and transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area from 7:30 p.m. to 10:30 p.m. on June 8, 2012 and July 4, 2012. The regulation at 33 CFR 165.506 will be enforced for the duration of the event. Vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

The Table to § 165.506, event (d)(7) establishes the enforcement date and geographic location for the fireworks events held in Washington, North Carolina. This regulation temporarily changes the enforcement location to latitude 35°32′25″ N, longitude 077°03′42″ W. The temporary safety zone will be enforced from 7:30 p.m. to 10:30 p.m. on June 8, 2012 and July 4, 2012, and will restrict general navigation in the regulated area during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this regulation will restrict access to the area, the effect of this rule will not be significant because: (i) The safety zone will only be in effect from 7:30 p.m. to 10:30 p.m. on June 08, 2012 and July 4, 2012; (ii) the Coast Guard will give advance notification via maritime advisories so mariners can adjust their plans accordingly; (iii) although the safety zone will apply to the section of the Pamlico River and Tar River, vessel traffic will be able to transit safely around the safety zone.

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 operators of vessels intending to transit the specified portion of Pamlico River and Tar River from 7:30 p.m. to 10:30 p.m. on June 8, 2012 and July 4, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will only be in effect for three hours each day from 7:30 p.m. to 10:30 p.m. Although the safety zone will apply to a section of the Pamlico River, vessel traffic will be able to transit safely around the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could 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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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 this instruction. This rule establishes a temporary safety zone to protect the public from fireworks fallout. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. At § 165.506, in the Table to § 165.506, make the following amendments:

■ a. Under ''(d) Coast Guard Sector North Carolina—COTP Zone,'' suspend entry 7, from June 7, 2012 through June 9, 2012, and from July 3, 2012 through July 8, 2012.

■ b. Under ''(d) Coast Guard Sector North Carolina—COTP Zone,'' add entry 14, which will be enforced from 7:30 p.m. to 10:30 p.m. on June 8, 2012 and from 7:30 p.m. to 10:30 p.m. on July 4, 2012, to read as follows:

§ 165.506–T05–0097 Safety Zones; Fifth Coast Guard District Fireworks Displays.

* * * * *

TABLE TO § 165.506

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

No.	Date	Location	Regulated area
*	*	*	*
(d.) Coast Guard Sector North Carolina—COTP Zone			
*	*	*	*
14	June 8, 2012, July 4, 2012	Pamlico River and Tar River, Washington, NC, Safety Zone.	All waters of Pamlico River and Tar River within a 300 yard radius of latitude 35°32′25″ N, longitude 077°03′42″ W, a position located on the southwest shore of the Pamlico River, Washington, NC.

* * * * *

Dated: May 5, 2012.

Anthony Popiel,

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

[FR Doc. 2012–12727 Filed 5–24–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0333]

RIN 1625–AA87

Security Zone; USS MISSISSIPPI Commissioning; Pascagoula Harbor & Pascagoula River; Pascagoula, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for the arrival, commissioning, and departure of the USS MISSISSIPPI. This security zone is necessary to protect persons, vessels, and waterfront facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature during the arrival, commissioning, and departure of the USS MISSISSIPPI. Entry into this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the Captain of the Port (COTP) Mobile or a designated representative.

DATES: This rule is effective from May 23, 2012 to June 8, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0333. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Lenell J. Carson, Sector Mobile, Waterways Division, U.S. Coast Guard; telephone 251–441–5940, email *Lenell.J.Carson@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because there is insufficient time to publish a NPRM. Following a planning meeting on March 29, 2012 between the U.S Navy, U.S Coast Guard, local agencies, and port stakeholders, the Coast Guard determined that a temporary security zone is necessary during the arrival, commissioning ceremony (to be held on June 2, 2012), and departure of the USS MISSISSIPPI. Publishing a NPRM and delaying this rule's effective date would be impracticable because it would unnecessarily delay the USS MISSISSIPPI's schedule and commitments. Delaying or foregoing this necessary security zone would also be contrary to public interest. This is a scheduled public event surrounding the commissioning of a U.S. Naval vessel and immediate action is necessary to implement additional security measure to protect persons, vessels, and waterfront facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature.

For the same reasons, 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** because immediate action is needed to protect persons, vessels, and waterfront facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature during the arrival, commissioning, and departure of the USS MISSISSIPPI.

B. Basis and Purpose

The USS MISSISSIPPI will be commissioned at the Port of Pascagoula, Pascagoula, MS on June 2, 2012. Scheduled events surround the commissioning ceremony will draw large crowds in or near the port. Additional security measures are necessary to protect persons, vessels, and waterfront facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature during the arrival, commissioning, and departure of the USS MISSISSIPPI.

The COTP anticipates some impact on vessel traffic due to this regulation. However, this security zone is deemed necessary for the protection of life and property within the COTP Mobile zone.

C. Discussion of the Final Rule

The Coast Guard is establishing a temporary security zone for the arrival, commissioning, and departure of the USS MISSISSIPPI. While the USS MISSISSIPPI is underway in the Pascagoula Harbor shoreward of the Horn Island Pass Lighted Buoy HI (RW ''HI'' Mo (A); Position 30–08–30.049 N, 088–38–40.125 W), the temporary security zone includes all waters within 100 yards of the USS MISSISSIPPI. When the USS MISSISSIPPI is moored in the Port of Pascagoula, the temporary security zone includes all waters within 25 yards of the USS MISSISSIPPI. Entry into these zones is prohibited to all vessels, mariners, and persons unless specifically authorized by the COTP Mobile or a designated representative. The COTP may be contacted by telephone at 251–441–5976.

The COTP Mobile or a designated representative will inform the public through broadcast notice to mariners of changes in the effective period for the security zone. This rule is effective from May 23, 2012 to June 8, 2012.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

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

The security zone listed in this rule will only restrict vessel traffic from transiting a small portion of the Pascagoula Harbor and Pascagoula River while the USS MISSISSIPPI is transiting through the harbor and when moored in the Port of Pascagoula. The effect of this regulation will not be significant for several reasons: (1) This rule will only affect vessel traffic for a short duration; (2) vessels may request permission from the COTP to transit through the security zone; and (3) the impacts on routine navigation are expected to be minimal. Notifications to the marine community will be made through the Local Notices to Mariners and via Safety Broadcast Notices to Mariners. These notifications will allow the public to plan operations around the affected areas.

2. Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the affected areas during the arrival, commissioning, and departure of the USS MISSISSIPPI. This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The zone is limited in size, is of short duration, and traffic will be allowed to pass through the zone with the permission of the COTP.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves security during the arrival, commissioning, and departure of the USS MISSISSIPPI and is not expected to result in any significant adverse environmental impact as described in NEPA. This rule is categorically excluded from further review under paragraph (34)(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a categorical exclusion determination will be made available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may

lead to the discovery of a significant environmental impact from this rule.

List of Subjects 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 § 165.T08–0333 to read as follows:

§ 165.T08–0333 Security Zone; Pascagoula Harbor & Pascagoula River, Pascagoula, MS.

(a) *Location.* The following areas are temporary security zones: all waters of the Pascagoula Harbor and Pascagoula River—

(1) Within 100 yards of the USS MISSISSIPPI while underway shoreward of the Horn Island Pass Lighted Buoy HI (RW ''HI'' Mo (A); Position 30–08–30.049 N, 088–38–40.125 W).

(2) Within 25 yards of the USS MISSISSIPPI while moored in the Port of Pascagoula.

(b) *Effective Dates.* This rule is effective from May 23 through June 8, 2012.

(c) *Periods of enforcement.* This section will only be enforced while the USS MISSISSIPPI is underway shoreward of the Horn Island Pass Lighted Buoy HI (RW ''HI'' Mo (A); Position 30–08–30.049 N, 088–38–40.125 W) and while moored in the Port of Pascagoula.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into the security zones is prohibited unless authorized by the Captain of the Port (COTP) Mobile or a designated representative.

(2) Persons or vessels desiring to enter into or passage through the security zones must request permission from the COTP Mobile or a designated representative. They may be contacted on VHF–FM channels 16 or by telephone at 251–441–5976.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP Mobile or designated representative.

(e) *Informational Broadcasts.* The COTP Mobile or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the security zones as well as any changes in the planned schedule.

Dated: April 30, 2012.

D. J. Rose,

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

[FR Doc. 2012–12671 Filed 5–24–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0384]

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

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce Safety Zones for fireworks displays and Special Local Regulations for swimming events in the Sector Long Island Sound area of responsibility on the dates and times listed in the tables below. This action is necessary to provide for the safety of life on navigable waterways during these regattas, fireworks displays and swim events. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port (COTP) Sector Long Island Sound or designated representative.

DATES: The regulations in 33 CFR 165.151 and 33 CFR 100.100 will be enforced during the dates and times listed in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Petty Officer Joseph Graun, Prevention Department, U.S. Coast Guard Sector Long Island Sound, (203) 468–4544, *joseph.L.Graun@uscg.mil.*

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

33 CFR 100.100

1.1 Harvard-Yale Regatta, Thames River, New London, CT	• Event type: Boat Race. • Date: Saturday, May 26, 2012 from 2 p.m. until 5 p.m. • Location: All waters of the Thames River at New London, Connecticut, between the Penn Central Draw Bridge 41°21′46.94″ N 072°5′14.46″ W to Bartlett Cove 41°25′35.9″ N 072°5′42.89″ W (NAD 83).
1.2 Great Connecticut River Raft Race, Middletown, CT	• Event type: Boat Race. • Date: Saturday, July 28, 2012 from 10 a.m. until 2 p.m. • Location: All waters of the Connecticut River Middletown, CT between Dart Island (Marker no. 73) 41°33′8.235″ N 072°33′24.459″ W and Portland Shoals (Marker no. 92) 41°33′46.828″ N 072°38′42.176″ W (NAD 83).

TABLE 1 TO § 165.151

6.0	June
6.2 Town of Branford Fireworks	• Date: Saturday, June 23, 2012. • Rain date: Sunday, June 24, 2012. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Branford Harbor, Branford, CT in approximate position, 41°15′30″ N, 072°49′22″ W (NAD 83).
6.3 Vietnam Veterans/Town of East Haven Fireworks	• Date: Saturday, June 30, 2012. • Rain date: Sunday, June 31, 2012. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters off Cosey beach, East Haven, CT in approximate position, 41°14′19″ N, 072°52′9.8″ W (NAD 83).
7.0	July
7.1 Point O'Woods Fire Company Summer Fireworks	• Date: Tuesday, July 3, 2012. • Rain date: Wednesday, July 4, 2012. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of the Great South Bay, Point O'Woods, NY in approximate position 40°39′18.57″ N, 073°08′5.73″ W (NAD 83).
7.4 Norwalk Fireworks	• Date: Tuesday, July 3, 2012. • Rain date: Thursday, July 5, 2012. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters off Calf Pasture Beach, Norwalk, CT in approximate position, 41°04′50″ N, 073°23′22″ W (NAD 83).
7.5 Lawrence Beach Club Fireworks	• Date: Saturday, June 30, 2012. • Rain date: Sunday, July 1, 2012. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of the Atlantic Ocean off Lawrence Beach Club, Atlantic Beach, NY in approximate position 40°34′42.65″ N, 073°42′56.02″ W (NAD 83).
7.6 Sag Harbor Fireworks	• Date: Saturday, June 30, 2012. • Rain date: Sunday, July 1, 2012. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Sag Harbor Bay off Havens Beach, Sag Harbor, NY in approximate position 41°00′26″ N, 072°17′9″ W (NAD 83).
7.7 South Hampton Fresh Air Home Fireworks	• Date: Friday, July 6, 2012 • Rain date: Saturday, July 7, 2012 • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Shinnecock Bay, Southampton, NY in approximate position, 40°51′48″ N, 072°26′30″ W (NAD 83).
7.8 Westport Police Athletic League Fireworks	• Date: Tuesday, July 3, 2012. • Rain date: Thursday, July 5, 2012. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters off Compo Beach, Westport, CT in approximate position 41°06′15″ N, 073°20′57″ W (NAD 83).
7.18 Hartford Riverfest Fireworks	• Date: Saturday, July 7, 2012. • Rain date: Sunday, July 8, 2012. • Time: 9:00 p.m. to 10:30 p.m. • Location: Waters of the Connecticut River off Hartford, CT in approximate position 41°45′21″ N, 072°39′28″ W (NAD 83).
7.22 Mason's Island Yacht Club Fireworks	• Date: July 7, 2012. • Rain date: July 8, 2012. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Fisher's Island Sound, Noank, CT in approximate position 41°19′30.61″ N, 071°57′48.22″ W (NAD 83).
7.28 City of Long Beach Fireworks	• Date: Tuesday, July 3, 2012. • Rain date: Friday, July 13, 2012. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters off Riverside Blvd, City of Long Beach, NY in approximate position 40°34′38.77″ N, 073°39′41.32″ W (NAD 83).
7.31 Shelter Island Fireworks	• Date: July 14, 2012. • Rain date: July 15, 2012. • Time: 8:30 p.m. to 10:30 p.m.

TABLE 1 TO § 165.151—Continued

	• Location: Waters of Gardiner Bay, Shelter Island, NY in approximate position 41°04′39.11″ N, 072°22′01.07″ W (NAD 83).
7.35 Groton Long Point Yacht Club Fireworks	• Date: Saturday, July 14, 2012. • Rain date: Sunday, July 15, 2012. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Long Island Sound, Groton, CT in approximate position 41°18′05″ N, 072°02′08″ W (NAD 83).
8.0	August
8.2 Port Washington Sons of Italy Fireworks	• Date: Sunday, September 9, 2012. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Hempstead Harbor off Bar Beach, North Hempstead, NY in approximate position 40°49′48.04″ N, 073°39′24.32″ W (NAD 83).
8.6 Town of Babylon Fireworks	• Date: Saturday, August 25, 2012. • Rain date: Sunday, August 26, 2012. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters off of Cedar Beach Town Park, Babylon, NY in approximate position 40°37′53″ N, 073°20′12″ W (NAD 83).
9.0	September
9.1 East Hampton Fire Department Fireworks	• Date: Saturday, September 1, 2012. • Rain date: Sunday, September 2, 2012. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters off Main Beach, East Hampton, NY in approximate position 40°56′40.28″ N, 072°11′21.26″ W (NAD 83).

TABLE 2 TO § 165.151

1.1 Swim Across the Sound	• Date: Saturday, July 28, 2012. • Time: 8:30 a.m. to 6:30 p.m. • Location: Waters of Long Island Sound, Port Jefferson, NY to Captain's Cove Seaport, Bridgeport, CT in approximate positions 40°58′11.71″ N 073°05′51.12″ W, north-westerly to the finishing point at Captain's Cove Seaport 41°09′25.07″ N, 073°12′47.82″ W (NAD 83).
1.3 Maggie Fischer Memorial Great South Bay Cross Bay Swim	• Date: Friday, July 20, 2012. • Time: 7 a.m. to 11 a.m. • Location: Waters of the Great South Bay, NY. Starting Point at the Fire Island Lighthouse Dock in approximate position 40°38′01″ N, 073°13′07″ W, northerly through approximate points 40°38′52″ N, 073°13′09″ W, 40°39′40″ N, 073°13′30″ W, 40°40′30″ N, 073°14′00″ W, and finishing at Gilbert Park, Brightwaters, NY at approximate position 40°42′25″ N, 073°14′52″ W (NAD 83).

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

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

Dated: May 10, 2012.

J. M. Vojvodich,

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

[FR Doc. 2012–12563 Filed 5–24–12; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 121

Revised Service Standards for Market-Dominant Mail Products

AGENCY: Postal Service™.

ACTION: Final rule with phased implementation dates.

SUMMARY: The Postal Service is revising the service standards for market-dominant mail products, as part of its Network Rationalization initiative. Some portions of the new standards will be implemented in two phases.

DATES: *Effective date:* July 1, 2012. Please see **SUPPLEMENTARY INFORMATION**

section for phased implementation dates.

FOR FURTHER INFORMATION CONTACT: Wendy Hocking, Industry Engagement and Outreach, at 202–268–8149.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction.
II. Comments.
III. Decision To Conduct Phased Implementation.
IV. Response to Comments.
V. Statutory Considerations.
VI. Explanation of Final Rules.

I. Introduction

On September 21, 2011, the Postal Service published an advance notice of proposed rulemaking (the Advance Notice) in the **Federal Register** to solicit public comment on a conceptual proposal to revise service standards for market-dominant products.[1] After considering comments received in response to the Advance Notice, the Postal Service decided to develop the concept into a concrete proposal, termed Network Rationalization. The basic logic of Network Rationalization is that falling mail volumes and the resultant excess capacity in the Postal Service's mail processing network necessitate a major consolidation of the network, and this task in turn is contingent on revisions to service standards, particularly the overnight standard for First-Class Mail.

On December 5, 2011, the Postal Service submitted a request to the Postal Regulatory Commission (PRC) for an advisory opinion on the service changes associated with Network Rationalization, in accordance with 39 U.S.C. 3661(b).[2] On December 15, 2011, the Postal Service published proposed revisions to its market-dominant service standards in the **Federal Register** and sought public comment (the Proposed Rulemaking).[3] The comment period for the Proposed Rulemaking closed on February 13, 2012.

Having considered comments responsive to the Proposed Rulemaking, informal advice that the Postal Service has received through other channels, and the results of its market research, the Postal Service has decided to implement Network Rationalization in a phased manner. The Postal Service believes that the initiative will help ensure its long-term viability, and that it complies with all applicable statutory requirements. This Notice explains the new rules and their phased implementation.

II. Comments

The Postal Service received 101 written comments in response to the Proposed Rulemaking. These responses came from a variety of sources, including retail and residential customers, businesses, periodicals publishers, mailer trade associations, postal unions, members of Congress, and others. As was the case for the Advance Notice, the majority of written comments received in response to the Proposed Rulemaking opposed Network Rationalization. Some commenters questioned various aspects of the initiative but ultimately supported it. A few supported it without reservation.

Commenters focused on the following concerns. They stated that the lengthened service standards would unreasonably burden many customers. They said, for example, that rural customers who depend on the Postal Service for vital deliveries, such as prescription medicines and paychecks, would be hurt, that businesses that receive remittance mail would suffer financial losses, and that periodicals would see their subscriptions decline. Commenters feared that the proposal could delay mailed election ballots from reaching their destinations, potentially causing some ballots not to be counted. Some mailers stated that it would not be possible for them to meet the new Critical Entry Times set forth in the Proposed Rulemaking. Overall, many commenters cautioned that Network Rationalization could accelerate mail volume declines, with customers abandoning the postal system for electronic alternatives. Accordingly, they suggested that the Postal Service achieve financial stability through other means, such as eliminating discounts, shifting to five-day or even three-day delivery, and seeking legislative relief from having to prefund the Retiree Health Benefits Fund.

Some commenters did not oppose the proposal but nevertheless questioned aspects of its planning, communication, and implementation. This was especially true for businesses and larger customers. For example, some characterized the Postal Service's current performance in meeting service standards as poor, and they wondered whether the Postal Service would improve performance under the new standards. Others expressed skepticism as to the Postal Service's ability to achieve its projected cost reductions. Moreover, they inferred that the initiative would shift costs to mailers, and asked why the Postal Service had not analyzed such cost impacts. Commenters also pointed out that increased costs to customers and decreased service levels are analogous to price increases. Some mailers expressed concerns about potentials for loading dock shortages and longer waiting times at mail entry locations, given the smaller number of mail processing facilities after implementation of Network Rationalization.

More generally, some commenters stated that the proposed implementation dates are too early, and they questioned the prudence of the Postal Service implementing the initiative before receiving the PRC's advisory opinion. In addition, some criticized the Postal Service's communication of its plans, particularly of details such as new mailing eligibility and software requirements.

A small minority of written comments supported Network Rationalization without reservation, encouraging the Postal Service to take whatever steps are necessary for it to remain a viable, self-supporting entity. One commenter noted that Network Rationalization could provide significant cost savings and could improve the attributable cost coverage of the Periodicals class of mail.

In addition to the written comments, the Postal Service received informal opinions and advice from commercial mailers, mailer associations, and members of Congress. The mailers and associations mostly supported Network Rationalization, while Congressional opinion was mixed.

III. Decision To Conduct Phased Implementation

After considering the formal rulemaking comments, the range of other informal advice it has received, and the results of its market research, and after considering the requirements of 39 U.S.C. 3691 and other applicable provisions of title 39, the Postal Service has determined to implement Network Rationalization, but on a more gradual timeline than it initially envisioned. The Postal Service is adopting new rules for market-dominant service standards, with an interim version that will apply from July 1, 2012, through January 31, 2014, and a final version that will apply on February 1, 2014, and thereafter. From the outset, the Postal Service has understood that implementation of Network Rationalization will require more than one year. The phased

[1] Proposal To Revise Service Standards for First-Class Mail, Periodicals, and Standard Mail, 76 FR 58433 (Sept. 21, 2011).

[2] PRC Docket No. N2012–1, Request of the United States Postal Service for an Advisory Opinion on Changes in the Nature of Postal Services (Dec. 5, 2011). Documents pertaining to the Request are available at the PRC Web site, *http://www.prc.gov*.

[3] Service Standards for Market-Dominant Mail Products, 76 FR 77942 (Dec. 15, 2011).

application of the new rules accommodates this reality and also provides the Postal Service with enough flexibility that, should subsequent events or changed circumstances so warrant, the Postal Service will be able to revisit the final version before February 1, 2014, and amend or withdraw it, as appropriate, through a new notice-and-comment rulemaking.

On July 1, 2012, coinciding with the effectiveness of the interim version of the new rules, the Postal Service will begin implementing the first phase of Network Rationalization. It will suspend Phase One from September 1, 2012, through December 31, 2012, to avoid disrupting the fall election and holiday mailing cycles, and resume it thereafter. The Postal Service will begin implementing the second phase on February 1, 2014, coincident with the application of the final version of the new rules.

The interim version of the new rules differs from the final version in three respects: (1) The interim version applies an overnight service standard to all intra-Sectional Center Facility (SCF) First-Class Mail, regardless of the point of entry or level of preparation, whereas the final version applies it only to intra-SCF First-Class Mail pieces that are entered at the SCF and meet specified preparation and entry time requirements; (2) the interim version applies a two-day service standard to First-Class Mail pieces if there is a six-hour or less driving time between the pieces' origin Processing and Distribution Center or Facility (P&DC/F) and destination Area Distribution Center (ADC), whereas the final version applies it if there is a six-hour or less driving time between the pieces' origin P&DC/F and destination SCF; and (3) the interim version modifies the delivery day range for end-to-end Periodicals in the contiguous forty-eight states from the current one to nine days to two to nine days, while the final version modifies it further to three to nine days (under both the interim and final versions, there will continue to be an overnight service standard for qualifying destination-entry Periodicals).

Operationally, the principal benefit of the new rules is that they will allow the Postal Service to expand its nightly processing window, smoothing out the peak volume load over more of the workday, thereby reducing the number of processing locations needed in the network. Presently, the Postal Service's delivery point sequencing (DPS) operations are generally run for six and one-half hours per day, from 12:30 a.m. to 7 a.m. Once implementation of Phase One is complete, the DPS window will expand to up to ten hours, from 8 p.m. to 6 a.m. This change will facilitate the consolidation of the mail processing operations of approximately 140 facilities. Then, once implementation of Phase Two is complete, the DPS window will expand to up to sixteen hours, from 12 p.m. to 4 a.m. This will make possible the consolidation of the mail processing operations of approximately 230 facilities (inclusive of the approximately 140 consolidated in Phase One).

As discussed in the sections below, the Postal Service is convinced that Network Rationalization is vital to its long-term viability. At the same time, the Postal Service is well aware that sudden changes to systems as complex as its mail processing network can precipitate unintended consequences. Accordingly, the Postal Service has decided on the extended, phased implementation schedule outlined above to help ensure that Network Rationalization proceeds in a steady, measured fashion, with a minimal level of disruption.

Of course, the Postal Service's phased implementation schedule by its nature builds in time for additional deliberation and consideration. As noted above, the Postal Service recognizes the possibility that subsequent events or changed circumstances could cause it at a future date to revisit the final version of the new rules that will apply beginning on February 1, 2014, and to alter or withdraw those rules through a new notice-and-comment rulemaking. At this time, however, the Postal Service expects to implement the new rules and Network Rationalization as set forth in this Notice.

IV. Response to Comments

As the Postal Service implements Network Rationalization, it will remain mindful of the concerns expressed by commenters and will work to minimize those concerns. In response to commenters who stated that Network Rationalization may lead to accelerated volume declines, the Postal Service notes that the initiative is largely focused on First-Class Mail, a mail class that has seen and will continue to see significant volume declines. These declines are linked, in large part, to electronic diversion, a secular trend that is outside the Postal Service's control. The Postal Service has conducted market research to estimate the additional volume that could be lost due to Network Rationalization, and it believes that the estimated losses are acceptable when compared to the initiative's likely benefits.

The Postal Service observes that the alternatives proposed by commenters would not, by themselves, restore the Postal Service to lasting financial viability. Furthermore, many of the suggested alternatives require the enactment of legislation. The Postal Service has diligently sought such legislation, particularly with regard to the Retiree Health Benefits Fund and five-day delivery, but progress has been slow, and the prospects for timely enactment, if any, remain unclear. On the revenue front, customers have strongly opposed the Postal Service's pursuit of an exigent rate increase, and the PRC has thus far rejected it. As for cost reductions outside of Network Rationalization, the Postal Service is pursuing other cost-saving initiatives simultaneously with Network Rationalization, but neither Network Rationalization nor any of the other initiatives is sufficient in itself to secure the Postal Service's financial stability. Rather, they are all necessary. And, even in the realm of mail processing, the Postal Service has continually pursued consolidation opportunities wherever feasible, but it is now reaching the limit of consolidations that can be effected without altering service standards nationwide.

Though it is true that Network Rationalization will burden some customers, most of these burdens can be minimized through relatively minor changes on the part of customers. For example, pharmaceutical companies can minimize gaps in prescription fulfillment by continuing to remind customers to place their refill orders in a timely manner. Likewise, customers who mail bill payments and are concerned that their payments may arrive late can mail their payments one or two days earlier than they do now. In addition, businesses that rely on remittance mail can still obtain overnight First-Class Mail service for their outgoing mail by meeting the new preparation and entry requirements outlined in Section VI below, and they can speed their receipt of incoming mail by using Caller Service at the destinating processing facility. Indeed, the Postal Service expects overnight Caller Service at destinating processing facilities to improve, given the larger mail processing operating windows.

The Postal Service believes that its cost savings estimates for Network Rationalization are, generally speaking, somewhat conservative, and it is confident that it can achieve the

savings.[4] It also recognizes that the initiative will cause additional costs for some customers, as most major service changes do. In the Advance Notice, the Postal Service requested that customers provide information on ''the nature and extent of costs or savings they might experience,'' including ''empirical data supporting any cost-benefit analysis.'' The Postal Service did not receive any responsive information, and it does not itself possess such information.

Furthermore, the Postal Service would point out that the decision to pursue Network Rationalization does not hinge on a particular level of savings in the short term. Rather, the initiative is driven substantially by the reality that falling mail volumes have created significant excess capacity in the Postal Service's mail processing network. Network Rationalization is aimed at realigning the network with current mail volume trends. As time goes on, and mail volumes continue to decline, the cost savings will grow.

In response to mailers' concerns about potentials for loading dock shortages and longer waiting times at mail entry locations, the Postal Service will expand appointment windows at facilities and modify volume restrictions. Further, the Postal Service plans to retain all current business mail entry units (BMEUs) for the time being. Should the Postal Service decide to relocate or consolidate any BMEU operations, it will notify mailers 120 days beforehand, and it will relocate or consolidate the units to nearby locations that minimize impacts on mailers. As the Postal Service moves forward with implementation, it is committed to communicating any changes simply and clearly.

Finally, with respect to the Postal Service's decision to move forward with Network Rationalization before receiving the PRC's advisory opinion, it is notable that the Postal Service filed its advisory opinion request more than 160 days before the publication of this Notice and more than 200 days before the July 1, 2012, implementation date. The PRC's rules require that such requests be filed at least ninety days before implementation.[5] The time between the filing of the Postal Service's request and the implementation of Phase One has provided the PRC with a reasonable period within which to issue an opinion. It appears now, however, that the PRC will not be able to issue an opinion before Phase One implementation commences. Nevertheless, the ongoing proceedings have enhanced the Postal Service's deliberations, and, given the extended implementation schedule that the Postal Service has adopted, the PRC's advisory opinion, when issued, can still provide valuable guidance to postal management during the implementation process.

V. Statutory Considerations

In addition to considering comments, the Postal Service has considered the requirements of 39 U.S.C. 3691 and other applicable provisions of title 39. Section 3691(b) sets forth objectives that the Postal Service's market-dominant service standards must serve, and Section 3691(c) sets forth factors that the Postal Service must take into account when revising the service standards. The Postal Service believes that it has properly considered the subsection (c) factors, and that the revised service standards achieve the subsection (b) objectives.

Since the passage of the Postal Reorganization Act (PRA), the Postal Service has been required to be largely self-supporting. The PRA established a cost-of-service system, which allowed the Postal Service to set prices at levels necessary to fully cover its costs. This system was dramatically altered in 2006 with the passage of the Postal Accountability and Enhancement Act (PAEA). In contrast to the PRA, the PAEA established a price cap system, with strict limitations on price increases for market-dominant product classes. As the PRC has observed, a primary goal of the price cap system is ''to incent the Postal Service to reduce costs and improve efficiency.''[6]

Section 3691 is situated within this larger context of inducing efficiency gains, and the subsection (c) factors are aligned with that goal in that, taken together, they balance levels of service for customers with the Postal Service's operational and business needs. From the formal rulemaking comments that the Postal Service has received, it is clear that some customers view the current service standards as vitally important, and that some customers would experience difficulties if service standards are lengthened. On a broader level, however, it appears that the public as a whole does not view the current service standards as an essential element of the mail.

The Postal Service has conducted market research into potential consumer and business reactions to the proposed service standard changes.[7] Most of the surveyed consumers and small businesses stated that the service standard changes would have a limited impact on their mailing behavior. Importantly, these customers believed that they could easily adapt to the proposed changes by, among other things, mailing earlier than they do now. Moreover, many customers were unaware of the current service standards, and mistakenly believed that the current service standards are of longer duration than they actually are. Larger commercial mailers were also accepting of the service standard changes and generally indicated that they would be able to adapt. Of course, some commercial mailers, such as remittance mailers, have a significant financial interest in sustained local overnight First-Class Mail service. The new rules make it possible for many of them to retain such service.

In its market research, and through its ongoing dialogue with mailers, the Postal Service found that most consumers and businesses would not prefer a significant price increase in lieu of the proposed service standard changes. Thus, their views seem to align with the PAEA's overall framework of limiting price increases to induce efficiency gains. Overall, then, while the revised service standards will burden some customers, it appears that they will satisfy most customers' mailing needs and will be broadly acceptable to the mailing public.

In regard to the subsection (c) factors that relate to the Postal Service's operational and business needs, the Postal Service has already set forth, in the Proposed Rulemaking, the mail volume and financial realities that necessitate Network Rationalization. Annual First-Class Mail volume peaked in 2001 at 103.7 billion pieces, and since then it has fallen by about 30 billion pieces, or 29 percent. Because the Postal Service's mail processing network was principally designed to achieve First-Class Mail service standards, the decline in First-Class Mail volume has made it difficult for the Postal Service to consolidate the network quickly enough to align with current volumes. The Postal Service expects the declines to continue into the foreseeable future, with First-Class Mail forecast to drop from 74 billion pieces in 2011 to 39 billion pieces in 2020, a

[4] One reason for the estimates' conservatism is that the underlying calculations hew to PRC methodologies, some of which incorporate assumptions that are, in the Postal Service's view, unrealistic.

[5] 39 CFR 3001.72.

[6] PRC Docket No. R2010–4, Order No. 547 (Sept. 30, 2010), at 80.

[7] *See* PRC Docket No. N2012–1, Direct Testimony of Rebecca Elmore-Yalch on Behalf of the United States Postal Service (USPS–T–11) (Dec. 5, 2011); and PRC Docket No. N2012–1, Direct Testimony of Greg Whiteman on Behalf of the United States Postal Service (USPS–T–12) (Dec. 5, 2011), available at *http://www.prc.gov.*

further 47 percent decline. Over this time, the number of addresses that the Postal Service serves will only grow, meaning that the Postal Service's revenue per delivery point will fall significantly. It is imperative, then, for the Postal Service to streamline its mail processing network.

The Postal Service believes that the revised service standards are designed to achieve the Section 3691(b) objectives. First-Class Mail and Periodicals should retain most of their value to customers, because the service standards for most such mail will increase by only one day. Further, the network consolidations made possible by the service standard changes will result in a more nimble and sustainable Postal Service. The stability of the Postal Service should, to some degree, enhance the value of First-Class Mail and Periodicals, by allowing customers to depend on the affordability of these products into the foreseeable future.

Network Rationalization will also help improve the Postal Service's performance in meeting service standards, by significantly enlarging the daily mail processing operating window. While the speed of delivery of First-Class Mail and Periodicals will diminish, somewhat reducing the value of the mail, this should be mitigated to some extent by the enhanced reliability of the service standards.

VI. Final Revisions to Service Standards

The Postal Service's market-dominant service standards are contained in 39 CFR Part 121. The new version of 39 CFR part 121 appears at the end of this Notice. The following is a summary of the revisions.

A. Service Standards Generally

The service standards contained in 39 CFR Part 121 for each mail class can be divided into two elements: (1) A delivery day range within which all mail in a given class is expected to be delivered;[8] and (2) business rules that determine the specific number of delivery days for each mail piece. Business rules are based on Critical Entry Times (CETs). The CET is the latest time on a particular day that a mail piece can be entered into the postal network and still have its service standard calculated based on that day (this day is termed ''day-zero''). In other words, if a piece is entered before the CET, its service standard is calculated from the day of entry, whereas if it is entered after the CET, its service standard is calculated from the following day.[9] For example, if the applicable CET is 5:00 p.m., and a letter is entered at 4:00 p.m. on a Tuesday, its service standard will be calculated from Tuesday, whereas if the letter is entered at 6:00 p.m. on a Tuesday, its service standard will be calculated from Wednesday.

CETs are not contained in 39 CFR Part 121, because they vary based on where mail is entered, the mail's level of preparation, and other factors. The CETs at retail collection points are generally listed at those points. For example, blue collection boxes list the time of day when mail is collected from them by the Postal Service; if a blue collection box lists three pick-up times on one day, the CET for that day is the latest listed pick-up time.

The Postal Service will institute several new CETs on February 1, 2014, when the final version of the new rules begin application, as described below. Of course, the CETs could be modified again in the future, as the operating environment that the Postal Service faces evolves.

B. First-Class Mail

The Postal Service is not changing the general delivery day ranges for First-Class Mail. The delivery day range for First-Class Mail that originates and destinates in the contiguous forty-eight states will remain one to three days, and the delivery day range for First-Class Mail that originates or destinates in Alaska, Hawaii, American Samoa, Guam, Puerto Rico, or the U.S. Virgin Islands will remain one to five days. The Postal Service is, however, changing the First-Class Mail business rules.

1. Overnight Rule

Under the current overnight business rule for First-Class Mail, the overnight service standard is applied to all intra-SCF mail, as well as to some inter-SCF mail pieces if a specified minimum level of mail volume regularly flows between the pieces' origin and destination SCFs.[10] Under the interim version of the overnight business rule, the overnight service standard will be applied only to intra-SCF mail.[11] It will no longer apply to any inter-SCF mail.[12]

Under the final version of the overnight business rule for First-Class Mail, the overnight service standard will be applied only to intra-SCF Presort mail that is entered at the actual SCF. The overnight service standard will not apply to mail that is entered anywhere other than the designated SCF, nor will it apply to mail that does not meet all of the preparation requirements for Presort mail. Pursuant to these revisions, the overnight service standard for First-Class Mail will no longer apply to mail sent by retail customers, regardless of where they enter the mail.[13]

On February 1, 2014, when the final version of the rule takes effect, the CET at the SCF will become 8 a.m., with a 12 p.m. exception that will be available only to intra-SCF Presort First-Class Mail that is sorted and containerized to the 5-digit ZIP Code or 5-digit scheme level.

2. Two-Day Rule

Under the current two-day business rule for First-Class Mail, a two-day service standard is applied to mail pieces for which the driving time between the applicable P&DC/F and ADC is twelve hours or less. The interim version of the two-day business rule will revise this metric to six hours. The final version will revise it to six hours between the applicable P&DC/F and SCF.[14]

3. Three-, Four-, and Five-Day Rules

The current three-, four-, and five-day service standards for First-Class Mail will remain unchanged. All First-Class Mail that qualifies for a two-day service standard under the current two-day business rule, but does not qualify for a

[8] There are separate delivery day ranges for mail within the contiguous forty-eight states and mail that originates or destinates outside the contiguous forty-eight states.

[9] If the following day is a Sunday or holiday, the service standard is calculated from the next Postal Service delivery day.

[10] The current overnight rule has an exception that excludes from overnight service some mail outside the contiguous forty-eight states, specifically: mail between Puerto Rico and the U.S. Virgin Islands; and mail originating and destinating in the Alaska 3-digit ZIP Codes 996, 997, 998, and 999, and in the Alaska 5-digit ZIP Codes 99540 to 99591.

[11] The new overnight rule will expand the exception described in footnote 10, *id.,* to include American Samoa and the Alaska 5-digit ZIP Codes 99592 to 99599. These ZIP Codes are currently unassigned, but they may be assigned in the future.

[12] Both the current and new rules use the terms ''intra-SCF'' and ''inter-SCF'' as they are defined in the Domestic Mail Manual (DMM). So, with respect to a particular SCF, intra-SCF mail is mail that originates and destinates within the 3-digit ZIP Code areas assigned to that SCF in the DMM, while inter-SCF mail is mail that originates or destinates outside those 3-digit ZIP Code areas.

[13] Some First-Class Mail pieces entered by retail customers may, under limited circumstances, continue to receive overnight service, but the applicable service standard will not be overnight.

[14] After the Phase Two consolidations, the Postal Service will be able to sort First-Class Mail at the origin to the SCF level, which is typically closer to the destination of the mail piece than the ADC level. Therefore, mail will generally bypass ADCs and be transported directly to SCFs. It is for this reason that the final version of the two-day business rule measures the driving time based on the destination SCF.

two-day standard under the new rule, will qualify for a three-day standard.

4. First-Class Mail International

The new domestic service standards for First-Class Mail International will mirror the new service standards for domestic First-Class Mail, just as the current domestic service standards for First-Class Mail International mirror the current service standards for domestic First-Class Mail.

C. Periodicals

The Postal Service is changing the delivery day range for end-to-end Periodicals mailed within the contiguous forty-eight states, from the current one to nine days, to two to nine days in the interim version of the new rules, and three to nine days in the final version. The Postal Service is also changing the delivery day range for end-to-end Periodicals that originate or destinate outside the contiguous forty-eight states, from the current one to twenty days, to two to twenty-six days in the interim version, and three to twenty-six days in the final version.[15]

The Postal Service is changing the delivery day range for destination-entry Periodicals mailed within the contiguous forty-eight states, from the current one to two days, to one to three days in both the interim and final versions. The Postal Service is changing the delivery day range for destination-entry Periodicals that originate or destinate outside the contiguous forty-eight states, from the current one to seven days, to one to eleven days in both the interim and final versions.[16]

The changes to the Periodicals business rules are described below. There are separate business rules for end-to-end Periodicals and destination-entry Periodicals.

1. End-to-End Periodicals

Under the current overnight business rule for end-to-end Periodicals, an overnight service standard applies to intra-SCF mail for which the origin P&DC/F and SCF are located in the same building. The new rules will not apply an overnight service standard to any end-to-end Periodicals (though they will apply an overnight standard to qualifying destination-entry Periodicals, as described below).

The current two- to four-day business rule covers most end-to-end Periodicals mail pieces that are mailed within the contiguous forty-eight states and do not qualify for the overnight service standard.[17] The rule calculates the specific standard for each such piece by adding one day to the comparable First-Class Mail service standard that the piece would qualify for if it were a First-Class Mail piece. The interim version of this rule will remain two to four days, but the final version will be three to four days, as a result of the reduced scope of the overnight First-Class Mail service standard.

The current five- to nine-day business rule covers end-to-end Periodicals mail pieces that are mailed within the contiguous forty-eight states, do not qualify for the overnight service standard, and cannot be merged with First-Class Mail. This rule will be retained.

The remaining business rules for end-to-end Periodicals cover mail pieces originating or destinating outside the contiguous forty-eight states. In the new business rules for these pieces, the current eight- to twenty-day service standard will become a twelve- to twenty-six day service standard, to more accurately reflect, and better inform customers of, the service that the Postal Service's network is presently capable of providing for mail outside the contiguous forty-eight states. The other end-to-end service standards for these pieces will not change.

2. Destination-Entry Periodicals

The new rules make three significant changes to the service standards for destination-entry Periodicals. First, they revise the overnight service standard to exclude Periodicals entered at Network Distribution Centers (NDCs) and Auxiliary Service Facilities (ASFs). This revision is being made to reflect the capabilities of the Postal Service's transportation network.

Second, the new rules revise the seven-day service standard to an eleven-day service standard. And third, the new rules revise the five- to eight-day service standard to an eight- to eleven-day service standard. The second and third changes are being made so that the rules more accurately reflect, and better inform customers of, the service that the Postal Service's network is presently capable of providing.

On February 1, 2014, the CETs for destination-entry Periodicals at facilities that do not employ the Flats Sequencing System (FSS) will change from 4 p.m. for mailings that require a bundle sort, and 5 p.m. for mailings that do not require a bundle sort, to 11 a.m. and 2 p.m., respectively. The CETs at FSS facilities will not change.

D. Standard Mail and Package Services

The new rules do not revise the service standards for Standard Mail and Package Services pieces mailed within the contiguous forty-eight states. They do, however, revise service standards for pieces that originate or destinate outside the contiguous forty-eight states, to more accurately reflect the service that the Postal Service's network is presently capable of providing.[18] The new rules revise Standard Mail's maximum delivery expectation from the current twenty-two days to twenty-seven days. Within the business rules, they revise the end-to-end nine- to twenty-two-day service standard to twelve to twenty-seven days, and the destination-entry nine- to twelve-day service standard to twelve to fourteen days.

Likewise, the new rules revise Package Services' maximum delivery expectation from the current twenty days to twenty-six days. Within the business rules, they revise the end-to-end seven- to twenty-day service standard to ten to twenty-six days, and the destination-entry seven- to eight-day service standard to eleven to twelve days.

E. Non-Substantive Changes

Apart from the substantive changes explained above, the Postal Service has also reworded and reorganized portions of rules, particularly the First-Class Mail and Periodicals sections, in a manner that does not change the substantive effects of the rules but will, the Postal Service hopes, make the rules clearer and easier to understand.

List of Subjects in 39 CFR Part 121

Administrative practice and procedure, Postal Service.

Accordingly, for the reasons stated, the Postal Service adopts the following revisions to 39 CFR Part 121:

[15] The proportion of mail affected by this change is less than one percent of total mail volume. The change is being made so that the rules more accurately reflect, and better inform customers of, the actual service that the Postal Service's network is presently capable of providing for such mail. Outside the contiguous forty-eight states, mail is often dependent on transportation that does not run daily (*e.g.,* some boat and air-taxi services used by the Postal Service operate only on certain days of the week). For this reason, the service accorded to such mail varies widely and is often longer than stated in the current service standards.

[16] See *id.* for why this change is being made. The proportion of mail affected is less than one percent of total mail volume.

[17] Mail pieces qualify for this rule based on whether they can be merged with First-Class Mail, as determined by criteria set forth in the DMM.

[18] The proportion of mail affected by these changes is less than one percent of total mail volume.

PART 121—SERVICE STANDARDS FOR MARKET DOMINANT MAIL PRODUCTS

■ 1. The authority citation for 39 CFR Part 121 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 403, 404, 1001, 3691.

■ 2. Section 121.1 is revised to read as follows:

§ 121.1 First-Class Mail.

(a)(1) Until February 1, 2014, a 1-day (overnight) service standard is applied to intra-Sectional Center Facility (SCF) domestic First-Class Mail® pieces properly accepted before the day-zero Critical Entry Time (CET), except for mail between Puerto Rico and the U.S. Virgin Islands, mail between American Samoa and Hawaii, and mail destined to the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

(2) On and after February 1, 2014, a 1-day (overnight) service standard is applied to intra-SCF domestic Presort First-Class Mail pieces properly accepted at the SCF before the day-zero CET, except for mail between Puerto Rico and the U.S. Virgin Islands, and mail destined to American Samoa and the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

(b)(1) Until February 1, 2014, a 2-day service standard is applied to inter-SCF domestic First-Class Mail pieces properly accepted before the day-zero CET if the drive time between the origin Processing & Distribution Center or Facility (P&DC/F) and destination Area Distribution Center (ADC) is 6 hours or less; or if the origin and destination are separately in Puerto Rico and the U.S. Virgin Islands; or if the origin or destination is in American Samoa or one of the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

(2) On and after February 1, 2014, a 2-day service standard is applied to inter-SCF domestic First-Class Mail pieces properly accepted before the day-zero CET if the drive time between the origin P&DC/F and destination SCF is 6 hours or less; or if the origin and destination are separately in Puerto Rico and the U.S. Virgin Islands; or if the origin or destination is in American Samoa or one of the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

(c) A 3-day service standard is applied to domestic First-Class Mail pieces properly accepted before the day-zero CET, if the 1-day and 2-day service standards do not apply, and:

(1) Both the origin and the destination are within the contiguous 48 states;

(2) The origin is in the contiguous 48 states, and the destination is in any of the following: the city of Anchorage, Alaska (5-digit ZIP Codes 99501 through 99539); the 968 3-digit ZIP Code area in Hawaii; or the 006, 007, or 009 3-digit ZIP Code areas in Puerto Rico;

(3) The origin is in the 006, 007, or 009 3-digit ZIP Code areas in Puerto Rico, and the destination is in the contiguous 48 states;

(4) The origin is in Hawaii, and the destination is in Guam, or vice versa;

(5) The origin is in Hawaii, and the destination is in American Samoa, or vice versa; or

(6) Both the origin and destination are within Alaska.

(d) A 4-day service standard is applied to domestic First-Class Mail pieces properly accepted before the day-zero CET, if the 1-day, 2-day, and 3-day service standards do not apply, and:

(1) The origin is in the contiguous 48 states and the destination is in any of the following: any portion of Alaska other than the city of Anchorage (5-digit ZIP Codes 99501 through 99539); any portion of Hawaii other than the 968 3-digit ZIP Code area; or the U.S. Virgin Islands;

(2) The destination is in the contiguous 48 states and the origin is in Alaska, Hawaii, or the U.S. Virgin Islands; or

(3) The origin and destination are in different non-contiguous states or territories, excluding mail to and from Guam and mail between Puerto Rico and the U.S. Virgin Islands.

(e) A 5-day service standard is applied to all remaining domestic First-Class Mail pieces properly accepted before the day-zero CET.

(f) The service standard for Outbound Single-Piece First-Class Mail International™; pieces properly accepted before the day-zero CET is equivalent to the service standard for domestic First-Class Mail pieces originating from the same 3-digit ZIP Code area and destined to the 3-digit ZIP Code area in which the designated International Service Center is located.

(g) The service standard for Inbound Single-Piece First-Class Mail International pieces properly accepted before the day-zero CET is equivalent to the service standard for domestic First-Class Mail pieces destined to the same 3-digit ZIP Code area and originating from the 3-digit ZIP Code area in which the designated International Service Center is located.

■ 3. Section 121.2 is revised to read as follows:

§ 121.2 Periodicals.

(a) *End-to-End.*

(1)(i) Until February 1, 2014, a 2- to 4-day service standard is applied to Periodicals pieces properly accepted before the day-zero Critical Entry Time (CET) and merged with First-Class Mail pieces for surface transportation (as per the Domestic Mail Manual (DMM)), with the standard specifically equaling the sum of 1 day plus the applicable First-Class Mail service standard;

(ii) On and after February 1, 2014, a 3- to 4-day service standard is applied to Periodicals pieces properly accepted before the day-zero CET and merged with First-Class Mail pieces for surface transportation (as per the DMM), with the standard specifically equaling the sum of 1 day plus the applicable First-Class Mail service standard.

(2) A 3-day service standard is applied to Periodicals pieces properly accepted before the day-zero CET if: the origin and destination are separately in Puerto Rico and the U.S. Virgin Islands; or if the origin is in Alaska, the service standards set forth in paragraphs (a)(1)(i) and (ii) do not apply, and the destination is in the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

(3) A 4-day service standard is applied to Periodicals pieces properly accepted before the day-zero CET if: the origin and destination are separately in Hawaii and Guam; or the origin and destination are separately in Hawaii and American Samoa.

(4)(i) A 5- to 8-day service standard is applied to Periodicals pieces properly accepted before the day-zero CET if they originate and destinate within the contiguous 48 states, they are not merged with First-Class Mail pieces for surface transportation (as per the DMM), and the Area Distribution Center (ADC) and Sectional Center Facility (SCF) are co-located, with the standard specifically equaling the sum of 4 days plus the number of additional days (from 1 to 4) required for surface transportation between the applicable 3-digit ZIP Code origin-destination pairs;

(ii) A 6- to 9-day service standard is applied to Periodicals pieces properly accepted before the day-zero CET if they originate and destinate within the contiguous 48 states, they are not merged with First-Class Mail pieces for surface transportation (as per the DMM),

and the ADC and SCF are not co-located, with the standard specifically equaling the sum of 5 days plus the number of additional days (from 1 to 4) required for surface transportation between the applicable 3-digit ZIP Code origin-destination pairs;

(5) A 12- to 26-day service standard is applied to all remaining Periodicals pieces properly accepted before the day-zero CET, with the standard specifically equaling the sum of 5 days plus the number of additional days (from 7 to 21) required for intermodal (highway, boat, air-taxi) transportation outside the contiguous 48 states for the applicable 3-digit ZIP Code origin-destination pairs.

(b) *Destination Entry.*

(1) *Destination Delivery Unit (DDU) Entered Mail.* A 1-day (overnight) service standard is applied to Periodicals pieces that qualify for a DDU rate and are properly accepted before the day-zero CET at the designated DDU.

(2) *Destination Sectional Center Facility (DSCF) Entered Mail.*

(i) A 1-day (overnight) service standard is applied to Periodicals pieces that qualify for a DSCF rate and are properly accepted before the day-zero CET at the designated DSCF, except for mail entered at the SCF in Puerto Rico and destined to the U.S. Virgin Islands, mail entered at the SCF in Hawaii and destined to American Samoa, and mail destined to the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999;

(ii) A 3-day service standard is applied to Periodicals pieces that qualify for a DSCF rate and are properly accepted before the day-zero CET at the designated DSCF, if the they are entered at the DSCF in Puerto Rico and destined to the U.S. Virgin Islands, entered at the DSCF in Hawaii and destined to American Samoa, or destined to the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

(3) *Destination Area Distribution Center (DADC) Entered Mail.*

(i) A 1-day (overnight) service standard is applied to Periodicals pieces that qualify for a DADC rate and are properly accepted before the day-zero CET at the designated DADC, if the DADC and DSCF are co-located;

(ii) A 2-day service standard is applied to Periodicals pieces that qualify for a DADC rate and are properly accepted before the day-zero CET at the designated DADC, if the DADC and DSCF are not co-located, unless the mail is entered at a DADC within the contiguous 48 states and destined outside the contiguous 48 states, or entered at the DADC in Puerto Rico and destined to the U.S. Virgin Islands, or destined to either American Samoa or the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999;

(iii) A 4-day service standard is applied to Periodicals pieces that qualify for a DADC rate and are properly accepted before the day-zero CET at the designated DADC, if they are entered at the DADC in Puerto Rico and destined to the U.S. Virgin Islands, or if they are destined to American Samoa or the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999;

(iv) An 11-day service standard is applied to Periodicals pieces that qualify for a DADC rate, are properly accepted before the day-zero CET at the designated DADC in the contiguous 48 states, and are destined to the 998 or 999 3-digit ZIP Code areas in Alaska.

(4) *Destination Network Distribution Center (DNDC)/Auxiliary Service Facility (ASF) Entered Mail.*

(i) A 2-day service standard is applied to Periodicals pieces that qualify for a DADC containerized rate, are properly accepted before the day-zero CET at the designated DNDC or ASF in the contiguous 48 states, and are destined within the contiguous 48 states, if the DADC and DSCF are co-located;

(ii) A 3-day service standard is applied to Periodicals pieces that qualify for a DADC containerized rate, are properly accepted before the day-zero CET at the designated DNDC or ASF in the contiguous 48 states, and are destined within the contiguous 48 states, if the DADC and DSCF are not co-located;

(iii) An 8- to 10-day service standard is applied to Periodicals pieces that qualify for a DADC containerized rate, are properly accepted before the day-zero CET at the designated DNDC or ASF in the contiguous 48 states, and are destined outside the contiguous 48 states, if the DADC and DSCF are co-located, with the specific standard being based on the number of days required for transportation outside the contiguous 48 states;

(iv) A 9- to 11-day service standard is applied to Periodicals pieces that qualify for a DADC containerized rate, are properly accepted before the day-zero CET at the designated DNDC or ASF in the contiguous 48 states, and are destined outside the contiguous 48 states, if the DADC and DSCF are not co-located, with the specific standard being based on the number of days required for transportation outside the contiguous 48 states.

■ 4. Section 121.3 is revised to read as follows:

§ 121.3 Standard Mail.

(a) *End-to-End.* (1) The service standard for Sectional Center Facility (SCF) turnaround Standard Mail® pieces accepted at origin before the day-zero Critical Entry Time is 3 days when the origin Processing & Distribution Center/Facility (OPD&C/F) and the SCF are the same building, except for mail between the territories of Puerto Rico and the U.S. Virgin Islands.

(2) The service standard for Area Distribution Center (ADC) turnaround Standard Mail pieces accepted at origin before the day-zero Critical Entry Time is 4 days when the OPD&C/F and the ADC are the same building, unless the ADC is in the contiguous 48 states and the delivery address is not, or the mail is between Puerto Rico and the U.S. Virgin Islands, or the mail is between Hawaii and American Samoa.

(3) The service standard for intra-Network Distribution Center (NDC) Standard Mail pieces accepted at origin before the day-zero Critical Entry Time is 5 days for each remaining 3-digit ZIP Code origin-destination pair within the same Network Distribution Center service area if the origin and destination are within the contiguous 48 states; the same standard applies to mail that is intra-Alaska or between the state of Hawaii and the territory of Guam or American Samoa.

(4) For each remaining 3-digit ZIP Code origin-destination pair within the contiguous 48 states, the service standard for Standard Mail pieces accepted at origin before the day-zero Critical Entry Time is the sum of 5 or 6 days plus the number of additional days (from 1 to 4) required for surface transportation between each 3-digit ZIP Code origin-destination pair.

(5) For each remaining 3-digit ZIP Code origin-destination pair, the service standard for Standard Mail pieces accepted at origin before the day-zero Critical Entry Time is the sum of 5 or 6 days plus the number of additional days (from 7 to 21) required for intermodal (highway, boat, air-taxi) transportation outside the contiguous 48 states for each 3-digit ZIP Code origin-destination pair.

(b) *Destination Entry.* (1) Standard Mail pieces that qualify for a Destination Delivery Unit (DDU) rate and that are accepted before the day-

zero Critical Entry Time at the proper DDU have a 2-day service standard.

(2) Standard Mail pieces that qualify for a Destination Sectional Center Facility (DSCF) rate and that are accepted before the day-zero Critical Entry Time at the proper DSCF have a 3-day service standard, except for mail dropped at the SCF in the territory of Puerto Rico and destined to the territory of the U.S. Virgin Islands, or mail destined to American Samoa.

(3) Standard Mail pieces that qualify for a Destination Sectional Center Facility (DSCF) rate, are accepted before the day-zero Critical Entry Time at the SCF, and are either entered in Puerto Rico and destined to the U.S. Virgin Islands, or are destined to American Samoa, have a 4-day service standard.

(4) Standard Mail pieces that qualify for a Destination Network Distribution Center (DNDC) rate, and that are accepted before the day-zero Critical Entry Time at the proper DNDC have a 5-day service standard, if both the origin and the destination are in the contiguous 48 states.

(5) Standard Mail pieces that qualify for a Destination Network Distribution Center (DNDC) rate, and that are accepted before the day-zero Critical Entry Time at the proper DNDC in the contiguous 48 states for delivery to addresses in the states of Alaska or Hawaii or the territories of Guam, American Samoa, Puerto Rico, or the U.S. Virgin Islands, have a service standard of 12–14 days, depending on the 3-digit origin-destination ZIP Code pair. For each such pair, the applicable day within the range is based on the number of days required for transportation outside the contiguous 48 states.

■ 5. Section 121.4 is revised to read as follows:

§ 121.4 Package Services.

(a) *End-to-End.* (1) The service standard for Sectional Center Facility (SCF) turnaround Package Services mail accepted at the origin SCF before the day-zero Critical Entry Time is 2 days when the origin Processing & Distribution Center/Facility and the SCF are the same building, except for mail between the territories of Puerto Rico and the U.S. Virgin Islands, and mail destined to American Samoa.

(2) The service standard for intra-Network Distribution Center (NDC) Package Services mail accepted at origin before the day-zero Critical Entry Time is 3 days, for each remaining (non-intra-SCF) 3-digit ZIP Code origin-destination pair within a Network Distribution Center service area, where the origin and destination is within the contiguous 48 states and is not served by an Auxiliary Service Facility; and for mail between the territories of Puerto Rico and the U.S. Virgin Islands, and for mail destined to American Samoa.

(3) The service standard for intra-Network Distribution Center (NDC) Package Services mail accepted at origin before the day-zero Critical Entry Time is 4 days for each remaining 3-digit ZIP Code origin-destination pair within a Network Distribution Center service area, where the destination delivery address is served by an Auxiliary Service Facility; the same standard applies to all remaining intra-Alaska mail and mail between the state of Hawaii and the territory of Guam, and mail destined to American Samoa.

(4) For each remaining 3-digit ZIP Code origin-destination pair within the contiguous 48 states, the service standard for Package Services mail accepted at origin before the day-zero Critical Entry Time is between 5 and 8 days. For each such 3-digit ZIP Code origin-destination pair, this is the sum of 4 days, plus the number of additional days (from 1 to 4) required for surface transportation between each 3-digit ZIP Code origin-destination pair, plus an additional day if the destination delivery address is served by an Auxiliary Service Facility.

(5) For each remaining 3-digit ZIP Code origin-destination pair for which either the origin or the destination is outside the contiguous 48 states, the service standard for Package Services mail accepted at origin before the day-zero Critical Entry Time is between 10 and 26 days. For each such 3-digit ZIP Code origin-destination pair, this represents the sum of 3 to 4 days, plus the number of days (ranging from 7 to 22) required for intermodal (highway, boat, air-taxi) transportation between each 3-digit ZIP Code origin-destination pair.

(6) The service standard for Inbound Surface Parcel Post® pieces (subject to Universal Postal Union rates) is the same as the service standard for domestic Package Services mail from the 3-digit ZIP Code area in which the International Network Distribution Center is located in the 3-digit ZIP Code in which the delivery address is located.

(b) *Destination Entry.* (1) Package Services mail that qualifies for a Destination Delivery Unit (DDU) rate, and that is accepted before the day-zero Critical Entry Time at the proper DDU, has a 1-day (overnight) service standard.

(2) Package Services mail that qualifies for a Destination Sectional Center Facility (DSCF) rate, and that is accepted before the day-zero Critical Entry Time at the proper DSCF, has a 2-day service standard, except for mail dropped at the SCF in the territory of Puerto Rico and destined to the territory of the U.S. Virgin Islands, and mail destined to American Samoa.

(3) Package Services mail that qualifies for a Destination Sectional Center Facility (DSCF) discount, is accepted before the day-zero Critical Entry Time at the SCF, and is destined to either American Samoa or the U.S. Virgin Islands, has a 3-day service standard.

(4) Package Services mail that qualifies for a Destination Network Distribution Center (DNDC) rate, and is accepted before the day-zero Critical Entry Time at the proper DNDC or Destination Auxiliary Service Facility, and originates and destinates in the contiguous 48 states, has a 3-day service standard.

(5) Package Services mail that qualifies for a Destination Network Distribution Center (DNDC) rate, and that is accepted before the day-zero Critical Entry Time at the proper DNDC in the contiguous 48 states for delivery to addresses in the states of Alaska or Hawaii, or the territories of Guam, American Samoa, Puerto Rico, or the U.S. Virgin Islands has a service standard of either 11 or 12 days, depending on the 3-digit ZIP Code origin-destination pair. For each such pair, the applicable day within the range is based on the number of days required for transportation outside the contiguous 48 states.

■ 6. The Appendix to Part 121 is revised to read as follows:

Appendix A to Part 121—Tables Depicting Service Standard Day Ranges

The following tables reflect the service standard day ranges resulting from the application of the business rules applicable to the market-dominant mail products referenced in §§ 121.1 through 121.4:

Table 1. Prior to February 1, 2014, end-to-end service standard day ranges for mail originating and destinating within the contiguous 48 states and the District of Columbia.

CONTIGUOUS UNITED STATES

Mail class	End-to-end range (days)
First-Class Mail	1–3
Periodicals	2–9
Standard Mail	3–10

CONTIGUOUS UNITED STATES—Continued

Mail class	End-to-end range (days)
Package Services	2–8

Table 2. On and after February 1, 2014, end-to-end service standard day ranges for mail originating and destinating within the contiguous 48 states and the District of Columbia.

CONTIGUOUS UNITED STATES

Mail class	End-to-end range (days)
First-Class Mail	1–3
Periodicals	3–9
Standard Mail	3–10
Package Services	2–8

Table 3. Prior to February 1, 2014, end-to-end service standard day ranges for mail originating and/or destinating in non-contiguous states and territories.

NON-CONTIGUOUS STATES AND TERRITORIES

Mail class	End-to-end								
	Intra state/territory			To/From contiguous 48 states			To/From states of Alaska and Hawaii, and the territories of Guam, Puerto Rico and the U.S. Virgin Islands		
	Alaska	Hawaii, Guam, & American Samoa	Puerto Rico & USVI	Alaska	Hawaii, Guam, & American Samoa	Puerto Rico & USVI	Alaska	Hawaii, Guam, & American Samoa	Puerto Rico & USVI
First-Class Mail	1–3	1–3	1–2	3–4	3–5	3–4	4–5	4–5	4–5
Periodicals	2–4	2–4	2–3	13–19	12–22	11–16	21–25	21–26	23–26
Standard Mail	3–5	3–5	3–4	14–20	13–23	12–17	23–26	23–27	24–27
Package Services	*2–4	2–4	2–3	12–18	11–21	10–15	21–26	20–26	20–24

* Excluding bypass mail.

Table 4. On and after February 1, 2014, end-to-end service standard day ranges for mail originating and/or destinating in non-contiguous states and territories.

NON-CONTIGUOUS STATES AND TERRITORIES

Mail class	End-to-end								
	Intra state/territory			To/From contiguous 48 states			To/From states of Alaska and Hawaii, and the Territories of Guam, Puerto Rico and the U.S. Virgin Islands		
	Alaska	Hawaii, Guam, & American Samoa	Puerto Rico & USVI	Alaska	Hawaii, Guam, & American Samoa	Puerto Rico & USVI	Alaska	Hawaii, Guam, & American Samoa	Puerto Rico & USVI
First-Class Mail	1–3	1–3	1–2	3–4	3–5	3–4	4–5	4–5	4–5
Periodicals	3–4	3–4	3	13–19	12–22	11–16	21–25	21–26	23–26
Standard Mail	3–5	3–5	3–4	14–20	13–23	12–17	23–26	23–27	24–27
Package Services	*2–4	2–4	2–3	12–18	11–21	10–15	21–26	20–26	20–24

* Excluding bypass mail.

Table 5. Destination-entry service standard day ranges for mail to the contiguous 48 states and the District of Columbia.

CONTIGUOUS UNITED STATES

Mail class	Destination entry (at appropriate facility)			
	DDU (days)	SCF (days)	ADC (days)	NDC/ASF (days)
Periodicals	1	1	1–2	2–3
Standard Mail	2	3	.....	5
Package Services	1	2	.....	3

Table 6. Destination entry service standard day ranges for mail to non-contiguous states and territories.

NON-CONTIGUOUS STATES AND TERRITORIES

Mail class	Destination Entry (at appropriate facility)									
	DDU (Days)	SCF (Days)			ADC (Days)			NDC (Days)		
		Alaska	Hawaii, Guam, & American Samoa	Puerto Rico & USVI	Alaska	Hawaii, Guam, & American Samoa	Puerto Rico & USVI	Alaska	Hawaii, Guam, & American Samoa	Puerto Rico & USVI
Periodicals	1	1–3	1	1–3	1–4 (AK) 11 (JNU) 11 (KTN)	1 (HI) 2 (GU)	1–4	10–11	10	8–10
Standard Mail	2	3	3–4	3–4	.....	.....	.....	14	13	12
Package Services	1	2	2–3	2–3	.....	.....	.....	12	11	11

AK = Alaska 3-digit ZIP Codes 995–997; JNU = Juneau AK 3-digit ZIP Code 998; KTN = Ketchikan AK 3-digit ZIP Code 999; HI = Hawaii 3-digit ZIP Codes 967 and 968; GU = Guam 3-digit ZIP Code 969.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0140; FRL–9669–8]

Revision to the South Coast Air Quality Management District Portion of the California State Implementation Plan, South Coast Rule 1315

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a State Implementation Plan (SIP) revision for the South Coast Air Quality Management District (District) portion of the California SIP. This SIP revision incorporates Rule 1315—Federal New Source Review Tracking System—into the District's SIP approved New Source Review (NSR) program to establish the procedures for demonstrating equivalency with federal offset requirements by specifying how the District will track debits and credits in its Offset Accounts for Federal NSR Equivalency for specific federal nonattainment pollutants and their precursors. EPA is approving this SIP revision because Rule 1315 provides an adequate system to demonstrate on an on-going basis that the rule requires offsets in amounts equivalent to those otherwise required by the Clean Air Act (CAA) and that the emission reductions the District is crediting and debiting in its Offset Accounts meet the CAA's NSR offset requirements for federal major sources and modifications.

DATES: *Effective Date:* This rule is effective on June 25, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2012–0140 for this action. Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. Some docket materials, however, may be publicly available only at the hard copy location (e.g., voluminous records, maps, copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, (415) 972–3534, *yannayon.laura@epa.gov*.

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

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I. Background

EPA allows and encourages local authorities to tailor SIP programs, including new source review permitting programs, to account for that community's particular needs provided that the SIP is not less stringent than the Act's requirements. See generally CAA Section 116, 42 U.S.C. 7416; *Train* v. *Natural Res. Defense Council,* 421 U.S. 60, 79 (1975); *Union Electric Co.* v. *EPA,* 427 U.S. 246, 250 (1976). The District's SIP-approved nonattainment permitting rules are contained in District Regulation XIII. See 61 FR 64291 (December 4, 1996) (final rule approving SCAQMD's NSR program) and 40 CFR 52.220(c)(240)(i)(*1*).

When EPA approved Regulation XIII in 1996, we noted that Rule 1304 exempted certain major sources from

the requirement to obtain offsets and Rule 1309.1 allowed the District to provide offsets for specific ''priority'' projects. We approved these rules because the District committed to demonstrating on an annual basis that it was providing an amount of offsets that was equivalent to the amount required to offset federal new and modified major sources subject to Rules 1304 and 1309.1.[1] The District adopted Rule 1315's regulatory language codifying how it will account for, or ''track'', the emission reductions that it adds into its Offset Accounts as credits and those which it subtracts as debits to provide offsets for the construction of certain federal major sources or modifications exempted from offset requirements pursuant to Rule 1304 or for which the District provided offsets pursuant to Rule 1309.1. SCAQMD Governing Board Resolution for the Re-adoption of Rule 1315—Federal New Source Review Tracking System, dated Feb. 4, 2011. EPA is now finalizing approval of Rule 1315 as a SIP revision. For a more detailed discussion of the District's NSR program and Rule 1315, please refer to our proposed approval. 77 FR 10430, 10430–31 (Feb. 22, 2012).

II. Evaluation of SIP Revision

A. What action is EPA finalizing?

EPA is finalizing a SIP revision for the South Coast portion of the California SIP. The SIP revision will be codified in 40 CFR 52.220 by incorporating by reference South Coast Rule 1315, as adopted February 4, 2011 and submitted on March 2, 2011.

The SIP revision provides a federally approved and enforceable mechanism for the District to transfer offsetting emissions reductions from the District's Offset Accounts to projects that qualify under District Rules 1304 and 1309.1.

B. Public Comments and EPA Responses

In response to our February 22, 2012 proposed rule, we received six comments, one from the South Coast Air Quality Management District (District), one from a consortium of environmental groups (Coalition for a Safe Environment, Communities for a Better Environment, Desert Citizens Against Pollution and the Natural Resources Defense Council (collectively referred to herein as ''CSE'')), and one each from the County Sanitation Districts of Los Angeles County, California Small Business Alliance, California Council for Environmental and Economic Balance, and the Southern California Gas Company. Copies of each comment letter have been added to the docket and are accessible at *www.regulations.gov.* The comment from the District supported EPA's analysis and proposal to approve Rule 1315 into the SIP. With the exception of CSE, all of the commenters generally supported EPA's analysis and proposed approval. The comment from CSE opposed the SIP revision and raised several specific objections. We have summarized the comments and provided a response to each comment below.

Comment 1: CSE's first comment provides an overview of the reasonable further progress (RFP) and base year requirements of the Clean Air Act (CAA). CSE asserts that the South Coast is prohibited from including pre-base year (i.e. pre-1997) emissions credits for particulate matter of 10 microns or less (PM_{10}) and sulfur oxides (SO_X) in its NSR Account under 40 CFR 51.165(a)(3)(ii)(C)(*1*) because the 2003 Air Quality Management Plan (2003 AQMP) is not ''valid.'' Comment Letter at 3 (stating: ''In the *absence* of a valid attainment demonstration, the shutdown-unit requirement under 40 CFR 51.165(a)(3)(ii)(C)(*2*) applies, not the base-year requirement.'') [Footnote omitted] CSE's basis for concluding the 2003 AQMP is not ''valid'' is that EPA has not re-designated the area to attainment for PM_{10}. Comment Letter at 3, n. 8 (''Whether [the 'fully approved SIP language'] is currently in 40 [CFR] 51.165(a)(3)(ii)(C)(*1*) or not is not relevant where, as here, [sic] attainment demonstration offered for compliance with this provision did not achievement [sic] attainment.'' [Citation omitted]). CSE also includes a discussion of the shutdown credit requirement in 40 CFR 51.165(a)(3)(ii)(C)(*2*).

Response 1: We disagree with these assertions. Although the text of EPA's current regulation in 40 CFR 51.165(a)(3)(ii)(C)(1) does not require a fully approved attainment demonstration in order to allow for the use of pre-base year shutdown credits as NSR offsets, in light of recent caselaw we have evaluated Rule 1315 for consistency with EPA's pre-2005 requirement for an approved attainment demonstration for these purposes. *See NRDC* v. *EPA,* 571 F.3d 1245, 1265 (D.C. Cir. 2009) (remanding, *inter alia,* those portions of EPA's 2005 ozone implementation rule that eliminated the approved attainment demonstration requirement in 40 CFR 51.165(a)(3)(ii)(C)). As the NRDC court explains, until EPA amended its regulations in 1989, emissions reductions from shutting down a source could only be used to offset a replacement for that source's production capacity. Id. at 1264 (citing 54 FR 27286, 27290 (June 28, 1989)). EPA proposed to change this limitation in 1989 in response to concerns expressed by local air pollution authorities that the restriction would infringe on their authority to make growth management decisions and industry commenters who argued that the policy encouraged sources to continue operating to prevent forfeiting emissions credits. 54 FR 27286 (June 28, 1989). EPA also received negative comments from a consortium of environmental groups opposing the proposed change because they were concerned that sources with a limited lifetime could get large ''paper'' credits that would result in worsening air quality. 54 FR at 27291–92.

EPA responded to these comments by revising the restriction on using emissions credits from shutdown sources, stating: ''The essence of the Act's offset provision is that a new source may be allowed in a nonattainment area only where its presence would be consistent with RFP toward attainment of the NAAQS.'' Id. at 27292. EPA explained in the preamble to the 1989 final rule: ''Thus, where a *fully approved* SIP demonstrates RFP and attainment, it is appropriate to grant that State maximum flexibility in its nonattainment plan, under section 173, within the constraint that the demonstration not be invalidated. By definition, any fully approved SIP has independently assured RFP and attainment.'' 54 FR at 27292 (emphasis added).

EPA cited several planning scenarios ''in which EPA considers the SIP to be inadequate and will continue to restrict offset credits for prior shutdowns.'' Id. at 27294. These scenarios included (1) ''nonattainment areas that have received a final notice of disapproval of their current SIP,'' (2) ''nonattainment areas that have received either a section 110(a)(2)(H) notice of deficiency based on failure to attain or maintain the primary NAAQS, or a notice of failure to implement an approved SIP,'' and (3) ''nonattainment areas that received notice from EPA that they have failed to meet conditions in their EPA-approved SIPs, including commitments to adopt particular regulations by a certain date.'' Id. at 27294–95. These are the relevant limited situations in which a *fully approved* SIP may be inadequate or inappropriate for allowing pre-base year shutdown credits to be added. In summary, EPA's pre-2005 regulations

[1] Environmental Protection Agency, Region IX Air & Toxics Division Technical Support Document for EPA's Notice of Final Rulemaking for the California State Implementation Plan South Coast Air Quality Management District New Source Review by Gerardo C. Rios, October 24, 1996 (TSD).

required an area to have a fully approved SIP, which has not been followed by a notice of deficiency, a notice of failure to implement the SIP or a notice that the area failed to meet conditions in the SIP. Id. at 27294–95.

CSE provides no support for its conclusory position that an approved attainment plan is only ''valid'' if EPA has redesignated the area to attainment for the pollutant at issue prior to or upon the attainment date. EPA fully approved the plan submitted by California to provide for attainment of the particulate matter (PM_{10}) NAAQS in the Los Angeles-South Coast Air Basin (2003 AQMP) in 2005. 70 FR 69081 (November 14, 2005). EPA has not notified the South Coast of any deficiency, failure to implement or unsatisfied condition in the 2003 AQMP. Moreover, although EPA has not yet re-designated the South Coast to attainment for PM_{10} (for which SO_X is a precursor), the District has submitted a re-designation request to EPA along with data showing it has not had a violation of the PM_{10} NAAQS since 2008. See Final PM–10 Redesignation Request and Maintenance Plan for the South Coast Air Basin, December 2009. Because EPA has fully approved the 2003 AQMP (which contains control strategies for both PM_{10} and SO_X emissions in the South Coast area), the District may use pre-base year PM_{10} and SO_X shutdown emission credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(*1*).

Accordingly, the requirements in 40 CFR 51.165(a)(3)(ii)(C)(*2*) related to emission reductions that do not meet the requirements in section 51.165(a)(3)(ii)(C)(*1*) do not apply to our action.

Comment 2: CSE states ''In its Proposed Rule and associated TSD, EPA applies the base-year requirement to all pollutants deposited in SCAQMD's Community Bank. For PM_{10} and its precursor SO_X, EPA looks to the 2003 AQMP with a 1997 base year. For ozone precursors VOC and NO_X, EPA looks to the 2007 AQMP with a 2003 base year. In both instances, EPA concludes that 'even if the District Offset Accounts rely on pre-base year emission reductions as offsets, the District's Plans have adequately added pre-base year emissions explicitly into the appropriate projected planning investments [sic].' '' Comment Letter at 4, quoting EPA's TSD at 13.[2] CSE's comment continues, stating: ''As shown below, this conclusion violates 40 CFR 52.165(a)(3)(i)(C) in two ways. First, for the PM_{10} and SO_X credits, EPA should have applied the shutdown-credit requirement, not the base-year requirement, because no attainment demonstration is in place for PM_{10}. Even if it could apply the 2003 AQMP, it commits additional errors. Second, for VOC an [sic] NO_X, EPA erroneously concludes that the 2007 AQMP explicitly includes pre-base year credits that it explicitly excluded.'' Comment Letter at 4.

Response 2: This comment appears to repeat arguments CSE made above in Comment 1 regarding whether the District can rely on the 2003 AQMP and below in Comment 8 regarding whether the District added pre-base year credits in its plan to provide for attainment of the 1997 8-hour ozone NAAQS (2007 AQMP). EPA's responses to this comment are above in response to Comment 1 and below in response to Comment 8.

Comment 3: CSE asserts that the 2003 AQMP is not a valid attainment demonstration because it did not demonstrate attainment with the federal PM_{10} NAAQS by 2006. Based on this, the South Coast may only allow emissions credits from shutdown sources pursuant to 40 CFR 51.165(a)(3)(ii)(C)(*2*). Comment Letter at 4–5.

Response 3: As discussed above, the CAA and 40 CFR 51.165(a)(3)(ii)(C)(*1*) require the South Coast to have a fully approved attainment demonstration for PM_{10} (and SO_X as a precursor) in order to allow the use of pre-baseline shutdown emission reduction credits for PM_{10} and its precursors. The 2003 AQMP was fully approved in 2005. 70 FR 69081 (November 14, 2005). EPA has not issued a notice of deficiency, notice of failure to implement or notice that the District is not meeting conditions in the 2003 AQMP. See 54 FR at 27294–95. The District has requested re-designation and submitted 3 years of data showing there has not been a violation of the federal PM_{10} NAAQS. EPA therefore disagrees with CSE's assertion that the District is limited to allowing emissions reductions for shutdown sources pursuant to 40 CFR 51.165(a)(3)(ii)(C)(*2*) (i.e. shutdowns occurring after the 1997 AQMP base year).

Comment 4: The next several pages of the CSE's comment letter assert that the South Coast did not ''explicitly include[] adequate pre-base-year PM_{10} and SO_X credits in its [2003 AQMP] emissions inventories.'' It discusses ''expected growth from the NSR program and the need for pre-base year credits.'' Comment Letter at 5. In reviewing Table 2–14 in the 2003 AQMP, CSE states: ''Where no pre-base-year credits are needed, the emissions inventories exclude them.'' Id.

Response 4: Although CSE's references are to the 2007 AQMP, it appears from the body of the discussion that CSE intended to refer to the 2003 AQMP and Appendix III of the 2003 AQMP. Comment Letter at 5, n. 14 & 15. Given the context of these comments, we assume that the references to the 2007 AQMP are an inadvertent typographical error and that CSE meant to refer to similar tables in the 2003 AQMP and Appendix III of this plan.

CSE's comment uses the phrase ''expected growth,'' which is not a term used in the 2003 AQMP, and then refers only to portions of the AQMP pertaining to expected *demand*. The District handles *growth* and *demand* separately and they are distinct in the 2003 AQMP.

The District includes pre-base year emissions in the *growth* portion of its 2003 AQMP. See 2003 AQMP Figure 3–6 and Appendix III Table 2–8 (Growth Impact to 2010 Annual Average Emissions in Tons Per Day). Appendix III, Table 2–8 shows a sum of the inventory for all emissions sources for each criteria pollutant with and without growth. The 2003 AQMP forecasts the 2010 (i.e. future year) emissions inventories ''with growth'' through a detailed consultation process with the Southern California Association of Governments (SCAG). SCAG provides extensive data on demographics and all emissions sources in the South Coast. It performs an exhaustive analysis of the growth in the inventory of sources that is likely to occur through the planning periods of 2010. The District's AQMP summarizes this data in the 2003 AQMP Figure 3–6 and provides additional details in Appendix III Table 2–8 and Attachments A–C.

The District's *growth* projections include the pre-base year emissions, consistent with the requirements of 40 CFR 51.165(a)(3)(i)(C)(*1*). For PM_{10}, the District added PM_{10} emissions into its future year 2010 inventory for growth of both point and area sources. For point sources of PM_{10}, the District added 3 tpd (from 11 tpd to 14 tpd); for area sources 23 tpd were added (from 77 tpd to 100 tpd) in its future year 2010 inventory. Appendix III, Table 2–8. This means that the District added a total of 26 tpd of PM_{10} emissions to its future year 2010 inventory for *all* point and area sources. The detailed inventories in the Attachments to Appendix III (2003 AQMP) separate the point and area sources into specific source categories (e.g. refineries, spray booths, charbroilers) so that the emissions with and without growth for each category is

[2] We note that our TSD referred to ''projected planning inventories'' rather than investments.

included in the base year and future year inventories for 2010 and 2020. Appendix III, Attachments A–C.

However, not *all* point and area sources are subject to NSR permit requirements. Therefore, the District provided data [3] to EPA indicating what portion of the baseline and growth projections are attributed to the point and area sources subject to NSR offset requirements. Docket Item III–Z and III–AA. This data shows that the District explicitly included 5.9 tpd of PM_{10} in its future year 2020 inventory for point and area sources subject to the District's NSR program. (Docket Item III–AA showing Total Emissions of 14.5 tpd for 1997 and Docket Item III–Z showing Total Emissions of 20.4 tpd for 2020). The District also provided data showing that it included 3.1 tpd of PM_{10} (the difference between 14.5 tpd for 1997 and 17.6 tpd for 2010) to the future year 2010 growth projection.[4]

In our proposed rule, after describing the 2007 AQMP's treatment of VOC and NO_X for ensuring a sufficient amount of pre-base year credits had been added as growth, we stated that ''[t]he District used a similar approach for the 2003 Plan as it pertains to PM_{10} and SO_X.'' 77 FR at 10433. EPA's proposal explains that the District added a certain amount of emissions as growth for various source categories in Table 2–8 of Appendix III. EPA further explained that ''[f]or Table 2.8, the District provided EPA with the point and area source data used to generate the summary data. EPA used this data to determine the amount of emissions due to growth at facilities subject to NSR offset requirements.'' 77 FR 10433, n.3.

Our TSD provides a detailed discussion of these data as it relates to the 2003 AQMP. We state: ''For PM_{10}, the District added 3.1 tpd as growth. [footnote omitted].'' TSD at 12. EPA is clarifying in this final approval that the TSD should have said the District added 5.9 tpd as growth because Docket Item III–Z is the District's future year 2020 inventory for NSR sources. To clarify, for those point and area sources subject to NSR, the 1997 ''no growth'' inventory was 14.5 tpd. Docket Item III–AA. The District then included ''growth'' of 5.9 tpd for the 2020 inventory in Docket Item III–Z and ''growth'' of 3.1 tpd to the 2010 inventory in Docket Item III–BB, for NSR sources. EPA inadvertently did not post the information for the 2010 inventory with our proposal and is adding it to the Docket as Docket Item III–BB. EPA's TSD inadvertently recited the sum from the 2010 inventory (3.1 tpd growth) rather than 5.9 tpd from the 2020 inventory. This mistake arising from referring to the wrong future year inventory total does not have any substantive consequence because the District's inclusion of either tonnage (3.1 tpd or 5.9 tpd) of pre-base year growth to the future year inventories far exceeds the amount that the District expects will be used.

In summary, CSE confuses *growth (3.1 tpd for future year 2010 NSR sources or 5.9 tpd for future year 2020 NSR sources),* which is where the District adds expected emission increases due to growth into the inventories—with *demand* for credits. CSE looks only at *demand (0.23 tpd)* for pre-base year offsets, which the District provides as a check to ensure its growth estimate is sufficient to account for this demand. This confusion leads CSE to contend that ''[t]he 2003 AQMP includes no pre-base year PM_{10} credits and 0.7 pre-base year SO_x credits.'' Comment Letter at 5–6, referring to Table 2–14 in 2003 Appendix III.

CSE is incorrect. This portion of the 2003 AQMP is evaluating historic PM_{10} demand and in addition, is limited to the historic demand from the District NSR Accounts. See Appendix III Table 2–14 ''2010 Net Demand for ERCs in the AQMD's NSR Accounts''. EPA's TSD more accurately refers to Table 2–15 that includes the District's estimated net demand from the NSR Accounts and the open market transactions, which is 0.23 tpd.

EPA's proposal and TSD stated: ''For PM_{10}, the District added 3.1 tpd as growth.'' TSD at 12. The footnote to this statement provided ''See 2003 Plan Appendix III, pgs. 25–35. For Table 2.8, the District provided EPA with the point and area source data used to generate the summary data. EPA used this data to determine the amount of emission due to growth at facilities subject to NSR offset requirements.'' TSD at 12, n.7. As explained above, EPA's TSD should have stated that the District added 5.9 tpd as growth for 2020 (Docket Item III–Z) and 3.1 tpd as growth for 2010 (Docket Item III–BB). CSE does not acknowledge that the 2003 AQMP added PM_{10} emissions growth in the future year 2010 and 2020 inventories. In fact, the District added emissions for growth in the 2010 (3.1 tpd) and 2020 (5.9 tpd) inventories far in excess of the expected need for offsets on the open market and by the NSR Account combined. Further, CSE's comment that if the District did not estimate that it would need credits from historic supply and demand that the District has ''excluded'' emissions from its inventories is not supported by any facts. The 2003 AQMP includes pre-base year credits in its growth added to its future year inventories.

Comment 5: Beginning on page 7 of its Comment Letter, CSE lists three comments. The first comment actually repeats several paragraphs of CSE's previous comments (e.g. that the only pre-base year emissions added in the 2003 AQMP are from Table 2–14 in Appendix III.) To the extent that CSE is repeating comments, EPA's responses above (and the statements in EPA's TSD) that the District added PM_{10} emissions as growth for point and stationary sources subject to NSR, address these comments. CSE's comment then addresses Table 2–8. Comment Letter at 8. EPA considers this comment to contain three separate points. First, CSE states that Table 2–8 includes growth from all point sources without distinguishing between pre-base year and post-base year credits. Second, CSE states that the growth from point sources in Table 2–8 does not distinguish between open market emissions transactions and the District's NSR Account transactions. Third, with respect to the data provided to EPA by the District (Docket Items III–Z and III–AA) CSE says: ''A review of those documents reveals that it is nothing more than identical information already attached to Appendix III of the 2003 AQMP—but simply repackaged into a single table.'' Comment Letter at 8.

Response 5: CSE's comment in this section confuses the District's and EPA's treatment of the Table 2–8 point and area sources subject to NSR. CSE says that it reviewed the documents prepared by the District and appended to EPA's TSD and found it was repackaging identical information regarding the future year inventories in Appendix III of the 2003 AQMP. CSE's review of the information is inaccurate. The spreadsheets contained in Docket Items III–Z and III–AA extract from the AQMP's base year and future year inventories (2020) those point and area sources subject to NSR. The point and area sources listed in Docket Items III–Z and III–AA are far fewer, particularly for the area sources, than those included in Appendix III, Attachments A–C. Therefore it is incorrect to say that the documents provide identical but repackaged information as that which is included in the 2003 AQMP.

EPA requested the District to extract those point and area sources subject to

[3] The District submitted several spreadsheets containing emissions data related to its base year and future year emission inventories, which we identify herein as lettered ''Docket Items,'' all of which are available in the docket for today's final rule.

[4] This table was inadvertently left out of the docket, and has now been added as Docket Item III–BB.

NSR because those are the only sources in Appendix III, Attachments A–C, for which EPA's regulations require sufficient emissions to be added back to the future year inventory to account for the use of pre-base year emissions reductions from shutdowns. EPA calculated that the District had added 3.1 tpd for the subset of point and area sources subject to NSR for the future year 2010 inventory by comparing the sum in Docket Item III–AA to the sum in Docket Item III–BB and 5.9 tpd when compared to the future year 2020 inventory (Docket Item III–Z). In the docket for our proposed rule, we included the spreadsheet for future year inventory for 2020 (Docket Item III–AA), and in response to comments we are adding Docket Item III–BB for the future year 2010 inventory to the docket for this final rule.

CSE's same comment contends that the District's Table 2–8 does not separate emissions into pre- and post-base year emissions. The spreadsheets the District provided and EPA attached to its TSD show the actual 1997 emission inventory for point and area sources subject to NSR—assuming no growth (Docket Item III–AA), the 2010 projected emission inventory (added to the docket as Docket Item III–BB), and the 2020 projected inventory that was attached to the TSD (Docket Item III–Z). Each of the future year NSR inventories (2010 and 2020) are based on emissions growth expected from the 1997 baseline. This means that the inventory for ''no growth'' is the inventory NSR subject point and area sources of 1997 emissions. Docket Item III–AA. The inventory ''with growth'' is the amount of emissions added into the 1997 inventory for purposes of showing attainment in 2010 and projecting out to 2020. Docket Items III–Z and III–AA. The distinctions between the inventories for the base year and after the base year, therefore, are inherent in the data itself and are summarized for NSR sources in the Docket Items III–Z, III–AA and III–BB. Based on the District's projected demand, 3.1 tpd of PM_{10} emissions added to the future year 2010 inventory and 5.9 tpd added to the future year 2020 inventory, far exceed the amount of pre-base year PM_{10} offsets that the District expected would ever be used. The District projected that it would not need to use any pre-base year PM_{10} emissions and 0.7 tpd of SO_x emissions from its NSR Accounts, and that the entire projected demand including the open market demand would not exceed 0.23 tpd for PM_{10}. We have concluded that the District has satisfied the requirements of 51.165(a)(3)(C)(ii)(*1*) by adding PM_{10} emissions to the 1997 base year emissions inventory and projecting these emissions as ''growth'' for the 2010 and 2020 future year inventories for point and area sources subject to NSR. 77 FR 10433 n.3.

CSE is correct that the 2003 AQMP inventories with no growth and with growth do not distinguish between the open market and the NSR Account transactions. Comment Letter at 7. However, there is no need for such a distinction and CSE has not provided any reason that such a distinction is needed. The only issue is whether the District has added sufficient pre-base year emissions from shutdown sources to allow for expected use of those emissions after the base year. As discussed above, the District has adequately accounted for these pre-base year PM_{10} emission reduction credits in the 2003 AQMP's future year (2010 and 2020) inventories.

CSE's comment concludes: ''This leads EPA to conclude that the District added 3.1 tpd of PM_{10} credits as growth while admitting that that figure includes only 0.23 tpd of pre-base year PM_{10} credits for open-market transactions.'' As noted above, CSE has mischaracterized the District's 2003 AQMP and EPA's position. The 2003 AQMP provides its analysis of ''the potential 2010 emissions from new and modified sources.'' 2003 AQMP at III–2–29. The District further clarifies: ''The net demand simply represents the emission increases in the future years to be offset by reductions previously banked (i.e. prior to the AQMP base year).'' Id. The estimated 2010 *demand,* however, does not equal the amount of pre-base year emission reductions that the District added back into the inventory. The pre-base year PM_{10} emissions are included in the *growth* inventory. The District's evaluation of *demand* is a check to ensure that adequate emissions (3.1 tpd and 5.9 tpd calculated from the NSR subject point and area source growth in 2010 and 2020) are included. EPA's proposed rule and TSD specifically state: ''For PM_{10}, the District added 3.1 tpd as growth.'' [footnote omitted]. TSD at 12.

Comment 6: The section of the Comment Letter that CSE identifies as its second separate comment says that it was improper for EPA to allow the District's NSR Account to carry a larger balance (3.94 tpd) of PM_{10} credits than the total amount of emissions that were added as growth (3.1 tpd). Comment Letter at 8.

Response 6: EPA's proposal and TSD acknowledged that the amount of PM_{10} emissions that the District added to its inventories (3.1 tpd) falls somewhat short of the starting balance in its NSR Account (3.94 tpd) for PM_{10}. TSD at 12–13 (stating: ''While this [3.1 tpd] is not the total amount of the pre-1997 base year emissions reductions available as debits pursuant to Rule 1315 (3.94 tpd) the District has demonstrated that this amount represents the highest amount of pre-1997 credits that are expected to be used as offsets prior to attainment of the ozone [sic] standard.'' We note that the reference to the ozone standard here was a typographical error and that we intended to refer to Appendix III of the 2003 AQMP for PM_{10}. TSD at 13.

As we explained in the TSD, the District's adjustment to the future year PM_{10} inventory in the 2003 AQMP is adequate, even though the total tonnage is somewhat lower than its NSR Account balance, because the District's analysis showed that it anticipated using significantly less than the pre-base year credits being added as growth. EPA's TSD stated: ''This approach is consistent with EPA guidance that States must include pre-base year credits to the 'extent that the State expects that such credits will be used as offsets * * *.'' TSD at 13 quoting 57 FR 13498. We conclude that the District's addition of 3.1 pre-base year PM_{10} credits to cover an expected use of emissions offsets (0.23 from both the NSR Accounts and the open market) in the 2010 emissions inventory and 5.9 tpd for 2020, is acceptable.

CSE's argument on this point appears to be that EPA's regulations require the District to include in its future year inventories all of the emissions offsets that could ever be available for use in the Air Basin (i.e. 3.94 tpd of PM_{10} from the NSR Account). But EPA's NSR regulations, as interpreted in the General Preamble, do not require this. See 57 FR 13498 at 13509 (stating that ''[a]ll pre-enactment banked credits must be included in the nonattainment areas attainment demonstration for ozone *to the extent that the State expects that such credits will be used* for offsets or netting prior to attainment of the ambient standards'') (emphasis added). As CSE's summary sentence itself says: ''the guidance was intended to direct the District to include all pre-base year credits it expected to use in the emissions inventories because otherwise the CAA would not allow their usage.'' Comment Letter at 9.

EPA proposed to approve Rule 1315 upon finding that the District included in its 2003 AQMP 3.1 tpd of PM_{10} emissions for 2010 and 5.9 tpd for 2020, an amount that would amply cover the District's projected historic supply and demand of 0.23 tpd. CSE has failed to

demonstrate that the District has projected any circumstance in which it would use 3.94 tpd of pre-base year PM_{10} emissions by 2010. CSE's Comment Letter fails to provide any reasoning, much less regulatory citation, showing why the District's AQMD should be required to add 3.94 tpd of pre-base year PM_{10} credits when the projected demand is only 0.23 tpd (and that demand is expected to occur on the open market rather than in the District's NSR Accounts.)

Comment 7: The following comment appears to be ancillary to CSE's prior comment. In the portion of its comment letter that purports to discuss CSE's ''third'' comment, CSE contends that Section 173 and 40 CFR 51.165(a)(3)(ii)(C)(1)(ii) requires the District to place a ''cap'' on the amount of pre-base year emissions offsets it may use in applying Rule 1315. CSE states: ''In other words approving pre-base year PM_{10} and SO_X credits for withdrawal that were not included in the emission inventories with no limitations on their use based on an 'expectation' they will not be used is not in accordance with the law.'' [footnote omitted] Comment Letter at 9.

Response 7: This comment seems to repeat the same issue as CSE's Comment 6. The problem is that CSE has misconstrued EPA's regulation at 40 CFR 51.165(a)(3)(ii)(C)(1).

As EPA noted in Response 1 above, in 1989, EPA significantly revised its previous restrictions on use of offset credit for source shutdowns and curtailments (formerly 40 CFR 51.18(j)) to allow the planning agency to have more control over emissions growth in the area and to allow sources to shutdown without forfeiting emissions credit if it could not be used immediately to replace productive capacity. See 54 FR at 27295–95. Congress substantially amended the Clean Air Act in 1990, including the attainment planning process in Part D of Title I of the Act. In 1992, EPA issued guidance entitled ''State Implementation Plans: The General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990.'' 57 FR 13498 (April 16, 1992). In that document, EPA stated: ''For purposes of equity, EPA encourages States to allow sources to use pre-enactment banked emissions reductions credits for offsetting purposes. States may do so as long as the restored credits meet all other offset creditability criteria and such credits are considered by States as part of the attainment emissions inventory when developing their post-enactment attainment demonstration * * *. Existing EPA regulations [40 CFR 51.165(a)(3)(ii)(C)(1)] prohibits certain pre-enactment banked emissions reduction credits, i.e., reductions achieved by shutting down existing sources or curtailing production or operating hours, from being used in the absence of an EPA-approved attainment plan.'' 57 FR 13498 at 13508. Nothing in these discussions suggests that the entire amount, or balance, of pre-base year banked credits must be included in the future year inventory of the approved attainment demonstration.

In 1996, EPA further considered this issue as part of our proposed rule to revise the Prevention of Significant Deterioration (PSD) and NSR regulations in 40 CFR part 51, subpart I (61 FR 38250, July 23, 1996). In that proposed rule, EPA stated: ''Passage of the 1990 Amendments has significantly altered the landscape that confronted EPA at the time of the 1989 rulemaking. Congress significantly reworked the attainment planning requirements of part D of title I of the Act such that EPA now believes it is appropriate to delete the restrictions on crediting of emissions reductions from source shutdowns and curtailments that occurred after 1990. In particular, Congress enhanced the importance of the requirement in section 172(c)(3) that States prepare a 'comprehensive, accurate, current inventory of actual emissions from all sources' in a nonattainment area as the fundamental tool for air quality planning.'' 61 FR 38250, 38311.

The proposed rule in 1996 notes that the 1990 Amendments added specific milestones towards achieving attainment and also mandated sanctions that would apply to States that fail to submit an attainment demonstration. 61 FR at 38311–12. EPA proposed two alternatives to allow increased use of shutdown credits. Id. In 2005, EPA's Phase 2 8-hour ozone implementation rule finalized the 1996 proposed alternative that did not require a State to have an approved attainment plan to use prior shutdown credits. 70 FR 71612, 71676 (November 29, 2005). On reconsideration of this rule in 2007, EPA disagreed with a comment that suggested retiring a certain quantity of pre-base year emissions each year, stating: ''The requirements of the NSR program provide growth management tools and are an integral part of the overall air quality attainment program.'' [5] 72 FR 31727, 31741 (June 8, 2007).

NRDC challenged this portion (among others) of EPA's 2005 final rulemaking, arguing in part that EPA's allowance of pre-base year shutdown credits and elimination of the requirement for an approved attainment demonstration were arbitrary and capricious. In 2009, the Court of Appeals for the D.C. Circuit rejected NRDC's challenge to EPA's longstanding policy allowing ''pre-application reductions'' as NSR offsets, as codified in 40 CFR 51.165(a)(3)(ii)(C)(*1*)(*ii*). *NRDC,* 571 F.3d 1245 (DC Cir. 2009). The court held that NRDC's challenge to this longstanding policy was time-barred because EPA's 2005 ozone implementation rule did not reopen the general issue of allowing pre-application offsets addressed in the 1989 rulemaking. However, the D.C. Circuit agreed with NRDC on the narrow issue that EPA's elimination of the requirement to have an approved attainment demonstration was not adequately justified. The court remanded this portion of EPA's 2005 rule to the Agency but did not vacate it.[6] Id.

Thus, we agree with CSE's general point that approval of an attainment demonstration for the relevant NAAQS is a prerequisite to the use of prior shutdown credits in accordance with 40 CFR 51.165(a)(3)(ii)(C)(*1*). We disagree, however, with CSE's assertion that the District is required to either add the entire pre-base year balance of credits to the approved future year attainment inventory or somehow cap the Rule 1315 NSR Account balance at the amount of projected demand, as this assertion is not supported by the text of 40 CFR 51.165(a)(3)(ii)(C) or the *NRDC* decision.

Comment 8: CSE titled this section of their comments ''The 2007 AQMP Explicitly Excludes VOC and NO_X Credits From Projected Emissions Inventories.'' CSE does not contest the ''validity'' of the 2007 AQMP. CSE's comments about the 2007 AQMP's treatment of pre-base year credits largely mirrors the comments about the 2003

[5] EPA notes that for purposes of the California Environmental Quality Act (CEQA), the District capped its account balances. See Chapter 4.1—Environmental Impacts And Mitigation Measures—Air Quality. CSE submitted this Chapter with its Comment Letter but does not provide any comments that address it. Although the CEQA caps are not part of Rule 1315 that will be included in the SIP, the District's commitment to limit usage of the Offset Accounts below these levels unless it performs additional CEQA analysis is significant.

[6] As a result, although the text of current 40 CFR 51.165(a)(3)(ii)(C)(1) does not require a fully approved attainment demonstration in order to allow offset credit for prior shutdowns or curtailments, in light of the NRDC decision we have evaluated Rule 1315 for consistency with EPA's pre-2005 requirement for an approved attainment demonstration for these purposes. The NRDC decision did not affect section 51.165(a)(3)(ii)(C)(1) in any other respect.

AQMP. The Comment Letter begins by characterizing Tables 2–10 and 2–11 in Appendix III of the 2007 AQMP, and then states: ''This is where growth for the Community Bank portion of the NSR program is accounted for, and this is where the pre-base-year credits would need to be included for ozone precursors. The 2007 AQMP includes no pre-base-year credits for VOC and NO_X.'' [Citation omitted] Comment Letter at 11. CSE's comment on the 2007 AQMP also recites three specific objections: (1) That EPA ''conflates total growth from all point sources in Table 2–8—where no distinctions are made between pre-base-year credits and post-base-year credits nor open-market transactions and NSR-Account transactions—for growth based on pre-base year credits from the NSR Account''; (2) EPA approves starting balances in the NSR Account that are larger than the growth; and (3) EPA's approval does not require a cap on the bank that is the same as the amount of growth that is added. Comment Letter at 12–14. Last, CSE states that EPA was required to analyze whether the 1-hour ozone attainment plan included adequate pre-base year credits. EPA responds to this comment at Response 27 below.

CSE is continuing to confuse *growth* and *demand.* Tables 2–10 and 2–11 in Appendix 3 are evaluating historic demand for VOC and NO_X credits. The District adds the pre-base year credits to its 2007 future year inventories in the growth portion of the 2007 AQMP which is graphically shown in Table 2–8 of the AQMP. Then, the District evaluates historic supply and demand as a check to ensure that adequate growth is added back into the future year inventories.

Table 2–8 in the 2007 AQMP Appendix III shows the VOC and NO_X emissions from area and point sources as ''no growth'' and ''with growth''. The growth that is added for the point and area sources in the ''with growth'' portion of Table 2–8 includes the pre-base year credits the District is adding to its future year inventories. For total point sources of VOC, Table 2–8 shows that the District added 12 tpd as growth (35 tpd to 47 tpd) and for area sources of VOC, the District added 36 tpd (195 tpd to 231 tpd). For NO_X, the District added 1 tpd for point sources (36 tpd to 37 tpd) and 2 tpd for area sources (29 tpd to 31 tpd).

EPA requested the District to provide data on the amount of growth that was included for point and area sources subject to NSR. EPA provided that information in Docket Items III–P (showing point and area NSR subject sources with growth) and III–Q (showing point and area NSR subject sources for no growth). These tables show that for NSR subject sources the District added 12 tpd for VOC (35 tpd to 47 tpd) and 2 tpd for NO_X (36 tpd to 38 tpd). EPA's TSD says that the District added 27 tpd for VOC and 2 tpd for NO_X. The TSD notes that the amount of pre-base year credits included in the growth far exceeded the District's projection of possible demand (3.1 tpd for VOC from the NSR Account and the open market) and 0 for NO_X. EPA determined that the credits the District was including in its growth for its future year inventories was ''conservative and an appropriate way to meet the requirements of 40 CFR 51.165.'' TSD at 12.

CSE's comment that EPA ''conflates total growth from all point sources in Table 2–8 * * * for growth based on pre-base-year credits from the NSR Account'' is not clear. CSE appears to consider only point sources as being subject to NSR. However, the District includes both point and area sources in its NSR program. Therefore, the District put together data on the point and area sources that are subject to NSR and prepared the tables in Docket Item III–P and III–Q. CSE apparently did not understand this information because it says that ''it is identical information already attached to Appendix III of the 2007 AQMP—simply repackaged into a single table.'' Comment Letter at 13. This is incorrect. EPA stated in its TSD: ''For Table 2.8 [sic], the District provided EPA with point and area source data used to generate the summary data. EPA used this data to determine the amount of emission due to growth at facilities subject to NSR requirements.'' TSD at 12, n 6. Therefore, EPA correctly determined that the District added sufficient pre-base year credits for point and area sources subject to NSR. The amount added as growth far exceeded the historic demand that the District used as a check.

For the two next points in CSE's comment on the 2007 AQMP, EPA incorporates its response from Responses 6 and 7, as applicable to the 2007 AQMP for VOC and NO_X emissions.

Comment 9: CSE comments that EPA lacks evidence to support the conclusions in the proposed rule concerning retroactive rule operation: ''Internal bank balances lack documentation.'' As an introduction to this section, CSE makes the following statement: ''Approving Rule 1315 would incorporate in federal law two changes to the District's internal banking system: ''One retroactive, in an effort to expunge from the District's legers [sic] the fact that it permitted more emission increases than the CAA's offsetting requirements allow; and one prospective, so that going forward the District would operate a new banking or ''tracking'' scheme. The rule's attempt to change history is rife with flaws, including a pervasive lack of documentation.''

Response 9: These statements are unsupported and lack sufficient specificity for EPA to respond. We assume the lettered subsections that follow this introduction contain specific comments which provide the factual support for these conclusions. Our response to the additional comments found in this subsection are provided below in response to each section (group of comments) provided by CSE.

Comment 10: CSE titled this section of their comments ''Pre-1990 Credits Lack Documentation.'' In this comment, CSE makes several assertions about the emission reductions that occurred prior to 1990 and how they are tracked in Rule 1315. The first is that ''the 1990 'starting balance' established in the Rule includes offsets for which the District claims to have '*some* or all' documentation. (Emphasis added by commenter.) (See Response 10A) ''Second, the EPAs approval of the decision to retire the pre-1990 offsets that remained in the Internal Bank in 2005 does not remove *all* invalid offsets from the system, since the Rule proposes to allow the facilities permitted prior to 2005 in reliance upon those pre-1990 offsets to ''return'' those offsets as ''payback of offset debt'' under Rule 1315(c)(3)(A)(v).'' (See Response 10B) Third, CSE states ''it is unclear why the EPA did[] not include the documentation that establishes the validity of the offsets in the ''Initial District Offset Account Balances'' set out at Table A in the Proposed Rule in the record for this rulemaking'' and that ''* * * EPA's failure to do so not only deprives the public the opportunity to review and comment upon that documentation, the failure is also a violation of the Administrative Procedures Act.'' (See Response 10C) And fourth that ''Proposed Rule 1315 has no mechanism to track how the pre-1990 credits are returned to the bank, either as payback of offset debt or through orphan shutdowns * * *''. (Citations omitted) (See Response 10D).

Response 10: EPA disagrees with each of these assertions for the reasons provided below.

Response 10A: First, CSE states that ''the 1990 'starting balance' established in the Rule includes offsets for which

the District claims to have '*some* or all' documentation,'' (emphasis added by commenter) and continue by stating that ''having 'some' documentation to support the claim that an offset is valid is not sufficient.'' The District provided a full discussion of their evaluation of pre-1990 credits on page 12 of their Staff Report (as well as the prior 2005 and 2006 evaluations), all of which are included in the Docket. The District explains that where ''all'' documentation was not available (e.g., the original permit file that generated the emission reductions) there was still sufficient historical records to verify the specific information listed in the 1994 Seitz memo and determine that the emission reductions meet the federal integrity criteria for offsets. The Staff Report also explains that all pre-1990 credits were evaluated when they were originally transferred into the District's initial Internal Bank. As discussed below, the District's 2003–2005 re-evaluation of all of its banked pre-1990 emissions reductions eliminated (with a starting date of 1990) all credits for which the District no longer possessed sufficient documentation to determine the emission reductions meet the federal integrity criteria for offsets. Therefore, we disagree with CSE and CSE has not pointed to any specific information showing that the District retained a pre-1990 credit without adequate documentation.

As discussed both in the District's Staff Report and EPA's TSD, EPA raised the issue of availability of sufficient records for the pre-1990 credits in the District's Offset Accounts in 2002, in light of the District's adoption of Rule 1309.2—Offset Budget, which would allow more sources access to the Offset Accounts. TSD at 4. EPA pointed to a 1994 EPA memo regarding the use of pre-1990 offsets as guidance. See Memorandum dated August 26, 1994 from John S. Seitz, Director, EPA Office of Air Quality Planning and Standards, to David Howekamp, Director, EPA Region IX Air and Toxics Division, ''Response to Request for Guidance on Use of Pre-1990 ERC's and Adjusting for RACT at Time of Use'' (1994 Seitz Memo). The 1994 Seitz Memo states that pre-1990 credits may be utilized, provided the State ''collect[s] and maintain[s] information on these ERC's, including, at a minimum, the name of the source that generated the ERC's, the source category that applies to this source, the quantity of ERC's generated by this source, the specific action that created the ERC's (e.g., a shutdown of a unit, process change, add-on control), the date that the ERC's were generated and enough other information to determine the creditability of all ERC's.'' 1994 Seitz Memo at 2. At EPA's request, the District reviewed all available records and determined that sufficient records were no longer available for some of pre-1990 credits, or that the effort to provide those records was too burdensome. See Proposed SCAQMD NSR Offset Tracking System, Background, February 23, 2006. Nevertheless, the District undertook a complete and thorough review of its offset records. Id. at 2. The result was the District's elimination of pre-1990 credits for which it did not have adequate documentation. Id. (stating: ''In order to resolve EPA's comments, SCAQMD staff is proposing several modifications to the procedures used in the tracking system. In the revised procedures SCAQMD has proposed elimination of all credits for which SCAQMD no longer retains documentation.'')

From this review, the District calculated new beginning balances for each of the pollutants. The District removed pre-1990 credits with inadequate records from the 1990 starting balance, leading to much lower balances for all pollutants except NO_X. Id. (stating: ''Several elements of the proposed revisions to the SCAQMD's tracking system contribute to these reductions, as discussed below, but the single element of the proposal with the greatest contribution is the reevaluation of pre-1990 credits and proposed elimination of all credits for which SCAQMD no longer retains documentation.'') Accordingly, the District removed this quantity of credits from the 1990 starting balances for the Internal Bank, as shown on page I–1 of Appendix I of the District's staff report. Thus the District's 1990 starting balances only contain credits for which the District possessed sufficient documentation, consistent with the 1994 Seitz Memo. Therefore, we disagree with CSE that there are pre-1990 credits in the District's bank that lack documentation. In approving the District's newly calculated starting balances (i.e those from which pre-1990 credits without documentation were eliminated), EPA is not required to independently review all documentation. As noted in our TSD, EPA is approving a system for tracking credits. EPA acknowledges the system depends on the starting balances. EPA determined that the District's Staff Report and the preceding documents setting forth the District's procedures ensured accurate and conservative starting balances for each pollutant. CSE has not identified any information to show otherwise.

Response 10B: Regarding CSE's second assertion that while Rule 1315 requires ''removal of some of those offsets, [the Rule] does not actually require removal of *all* invalid offsets''; EPA disagrees. As stated on page 14 of the District's Staff Report, all pre-1990 credits for CO and PM_{10} were used by 1997, and the remaining balance of VOC, NO_X and SO_X credits were retired at the end of 2005. CSE claims that this retirement ''does not remove *all* invalid offsets from the system, since the Rule proposes to allow the facilities permitted prior to 2005 in reliance upon those pre-1990 offsets to 'return' those offsets as 'payback of offset debt' under Rule 1315(c)(3)(A)(v).'' [Footnote omitted] Comment Letter at 16. According to CSE, as the pre-1990 internal bank offsets are returned to the internal bank, they are laundered, or 'tracked' as if they were never touched by the improper crediting of those offsets in the first place.'' Comment Letter at 16. These statements are incorrect and appear to be based on a misunderstanding of the fact that once a credit is used to offset new emission increases, the ''credit'' is gone. When credits are debited from the bank to allow the construction and increased emissions from a new or modified source, these new emissions are no longer ''pre-1990'' emissions, as they are being emitted in the present timeframe. When such a source shuts down or has controls applied to reduce emissions, the reductions reduce the *current* emission inventory. In other words, pollution that is being emitted into the air stops being emitted into the air. These current day emission reductions no longer have any relationship to any pre-1990 credits. For example, assume a new piece of equipment was permitted in 2000 entirely with the use of pre-1990 credits and operated until the entire facility shutdown in 2011. If the facility submits an application to claim the emission reductions from the entire facility (where some pieces of equipment obtained credits from the District Offset Account and some did not), the District would evaluate the application under the provisions of Rule 1309—Emission Reduction Credits and Short Term Credits, which is SIP approved. Rule 1309 requires the quantity of emission reductions verified as meeting the federal integrity criteria to undergo an additional adjustment to reflect current day BACT levels,[7] and

[7] The District imposes this more stringent current day BACT adjustment at the time of credit creation

Continued

only then is the quantity of any ''payback of offset debt'' credited to the District Offset Accounts. The remaining balance of emission reductions is issued to the source as an ERC certificate. If the source did not claim any emission reductions from the shutdown of their facility, the District would then evaluate the emission reductions pursuant to Rule 1315, which imposes different requirements than Rule 1309, but also ensures that all credits meet the federal integrity criteria. It is important to note that all crediting of emission reductions in either example are based on real reductions of emissions that were recently emitted into the air but are no longer being emitted. The association with the pre-1990 credits no longer exists. Thus CSE is incorrect to claim that the pre-1990 credits are ''laundered'' in the tracking system, since the tracking system only collects as credits the quantity of actual emission reductions calculated pursuant to Rule 1309 that were originally lent to the source from the District's Offset Accounts. In addition, orphan shutdown credits are collected in accordance with Rule 1315, which requires that permitted emission limits be adjusted by an 80% factor to estimate actual emissions. See Rule 1315(c)(3)(B)(i).

Response 10C: CSE's third comment claims that EPA must review documentation for each of the thousands of individual transactions that contributed to the 1990 starting balance, otherwise our approval of Rule 1315, including our determination that the 1990 starting balance meets the federal integrity criteria for offsets is improper. EPA does not believe it was Congress's intent that we review each individual action carried out by a local air District to ensure compliance with the CAA. As the Court's have recognized, the Clean Air Act establishes a system of cooperative federalism. The federal EPA establishes the National Ambient Air Quality Standards, but the States have primary authority for ensuring that their air quality meets the NAAQS. 42 U.S.C. 7407(a), 7401(a)(3). The CAA requires States to develop SIPs to implement, maintain and enforce the NAAQS and to submit these SIPs to EPA, and EPA must approve a submitted SIP that meets the CAA's requirements. 42 U.S.C. 7410, 7410(k)(3). In this case, the District adopted and submitted a rule that provides detailed methodologies for reviewing and quantifying specific types of emission reductions prior to crediting such reductions to their Offset Accounts. It is the overall program that EPA must review to ensure it contains the necessary provisions to ensure (1) that the District is providing an adequate quantity of emission reductions to make up for all required federal emission reductions not required by the District's NSR program (CAA Section 173), and (2) to ensure the federal offset criteria for offsets debited to be permanent, surplus, quantifiable, and enforceable are met (40 CFR 51.165((a)(3)(ii)(C)(*1*)(*i*)). For the reasons explained in EPA's proposed rule and TSD, we have determined that Rule 1315 satisfies these statutory and regulatory criteria for approval. CSE's broad assertion that EPA should have reviewed the extensive documentation for each pound of emissions credits in the District's Offset Accounts is without merit.

CSE claims that since ''EPA failed to review the documentation that the SCAQMD relied upon to establish its Offset Account balance, then EPA[ ] is in no position to find * * *'' that the credits in the Offset Accounts meet the requirements of the CAA. As discussed on page 10 of the TSD, EPA made a determination as to the whether the credits contained in the District's Offset Accounts meet the federal integrity criteria of being permanent, surplus, quantifiable, and enforceable and therefore meet the requirements of the CAA. It is not necessary for EPA to review documentation for every single credit and debit in the District's Offset Account to make this determination. Instead EPA has reviewed and evaluated the mechanisms contained within Rule 1315 to ensure that at the time of use, all credits used to offset new emission increases meet the federal integrity criteria. Further discussion of how EPA evaluated the rule is provided below in response to specific comments made by CSE.

Response 10D: CSE's fourth assertion is based on the misconception that pre-1990 credits remain classified as pre-1990 credits even after they have been used to construct a new project. As discussed above in EPA's response to CSE's second assertion, this is incorrect. (See Response 10B) Once a credit is used by a source, the credit is retired. Any credits generated later from emissions reductions at that source are new credits from actual reductions that meet the federal criteria. See EPA's response to CSE's second assertion under this comment for a more detailed discussion.

Comment 11: CSE titled this section of their comments ''Annual Balances Lack Documentation''. In this comment, CSE correctly points out that Rule 1315 relies on permitted emission limits, discounted by 20% to account for actual emissions from a shutdown source, rather than relying on actual emissions information for major or minor source orphan shutdowns. They claim that ''This presents three problems inherent to this rulemaking.''

The first problem identified by CSE is that ''the CAA's plain language requires 'actual' emissions be used to meet its offsetting requirement * * *'' They then cite 40 CFR 51.165(a)(1) which reads ''All such plans shall use the specific definitions. Deviations from the following wording will be approved only if the State specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definition below.'' While not stated explicitly, it appears that CSE's intended comment is that the rule must use the term and meaning of ''actual'' as defined in 51.165 and not an alternative determination of ''actual'' emissions.

Response 11: As CSE points out in their comment, the CAA does allow deviations from defined terms if the definition is ''at least as stringent, in all respects as the corresponding definition * * *'' Except for orphan shutdowns, all credits are first evaluated pursuant to the requirements of Rule 1309, which in turns specifies that the Rule 1306 emission calculation methods be used to calculate emission reductions. Rule 1306(c)(1) states that emission decreases are ''The sum of actual emissions, * * * which have occurred each year during the two-year period immediately preceding the date of permit application, or other appropriate period, determined by the Executive Officer or designee to be representative of the source's cyclical operation, and consistent with federal requirements; * * *'' In turn, Rule 1302 defines *Actual emissions* as ''the emissions of a pollutant from an affected source determined by taking into account actual emission rates and actual or representative production rates (i.e., capacity utilization and hours of operation).'' Thus, except for reductions from Orphan Shutdowns, the quantity of emission reductions credited to the District Offset Accounts is based on the same definition of ''Actual Emissions'' as in 40 CFR 51.165.

in lieu of current and future surplus adjustments to the quantity of emission reductions. See 61 FR 64292, Dec. 4, 1996 and Environmental Protection Agency, Region IX Air & Toxics Division Technical Support Document for EPA's Notice of Final Rulemaking for the California State Implementation Plan South Coast Air Quality Management District New Source Review by Gerardo C. Rios, October 24, 1996 (TSD).

The only remaining question is whether the District's use of 80% of permitted emission limits for orphan shutdowns provides a result that is ''at least as stringent as'' the result of using the 40 CFR 51.165 definition of the term *Actual Emissions* when quantifying the amount of emission reductions to be credited to the District Offset Accounts. The TSD and proposal for the proposed approval of Rule 1315 both provide a discussion on this topic and explain why the provisions of Rule 1315 provide an acceptable method (i.e. at least as stringent as the federal requirement) to calculate actual emissions from orphan shutdowns as required by Rule 1315. (See TSD pgs 9–10) CSE's comments do not question the reasoning behind EPA's determination, but simply state in their next comment that actual emission data is available, therefore it should be used. EPA's responds to this assertion in our response to Comment 13, that also makes this point.

Comment 12: CSE also states in this comment that Rule 1315 contains a definition for ''Net Emission Increase'' that differs from the language in the regulation.

Response 12: This definition is not included in the version of Rule 1315 that we are approving, as the District has specifically excluded this definition from the SIP submittal. See Rule 1315(h). Therefore, we do not need to evaluate this definition as part of our action on Rule 1315.

Comment 13: CSE states that ''While some very small sources do not report emissions, major sources and sources that emit over 4 tons per year of certain pollutants all report annually. Yet under Rule 1315(c)(3)(B), *all* orphan shutdowns and reductions are treated as if they were very small sources, with no emissions information. Actual emissions information cannot be ignored in favor of assuming 80% of permitted emissions.''

Response 13: While District Rule 301—Permitting and Associated Fees, requires all sources with a potential to emit greater than 4 tpy to submit an annual emission report, these reports do not always include emission data for individual pieces of equipment. Instead, since the annual report covers the entire facility, many sources, such as combustion sources and coating operations are often grouped together for the report. Annual emissions from these units are based on the equipment group's total material usage multiplied by an appropriate default emission factor. The default emission factors are designed to be conservative and may not be as accurate as the emission factors used for permitting of equipment or the calculation of ERCs. For these reasons, EPA disagrees with CSE that the use of annual emission reports would provide a better (more accurate?) way to calculate actual emission reductions from orphan shutdowns. As stated in the TSD and proposal, we have determined that the method provided in Rule 1315 is at least as stringent as using actual emissions records for determining the actual emission reductions from orphan shutdowns. See TSD at 9, 10.

Comment 14: CSE states that there is no evidence that any of the Orphan Reduction/Orphan Shutdown credits meet the definitions for these terms because the District does not evaluate whether these reductions are ''not otherwise required by rule, regulation, law, approved Air Quality Management Plan Control Measure, or the State Implementation Plan.''

Response 14: This statement is incorrect. As part of the process for collecting orphan shutdowns the District reviews existing rules and laws to ensure the reduction or shutdown (or equivalent such as electrification) is not required as of the date of the reduction. The requirement to perform this check and make any necessary adjustments is inherent in the definition of orphan shutdown, which is defined as follows: ''Any reduction in actual emissions from a permitted source within the District resulting from removal of the source from service and inactivation of the permit without subsequent reinstatement of such permit provided such reduction is not otherwise required by rule, regulation, law, approved Air Quality Management Plan Control Measure, or the State Implementation Plan and does not result in issuance of an ERC.'' Rule 1315(b)(5). To the extent CSE intended to comment on the District's implementation of the rule, such comments are outside of the scope of our action on this rule under CAA 110(k).

Comment 15: This comment states that ''[CSE] knows[ ] that the SCAQMD has made mistakes in determining what can lawfully be credited to its Internal Bank,'' and offers two examples. First they cite the District's action of removing pre-1990 credit balances for which sufficient records were no longer available. Second they claim that the documentation the District provided for the CPV Sentinel Energy Project source-specific SIP revision proves that the District has claimed some offsets for their Internal Bank that were not valid. Last, CSE claims that the rulemaking lacks the record required for EPA to make a finding ''* * * that the emission reductions the District is crediting and debiting in its Offset Accounts meet the requirements of the CAA and can be used to provide the offsets otherwise required for Federal major sources and modification.'' CSE bases this claim primarily on that fact that the same type of documentation provided for the CPV Sentinel Energy Project source-specific SIP revision was not made available for Rule 1315.

Response 15: As EPA stated earlier in Response 10C, there is no requirement for EPA to review and approve every transaction that was or will be undertaken pursuant to Rule 1315. Instead EPA has carefully reviewed each of the provisions of Rule 1315 and determined that it provides an adequate method for tracking and quantifying emission reductions which meet all of the federal integrity criteria for offsets. The TSD provided a full discussion on each aspect of these criteria. (See TSD pgs 7–10)

As stated in the District's Staff Report, the District has implemented an NSR tracking system to demonstrate programmatic equivalence between its NSR program and the offset requirements of the Federal program since EPA's 1996 approval of the Districts NSR program. District staff have prepared and presented to the AQMD Governing Board at public meetings a series of reports that track credits and debits from August 1990 through July 2002. While the rulemaking process for Rule 1315 was in flux (adopted, challenged in court, repealed, re-adopted * * *) the District submitted additional reports in 2007 that also tracked the credits and debits from the District's Offset Accounts. Each of these reports demonstrated that in the aggregate, the District provided an equivalent number of offsets as would have otherwise been required by the federal CAA. Each of these reports is included in the docket for this rulemaking.

Comment 16: CSE titled this section of their comments ''The Rule 1315 Approach to Surplus Adjustment Does Not Capture Reductions as Required by Federal Law'' CSE claims that ''the provisions of Proposed[ ] Rule 1315(c)(4) are inadequate to capture all the reductions needed to ensure banked reductions remain surplus at time of use'' because when offsets are deposited from any source listed in 1315(*c*)(3)(A) there is no provision that requires those emission reductions to be surplus adjusted prior to deposit; and ''once the emissions reductions are deposited, there is no mechanism for ensuring that the proper annual reduction is

calculated and applied.'' Comment Letter at 19.

Response 16: EPA disagrees. Rule 1306 requires all actual emission reductions to be BACT adjusted at the time of creation. South Coast Rule 1306(c). This means that only reductions that exceed the level of control required by BACT are allowed to be credited under the Districts NSR program. As EPA discussed in our 1996 approval of the District's NSR program (61 FR 64292), we approved this requirement in lieu of the requirement to surplus adjust credits at the time of use based on our conclusion that the District's BACT adjustment at time of creation was at least as stringent as a requirement to adjust at the time of use. For the same reasons, we believe that all credits deposited under paragraph (c)(3)(A), except clauses (c)(3)(A)(i), (c)(3)(A)(ii), and (c)(3)(A)(vi) are adequately surplus adjusted both at the time of creation and use. Paragraph (c)(4) entitled ''Surplus at the Time of Use'' only applies to these three clauses because they are the only ones not automatically adjusted to account for a surplus adjustment at the time of use. Instead, paragraph (c)(4) requires credits deposited into the District Offset Accounts, pursuant to clauses (c)(3)(A)(i), (c)(3)(A)(ii), and (c)(3)(A)(vi), to be annually discounted in the aggregate to ensure they remain surplus at the time of use.

Typically credits are adjusted at the time of use by reviewing the source category and type of reduction that created the emission reduction and determining if any new requirements requiring additional reductions have become applicable. This method would be extremely difficult and administratively burdensome if applied to the District's tracking system. Therefore the District proposed an alternative which we believe is equivalent to the case by case application of surplus adjustment at the time of use. Rule 1315 paragraph (c)(4) requires the District to determine the quantity of emission reductions expected from the adoption of new regulations for each non-attainment pollutant. The District then determines what percentage of permitted emissions these reductions represent. The same percentage of emission reductions is then applied to the Offset Account balance for that pollutant. For example, if the District adopts two rules that will achieve 200 tpy of PM_{10} emission reductions, these 200 tpy represents a specific percentage of the total PM_{10} stationary source inventory. This percentage is applied to (multiplied by) the Offset Account balance and the resulting figure is subtracted from the Offset Account Balance, which in effect reduces the total Offset Account balance by a percentage equal to the total amount of emission reductions achieved by new or revised control measures, as a percentage of the total PM_{10} stationary source inventory. This means that the degree of emission reduction achieved by any rules implemented in a year are applied to the entire Offset Account balance, not just to sources that would otherwise be subject to the new rules, which will result in a greater downward adjustment in the total Offset Account balance compared to source category-specific adjustments. We conclude that this surplus adjustment requirement in Rule 1315 is at least as stringent as other, more traditional methods for surplus adjustments at time of use.

Comment 17: CSE's comment states that while Rule 403, a fugitive dust rule, was adopted to control PM_{10} emissions, no surplus reductions appear in the District Offset Account balance sheet for that year. Comment Letter at 19.

Response 17: CSE is correct that no surplus reductions were made for Rule 403. This rule regulates fugitive dust from any active operation—such as earth-moving activities, construction/demolition activities, disturbed surface areas, or heavy- and light-duty vehicular movement and open storage piles. It does not apply to permitted emission units. If a source subject to this rule was to shut down, no emission reductions would be collected for the reduced fugitive emissions subject to Rule 403. Since there are no emission reductions in the District's Offset Accounts that are subject to Rule 403, the Offset Account balance does not need to be surplus adjusted for Rule 403.

Comment 18: CSE's comment continues by stating that this system is not equivalent because the credits in the District's internal bank do not reflect the District's rules as a whole and offers as an example that spray coating operations are more likely to occur at minor, rather than federal major facilities. And finally that ''Spray coating operations became subject to a new PM regulation in 2002, when the District adopted Rule 481. The District made no discount to the internal bank PM_{10} account in 2002–2003.'' Comment Letter at 19.

Response 18: This statement is not correct. Since the balance of both minor and major orphan shutdowns undergo annual surplus adjustments, it does not matter at which type of facility the emission reductions occur. In addition, since Rule 1315 requires the amount of emission reductions achieved from the entire permitted stationary source inventory to be applied to the total Offset Account balances, it does not matter at which source categories the emission reductions from new rules occur, nor does it matter what source categories generated the credits in the District's Offset Accounts. The Offset Account balances are surplus adjusted annually, in the aggregate, so that all credits meet the surplus at time of use requirement prior to being debited from these accounts. The revisions to Rule 481, which were adopted in 2002, were all administrative in nature and did not achieve any PM_{10} emission reductions, therefore no surplus adjustment was made to the District's Offset Accounts for PM_{10} in 2002–03.

Comment 19: Finally CSE offers an example of an instance where the District failed to surplus adjust at time of use some of the emission reductions listed in the AB 1318 Tracking System. Comment Letter at 19. EPA notes that credits transferred from the Rule 1315 Offset Accounts into the AB 1318 Tracking System had already been surplus adjusted to account for the emission reductions of Rule 1157—in the aggregate, as represented by the 0.31 tpd surplus adjustment the District made to their PM_{10} Offset Account balance at the end of 2006. While CSE is correct that Rule 1157 reduced emissions from the 389 affected facilities by 60%, the effect on the entire permitted stationary source emission inventory was only 2.8%.

Response 19: It appears, based on CSEs comments, that CSE did not fully understand the requirements of Rule 1315 (c)(4). Section (c)(4) of the rule requires an ''in the aggregate'' adjustment of the Offset Account balances, which reduces emissions by the same overall percentage achieved by any new rules, whether or not credits in the District's accounts came from source categories affected by the new rules. For the reasons provided in our TSD in Section IV.A.2. and in Response 16 above, we conclude that Rule 1315 contains adequate provisions to ensure all Offset Account balances are surplus adjusted annually to satisfy the surplus adjustment at the time of use requirement.

Comment 20: CSE asserts that ''Proposed Rule 1315 Does not Incorporate the Federal Validity Requirements.'' Specifically, CSE states that ''To meet the requirements of federal law, the Proposed Rule must incorporate the definitions for validity found in federal law * * *'' and that ''While Proposed Rule 1315 (6) is titled ''Federal Offset Criteria,'' it does nothing more than reference other parts of the Proposed Rule and those parts

neither contain nor reference the requirements of federal law. Proposed Rule 1315(6) instead is circular and self-referential.'' Comment Letter at 20.

Response 20: CSE does not provide any citations to support this alleged requirement. While EPA agrees that all emission reductions used to offset the emissions from new and modified sources must meet the federal integrity criteria of being permanent, surplus, quantifiable, and enforceable, it is not necessary for the rule to specifically define these terms. See 40 CFR 51.165(a)(3)(ii)(C)(*1*)(*i*). Instead the rule must include provisions that ensure that the credits being used as offsets meet these criteria. Paragraph (c)(6) of Rule 1315 is not intended to be a requirement that the criteria be met, but instead points to the rule section(s) that ensure each of these criteria are met. Section IV.A. of our TSD discusses EPA's evaluation of how the rule ensures each of these criteria are being met, consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(C)(*1*)(*i*). CSE's comment is conclusory and unsupported.

Comment 21: CSE's comments that the SCAQMD's existing SIP approved NSR program establishes certain requirements on emissions that this Rule attempts to set aside. CSE cites sections of Rule 1315 which allow some of the offsets provided from the open market, pursuant to the requirements of Rule 1303, to be collected as credits for the District's Offset Accounts. They claim that since Rule 1303 requires these offsets to be provided to obtain a permit, they are not surplus to the requirements of the SIP, and may not be credited into the District's Offset Accounts. Comment Letter at 21.

Response 21: The purpose of Rule 1315 is to provide a tracking system to demonstrate that in the aggregate, the District is providing at least as many offsets under their approved NSR program as would otherwise be required by a program that contained no exemptions from federal offset requirements. The requirement in Rule 1303 for minor sources (>4 tpy but less than major source emission thresholds) to provide offsets for emission increases is more stringent than federal requirements which only apply to major sources. South Coast Rule 1303(b)(2). Likewise, the general requirement to provide offsets at a ratio of 1.2:1 is more stringent than the CAA's general requirement in subpart 1 of part D, title I to provide offsets at a ratio of 1:1 for all non-attainment pollutants except ozone precursors (VOC and NO_X), which are subject to more stringent offset ratios under subpart 2 of part D. When the District collects offsets (or portions thereof) that were already determined to be surplus, they are collecting a greater quantity of offsets than required by the federal NSR program. Rule 1315 collects some of the offsets surrendered to the District that are in excess of federal requirements to balance against the offsets not collected by the District, which would have been required under federal requirements. Before any emission reductions can be credited to the District's Offset Accounts, the emission reductions must first meet the federal integrity criteria, which these credits—offsets collected for minor sources and the additional 0.2 offset ratio, have already met. They are ''credits'' i.e., pluses to the tracking system because they are in excess of federal offset requirements.

Comment 22: CSE states that the provisions of Section (c)(3)(A)(v) are problematic for two reasons: (1) ''Once a facility uses an ERC (or ERC equivalent) to meet its NSR offsetting requirement, that ERC no longer exists.''; (2) ''* * * there is no provision in Proposed Rule 1315 that requires a surplus adjustment for those emissions * * *''. Comment Letter at 21. CSE then provides the following example of how they believe this process would work:

> As the Rule is currently proposed, a manufacturing facility operating now could have received a Community Bank or Priority Reserve allocation for emissions in 1994 [check], based upon the shutdown of a boiler that operated between 1987 and 1993. Then, the manufacturing facility shuts down in 2010 and submits a 1306 banking application. This proposed rule would allow the SCAQMD to bank the entire Community Bank or Priority Reserve allocation even though the intervening facility has already used that allocation to meet its 1303 obligation and there have been rules adopted between 1987 and 2010 that would have required emission reductions for boilers.

Response 22: There are several errors in this example. If an existing facility shutdown in 2010 and submits a banking application pursuant to Rule 1306, then the District will first determine how much of the emission reduction meets the federal offset integrity criteria, including the required BACT surplus adjustment. After this determination has been made, the District will then review its records to determine if the source ever obtained any offsets from the District (e.g., Priority Reserve, Community Bank, NSR Balance). If so, then the District will subtract this amount from the total creditable amount of emission reductions calculated pursuant to Rule 1306, and credit only the amount originating from the District accounts back to the Rule 1315 tracking system. To the extent the District provided these credits to the source in the first place, the District is simply returning the same amount of credits to the District NSR Account. These credits are still surplus adjusted.

Comment 23: Based on the example provided in the earlier comment, CSE also claims these emission reductions are not surplus when they are credited back to the District offset accounts because they were already relied upon by the shutdown source. Comment Letter at 22.

Response 23: EPA agrees that such a facility would have relied on these credits at the time their permit was issued, but since that time, the facility has been emitting its own emissions into the air. When the facility shuts down, it is creating new emission reductions when compared to the baseline inventory. These new emission reductions are evaluated pursuant to Rule 1306 to verify that they meet all of the federal integrity criteria, including the requirement that the reduction be surplus.

Comment 24: CSE claims that ''Similarly, for Proposed Rule 1315(3)(A)(vi)[ ] Rule 1306 does not allow ERCs to be generated for the activities described therein.''

Response 24: CSE's comment does not provide an explanation or basis for this claim. The provision contained in section (c)(3)(A)(vi) of Rule 1315 allows, upon EPA concurrence, the amount of the BACT adjustment required by Rule 1306(c) to be credited to the District's Offset Accounts if this amount ''is not otherwise required by rule, regulation, law, approved Air Quality Management Plan Control Measure, or the State Implementation Plan.'' This provision has only been used once since the District created its Internal Bank in 1990.[8] EPA intends to approve such use only in cases where the credits are to be used immediately for a specifically identified project (and therefore the credits would not be subject to an additional at time of use surplus adjustment) and where EPA determines that the construction of the identified project would not interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act.

Comment 25: CSE states in this comment ''As a broader, more universal matter the SCAB and the Coachella Valley's failure to attain the PM_{10} NAAQS and the 1 hour ozone NAAQS

[8] See Appendix A of Rule 1315 Staff Report, entry entitled ''1990–97 BACT Discount ERCs [(c)(3)(A)(vi)]''.

coupled with the massive black box in the 8 hour ozone plan show that no emission reductions that have occurred or will occur as part of the NSR program are actually surplus. In fact, the Air Basins need all the reductions of the NSR program and *more* for attainment. The currently approved SIP Rules set out a rigorous process for banking emission reductions that was developed at the direction of the Clean Air Act because the Air Basins are nonattainment areas. The EPA cannot now approve a Rule that, in effect, sets aside parts the SIP approved NSR program.'' Comment Letter at 22.

Response 25: It appears that CSE is using the term ''surplus'' in this comment to mean something different from the requirement in 40 CFR 51.165((a)(3)(ii)(C)(*1*)(*i*) that emission reductions be ''surplus'' to any other requirement of the CAA. In the context of evaluating the integrity of an NSR offset, EPA uses the term ''surplus'' to refer to any emission reduction that is not otherwise required by the CAA. See CAA 173(c); *see also* TSD at 7–9. Whether the District has attained any particular NAAQS or needs additional emission reductions as part of its plan for attaining a particular NAAQS is not relevant to the question whether a particular emission reduction is ''surplus'' to other CAA requirements consistent with 40 CFR 51.165(a)(3)(ii)(C)(*1*). Contrary to CSE's contention that Rule 1315, ''sets aside parts the SIP approved NSR program,'' we are approving Rule 1315 based on our conclusion that it strengthens the SIP-approved NSR program by providing a detailed methodology for tracking credits within the District's Offset Accounts.

Comment 26: CSE titled this section of their comments ''Allowing the District to Shift from a 1.5 to 1.0 Offset Ratio to a 1.2 to 1.0 Offset Ratio Violates the Act''. CSE claims that ''EPA has not determined that California BARCT and federal BACT are equivalent'' and that ''federal BACT is a facility by facility approach and BARCT uses classes of categories'' and therefore, they cannot be equivalent. Approval of a 1.2:1, rather than 1.5:1 offset ratio is an illegal shift and is therefore arbitrary and capricious.

Response 26: We disagree as we are not approving any change in the offset ratios established in the District's SIP-approved NSR program. Rule 1303—Requirements, currently requires all sources of VOC and NO_X to provide offsets at a 1.2:1 ratio. EPA approved this ratio as part of our 1996 approval of the Districts NSR program based on our conclusion that the District's program met the criteria for exemption from the requirement in CAA section 182(e)(1) for a 1.5:1 offset ratio in extreme ozone nonattainment areas (61 FR 64291, December 4, 1996). Nothing in our action today affects our prior action with respect to Rule 1303. To the extent CSE intended to challenge our approval of the 1.2:1 ratio in Rule 1303 into the SIP in 1996, such a challenge is late.

As CSE notes, Section 182(e)(1) of the CAA provides an exception to the requirement of a 1.5:1 offset ratio for ozone precursors in extreme non-attainment areas. This Section reads as follows:

> ''* * * shall be at least 1.5 to 1, except that if the State plan requires all existing major sources in the NA areas to use BACT as defined in section 7479(3) for the control of VOC, the ratio shall be at least 1.2:1.''

We note that California state law requires all nonattainment areas to implement Best Available Retrofit Control Technology (BARCT).[9] The District has adopted rules which require BARCT for all source categories that include major sources and many that apply to minor sources as well. These rules have been submitted and approved (or in the process of being approved) into the South Coast portion of the California SIP. Therefore the District does have requirements *in their plan* that require *all existing major sources* to use BARCT as defined in Rule 1302—Definitions. CSE provides the definitions of both terms—Federal BACT and California BARCT in their Comment Letter. A review of both terms shows that the definition of BARCT contains the same key elements of the Federal BACT definition, as noted below by the underlined text of the definition of BARCT:

> *An air emission limitation* that applies to existing sources and is *based on the maximum degree of reduction* achievable, *taking into account environmental, energy, and economic impacts* by each class or category of source.

The application of both BACT and BARCT each result in ''an air emission limitation,'' ''based on the maximum degree of reduction,'' ''taking into account environmental, energy, and economic impact,'' ''for such facility'' (BACT) or ''each class or category of source'' (BARCT).

The definition of BACT referenced in Section 182(e)(1) is from the new source review regulations, which only apply when a facility is new or makes a modification that increases emissions. The language in Section 182(e)(1) therefore specifically states that the requirement—to apply the Best Available Control Technology—also applies to existing major sources. This inherently means that any additional control must be applied on a retrofit basis, which is exactly what the California requirement to apply Best Available *Retrofit* Control Technology does. Since the District requires the implementation of BARCT on all major ozone pre-cursor sources, we continue to find that the provisions of Section 182(e)(1) allow for approval of a NSR program that requires a 1.2:1, rather than 1.5:1 offset ratio of ozone precursors in the South Coast.

Comment 27: CSE titled this section of their comments ''EPA Failed to Show That This SIP Amendment Does Not Interfere With Attainment of the 1-hour Ozone Standard. CSE comments that EPA's proposed approval of Rule 1315 ''fails to make the assessment that this SIP revision will not interfere with attainment of the 1-hour ozone standard,'' citing CAA section 110(l) and *Hall* v. *EPA,* 273 F.3d 1146, 1158 (9th Cir. 2001). The comment states that the absence of such a ''finding'' violates ''bedrock statutory provisions and longstanding NSR case law * * *'' CSE believes that EPA's failure to assess this SIP revision for potential interference with the 1-hour ozone standard is particularly troubling in light of a recent Ninth Circuit decision that the current 1-hour ozone plan is deficient to actually attain the 1-hour ozone standard, citing *Association of Irritated Residents* v. *EPA.* Comment Letter at 24.

Response 27: EPA acknowledges that, for the proposed rule, the Agency did not evaluate whether the SIP revision would interfere with attainment of the 1-hour ozone standard under CAA section 110(l). Given that the 1-hour ozone standard was revoked in 2005 [see 40 CFR 50.9(b)], the potential issue to address under section 110(l) is not whether the SIP revision would interfere with attainment or RFP of the 1-hour ozone NAAQS because the 1-hour ozone standard is no longer one of the NAAQS. Instead the issue to be addressed is whether the SIP revision would interfere with any other applicable requirement of the CAA, which in this case refers to the ''anti-backsliding'' requirements [found in 40 CFR 51.905(a)(1)(i)], which continue to apply in 8-hour ozone nonattainment areas (such as the South Coast) that had been a nonattainment area for the 1-hour ozone standard. Among the anti-backsliding requirements is the requirement to have an approved 1-hour ozone attainment demonstration plan.

[9] Health & Safety Code § 40440(a)(1).

The South Coast Air Basin has a 1-hour ozone attainment plan (referred to as the ''1997/1999 South Coast Ozone SIP'') that EPA approved in 2000 (65 FR 18903, April 10, 2000) and this SIP revision would not interfere with that plan. However, the commenter is correct that a recent Ninth Circuit decision raises the possibility that, in light of deficiencies in the 1997/1999 South Coast Ozone SIP brought to EPA's attention in 2003 (i.e., prior to revocation of the 1-hour ozone standard) and having nothing to do with NSR, EPA may find it necessary to develop and adopt a new 1-hour ozone attainment plan or require the State of California to do so, in response to the remand of that case. See, generally, *Association of Irritated Residents* v. *EPA,* No. 09–71383 and 09–71404, rehearing denied and amended opinion filed Jan. 27, 2012. EPA has not yet decided how the Agency intends to respond to the decision in *Association of Irritated Residents,* and although this SIP revision would not interfere with such a future plan, it would need to be taken into account in developing the emissions inventories and control strategies for such a 1-hour ozone attainment plan in much the same manner as has been done for the now-approved South Coast 8-hour ozone and $PM_{2.5}$ plans.

Comment 28: CSE titled this section of their comments ''It is Arbitrary and Capricious for This SIP Amendment to Allow for Vast Increases in Pollution Credits Given the Reliance on a Large 'Black Box'.'' CSE's final comment is that EPA cannot approve Rule 1315 because the District has emissions reductions in its AQMPs ''black box''. Comment Letter at 24. CSE comments that the 2007 AQMP has 55% of the emission reductions needed to attain the 8-hour ozone NAAQS in the ''black box''. CSE then states: ''Given that there really is not a true framework for attaining the 8-hour ozone standard (e.g. reliance on speculative, undefined measures) on time combined with the recent failure of the region to attain the 1-hour ozone standard, [footnote omitted] it is arbitrary and capricious for EPA to allow 1315 to move forward with the myriad of newly minted offsets that will be allowed to impede the already formidable task of actually closing the ''black box'' gap that currently exists. Even if the rosy assumptions in the TSD are accurate, adding 29 tpd (27 tpd VOC and 2 tpd NO_X) of pre-2002 credits is approximately 10% of the emissions reductions needed to be met through black box reductions. This represents a significant amount of pollution that could be prevented, which would actually help push the region to attain the standard on time.'' Comment Letter at 24–25.

Response 28: We disagree with these assertions. First, with respect to the commenter's contentions that the ''black box'' (which we refer to herein as the ''long-term strategy'') in the 2007 AQMP accounts for 55% of the reductions needed to attain the 1997 8-hour ozone standard and that pre-2002 credits account for approximately 10% of these ''black box'' reductions, these statements are factually incorrect. As we explained in our responses to similar comments on our proposal to approve the 2007 AQMP (referred to in that action as the ''South Coast 2007 Ozone SIP''), the correct amounts of the needed emission reductions attributed to the long-term strategy in the 2007 AQMP are 26% for NO_X (241 of 910 tons per day (tpd) needed to attain) and 9% for VOC (40 of 461 tpd needed to attain). See 77 FR 12674, 12686 (March 1, 2012). Thus, the pre-2002 base year emission reduction credits (2 tpd of NO_X and 27 tpd of VOC) that the District added as growth into its projected inventories for the 2007 AQMP constitute roughly 0.83% of the NO_X reductions and 68% of the VOC reductions attributed to the long-term strategy in the 2007 AQMP.[10]

Second, we disagree with the commenter's suggestion that the South Coast's inclusion of a long-term strategy in the 2007 AQMP precludes our approval of Rule 1315 into the SIP or somehow renders our approval arbitrary and capricious. CAA section 182(e)(5) authorizes EPA to ''approve provisions of an implementation plan for an Extreme Area which anticipate development of new control techniques or improvement of existing control technologies * * *'' provided certain conditions have been met. 42 U.S.C. 7511a(e)(5). EPA fully approved the 2007 AQMP based, in part, on our conclusion that California had met the criteria for approval of a long-term strategy under CAA section 182(e)(5) for purposes of attaining the 1997 8-hour ozone standard (77 FR 12674 at 12686–12689) and our conclusion that the SCAQMD had accounted for existing pre-base year ERCs in the reasonable further progress (RFP) and attainment year inventories in the plan, consistent with the applicable requirements of part D, title I of the CAA and EPA's implementing regulations in 40 CFR part 51 (77 FR 12674 at 12682). CSE provides no support for its contention that these elements of the 2007 AQMP preclude or undermine our approval of Rule 1315 into the SIP, nor any information indicating that approval of Rule 1315 would interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act (see CAA 110(l)).

Finally, to the extent the commenter intended to argue that the South Coast area's failure to attain the 1-hour ozone NAAQS by the applicable attainment date precludes our approval of Rule 1315 or somehow renders our approval arbitrary and capricious, we disagree. EPA's recent determination that the South Coast area failed to attain the 1-hour ozone standards by its applicable attainment date of November 15, 2010 (76 FR 82133, December 30, 2011) has no bearing on our action on Rule 1315, and the commenter provides no support for any argument otherwise.

Comment 29: In CSE's last portion of this comment, CSE reproduces Table 4.1–4 from Subchapter 4.1 of the Districts Final Program Environmental Assessment (CEQA analysis) prepared for adoption of Rule 1315. Comment Letter at 25. Using data from this table, CSE states that the amount of potential ozone emissions increases from Rule 1315 (16.99 tpd VOC in 2014 and 34.52 tpd in 2023 and 1.29 tpd in NO_X in 2014 and 2.38 tpd in 2023) is ''important because they represent a *significant* increase in the total projected emissions''. (emphasis added) CSE then provides the total projected emission inventory for years 2014, 2020 and 2023 from the 2007 AQMP, apparently to show that the values in Table 4.1.4 are a large percentage of the total projected emission inventory. CSE then states that EPA must ''demonstrate what measures will replace this backsliding in emission reductions that will lead to attainment of all relevant standards,'' and finally that ''it is arbitrary and capricious for EPA to ignore the significant analysis prepared by the SCAQMD for the California Environmental Quality Act document for Rule 1315 that details the emissions and impacts associated with adopting this Rule.''

Response 29: EPA disagrees with CSE's characterization of the information provided in Subchapter 4.1 of the District's CEQA analysis. See ''Final Program Environmental Assessment for Re-Adoption of

[10] It appears that CSE simply summed the NO_X and VOC emissions estimates to arrive at its 55% and 10% figures, but this approach entirely overlooks the significant differences in the NO_X reductions and VOC reductions attributed to the long-term strategy in the 2007 AQMP, as well as the respective contributions of reductions in each pollutant to attainment of the ozone standards in the South Coast.

Proposed Rule 1315—Federal New Source Review Tracking System, Volume I, Subchapter 4.1, ''Environmental Impacts and Mitigation Measures—Air Quality'' (January 7, 2011) (Rule 1315 CEQA Analysis). The emissions data in Table 4.1–4 of this CEQA analysis, which CSE reproduced in Table 4.1–4 of its comment letter, provide conservative (high) estimates of *total* NO_X and VOC stationary source emissions expected from implementation of Rule 1315. See Rule 1315 CEQA Analysis at 4.1–9. The 2007 AQMP includes all of these projected NO_X and VOC emissions in the future projected inventories ''with growth'' for 2014, 2020 and 2023. See 2007 AQMP, Table 2–8 of Appendix III. To the extent CSE intended to argue that implementation of Rule 1315 will *increase* the projected NO_X and VOC emission inventories in the 2007 AQMP by the amounts specified in Table 4.1–4, this assertion is factually incorrect, as the emissions impacts identified in Table 4.1–4 of the Rule 1315 CEQA Analysis are already accounted for in the 2007 AQMP projected emission inventories. Alternatively, to the extent CSE intended to challenge the District's inclusion of these additional NO_X and VOC emissions in the projected emissions inventories underlying the 2007 AQMP, such a challenge to the 2007 AQMP is outside the scope of our action on Rule 1315.

Comment 30: The South Coast Air Quality Management District submitted a comment letter in which the District stated that the legislative history of the 1990 Amendments to the CAA specifically addressed the ability of a district to promulgate a rule that, in the aggregate produces equivalent or greater emissions reductions. Comment Letter at 1–2. The District also included a discussion of the importance of Rule 1315 to the economic issues in the area and that many of the projects in the area that will use credits from the District's Offset Accounts are environmentally beneficial. Comment Letter at 2–3. The District's comment also referenced the Ninth Circuit's decision in Natural Resources Defense Council v. South Coast Air Quality Management District, 651 F.2d 1066 (9th Cir. 2011) which evaluated the District's treatment of pre-1990 credits in its Offset Accounts and ''concluded that the challenge to the pre-1990 offsets was moot''. [citation omitted] The District stated: ''Therefore, we conclude that EPA need not be concerned with any issues relating to pre-1990 offsets.'' Comment Letter at 5. Finally, the District pointed to some specific language in EPA's TSD that the District considered inaccurate. TSD at p. 11.

The District requested EPA to include in its final approval the following clarification: ''The AQMP growth projections do not distinguish between new or modified sources and increased operations at existing sources. Therefore, the growth projections represent a maximum projected amount of demand for pre-base-year offsets. All growth from new and modified sources must necessarily be offset by pre-base-year emission reductions. This is because post-base-year reductions could at most be used to replace themselves, and would not be available to support growth. Therefore, the AQMP growth projections represent maximum projected use of pre-base-year offsets.'' Comment Letter at 5. The District's comment also attached copies of hundreds of letters from local municipalities, organizations and businesses that supported State legislation that would allow the District to continue to issue credits from its Offset Accounts during preparation of CEQA documents.

Response 30: EPA agrees with the District that Congress intended to allow the District to adopt a rule that in the aggregate that demonstrates an equivalent amount or greater emission reductions than would be required by the 1990 Amendments to the CAA. EPA appreciates the District's statements about the importance of Rule 1315. These considerations may inform the policy choices that the District makes in choosing how to implement the requirements of the CAA. EPA makes note of the Ninth Circuit's decision in *NRDC* v. *SCAQMD.* As discussed in a prior Response, EPA has also determined that the District's treatment of pre-1990 credits in Rule 1315 is approvable. Finally, EPA agrees that the District's language clarifies EPA's intent with respect to approving the District's inclusion of pre-base year credits in its inventories. Accordingly, we agree that ''[t]he AQMP growth projections do not distinguish between new or modified sources and increased operations at existing sources. Therefore, the growth projections represent a maximum projected amount of demand for pre-base-year offsets. All growth from new and modified sources must necessarily be offset by pre-base-year emission reductions. This is because post-base-year reductions could at most be used to replace themselves, and would not be available to support growth. Therefore, the AQMP growth projections represent maximum projected use of pre-base-year offsets.'' EPA agrees that in both the 2003 and 2007 AQMPs, the growth that the District adds represents the maximum projected use of pre-base year credits. EPA also takes note of the hundreds of pages attached to the District's comment letter.

Comment 31: California Council for Environmental and Economic Balance, the County Sanitation Districts of Los Angeles County and the Southern California Gas Company submitted comments on our proposed approval of Rule 1315. These comment letters express support for EPA's proposed approval of Rule 1315. The comment letters also state that Rule 1315 is important for the area to continue to operate essential public services, such as installation of emergency generators at wastewater pumping plants. Finally, these comment letters ask EPA to finalize approval of Rule 1315 with an effective date that is shorter than 30 days based on the good cause exception in section 553(d) of the Administrative Procedures Act.

Response 31: EPA takes note of the support for final approval of Rule 1315. EPA also understands that as a result of State legislation the District may be precluding from issuing permits pursuant to Rule 1315 for a short period of time until the effective date of EPA's final approval of Rule 1315. Although EPA understands that waiting for a 30 day effective date to expire may place a burden on the District and local municipalities, utilities and business, EPA is declining at this time to provide a shorter effective date based on 5 U.S. C. 553(d)(3).

III. EPA's Final Action

Under section 110(k)(3) of the Act, EPA is fully approving Rule 1315, as adopted February 4, 2011 and submitted on March 2, 2011, into the South Coast portion of the California SIP based on our conclusion that this SIP revision satisfies all applicable CAA requirements.

IV. Statutory and Executive Order Reviews

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

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; 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.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 24, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: April 26, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(403) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(403) A new rule for the following APCD was submitted on March 2, 2011, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rule 1315, ''Federal New Source Review Tracking System,'' excluding paragraph (b)(2) and subdivisions (g) and (h), adopted on February 4, 2011.

* * * * *

[FR Doc. 2012–12500 Filed 5–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1990–0011; FRL–9676–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Ellsworth Air Force Base Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 announces the deletion of Operable Unit (OU) 1—the former Fire Protection Training Area (FPTA), along with two other Areas of Concern (AOC): the Gateway Lake Ash Study Area and the Pride Hangar Study Area of the Ellsworth Air Force Base (AFB) from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This partial deletion pertains to the surface soil, unsaturated subsurface soil, surface water and sediments of Operable Unit (OU) 1, the Gateway Lake Ash Study Area, and the Pride Hangar Study Area. The groundwater medium associated with OU–11, Basewide Groundwater will remain on the NPL. The EPA and the State of South Dakota, through the Department of Environment and Natural Resources, have determined that all appropriate response actions under CERCLA, other than five-year reviews have been completed. However, the deletion of these parcels does not preclude future actions under Superfund.

DATES: *Effective Date:* This action is effective May 25, 2012.

ADDRESSES: Mr. John Dalton, Community Involvement Coordinator (8OC), U.S. EPA, Region 8, 1595 Wynkoop St., Denver, CO 80202; telephone number 303–312–6601; fax number 303–312–6961; email address: *dalton.john@epamail.epa.gov.*

EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–1990–0011. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is

restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the site information repositories. Locations, contacts, phone numbers and viewing hours are:

U.S. EPA, Region 8 Library, 1595 Wynkoop St., Denver, CO 80202, Monday through Thursday, 8:00 a.m. to 4:00 p.m.

South Dakota Air & Space Museum, 2890 Davis, Bldg 5208, Ellsworth AFB, SD 57706 Monday through Friday, 7:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: C. Mark Aguilar, Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, 8EPR–F 1595 Wynkoop St., Denver, CO 80202, (303) 312–6251, email: *aguilar.mark@epa.gov.*

SUPPLEMENTARY INFORMATION: The portion of the site to be deleted from the NPL is: Operable Unit (OU) 1—the former Fire Protection Training Area (FPTA), along with two other Areas of Concern (AOC): the Gateway Lake Ash Study Area and the Pride Hangar Study Area of the Ellsworth Air Force Base, Rapid City, South Dakota. A Notice of Intent for Partial Deletion for this Site was published in the **Federal Register** on March 13, 2012.

The closing date for comments on the Notice of Intent for Partial Deletion was April 12, 2012. No public comments were received and EPA still believes the partial deletion action is appropriate.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion of a site from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of portions of a site from the NPL does not affect responsible party liability, in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: May 8, 2012.

James B. Martin,

Region Administrator, Region 8.

[FR Doc. 2012–12806 Filed 5–24–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2012–0003]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Mobile (FEMA Docket No. B–1225).	Unincorporated areas of Mobile County (11–04–0759P).	August 2, 2011; August 9, 2011; *The Press-Register*.	The Honorable Connie Hudson, President, Mobile County Commission, 205 Government Street, Mobile, AL 36644.	December 7, 2011	015008
Mobile (FEMA Docket No. B–1225).	Unincorporated areas of Mobile County (11–04–0760P).	August 2, 2011; August 9, 2011; *The Press-Register*.	The Honorable Connie Hudson, President, Mobile County Commission, 205 Government Street, Mobile, AL 36644.	December 7, 2011	015008
Mobile (FEMA Docket No. B–1225).	Unincorporated areas of Mobile County (11–04–0761P).	August 11, 2011; August 18, 2011; *The Press-Register*.	The Honorable Connie Hudson, President, Mobile County Commission, 205 Government Street, Mobile, AL 36644.	December 16, 2011	015008
Mobile (FEMA Docket No. B–1225).	Unincorporated areas of Mobile County (11–04–0762P).	August 4, 2011; August 11, 2011; *The Press-Register*.	The Honorable Connie Hudson, President, Mobile County Commission, 205 Government Street, Mobile, AL 36644.	December 5, 2011	015008
Arizona:					
Cochise (FEMA Docket No.: B–1240).	City of Sierra Vista (11–09–2096P).	October 28, 2011; November 4, 2011; *The Sierra Vista Herald*.	The Honorable Rick Mueller, Mayor, City of Sierra Vista, 1011 North Coronado Drive, Sierra Vista, AZ 85635.	October 20, 2011	040017
Coconino (FEMA Docket No.: B–1231).	City of Flagstaff (11–09–2204P).	June 3, 2011; June 10, 2011; *The Arizona Daily Sun*.	The Honorable Sara Presler, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001.	May 27, 2011	040020
Pima (FEMA Docket No.: B–1231).	City of Tucson (11–09–1158P).	August 5, 2011; August 12, 2011; *The Arizona Daily Star*.	The Honorable Bob Walkup, Mayor, City of Tucson, 255 West Alameda Street, Tucson, AZ 85701.	August 29, 2011	040076
Pima (FEMA Docket No.: B–1231).	Unincorporated areas of Pima County (12–09–0017P).	May 31, 2011; June 7, 2011; *The Daily Territorial*.	The Honorable Ramon Valadez, Chairman, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	October 6, 2011	040073
Arkansas: Benton (FEMA Docket No.: B–1228).	City of Bella Vista (11–06–1141P).	September 7, 2011; September 14, 2011; *The Bella Vista Weekly Vista*.	The Honorable Frank E. Anderson, Mayor, City of Bella Vista, 406 Town Center Northeast, Bella Vista, AR 72714.	January 12, 2012	050511
California:					
Butte (FEMA Docket No.: B–1235).	Unincorporated areas of Butte County (11–09–3448P).	October 7, 2011; October 14, 2011; *The Chico Enterprise-Record*.	The Honorable Steve Lambert, Chairman, Butte County Board of Supervisors, 3159 Nelson Avenue, Oroville, CA 95965.	February 13, 2012	060017
Napa (FEMA Docket No.: B–1235).	City of Napa (11–09–3313P).	October 14, 2011; October 21, 2011; *The Napa Valley Register*.	The Honorable Jill Techel, Mayor, City of Napa, 955 School Street, Napa, CA 94559.	February 20, 2012	060207
Napa (FEMA Docket No.: B–1235).	Unincorporated areas of Napa County (11–09–3313P).	October 14, 2011; October 21, 2011; *The Napa Valley Register*.	The Honorable Bill Dodd, Chairman, Napa County Board of Supervisors, 1195 3rd Street, Suite 310, Napa, CA 94559.	February 20, 2012	060205
San Mateo (FEMA Docket No.: B–1235).	City of San Carlos (11–09–1259P).	October 7, 2011; October 14, 2011; *The San Mateo Daily Journal*.	The Honorable Andy Klein, Mayor, City of San Carlos, 600 Elm Street, San Carlos, CA 94070.	February 13, 2012	060327
Solano (FEMA Docket No.: B–1235).	City of Fairfield (11–09–1570P).	October 20, 2011; October 27, 2011; *The Daily Republic*.	The Honorable Harry T. Price, Mayor, City of Fairfield, 1000 Webster Street, Fairfield, CA 94533.	February 24, 2012	060370
Colorado: Adams & Arapahoe (FEMA Docket No.: B–1235).	City of Aurora (11–08–0699P).	October 6, 2011; October 13, 2011; *The Aurora Sentinel*.	The Honorable Ed Tauer, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	February 10, 2012	080002
Delaware:					
Kent (FEMA Docket No.: B–1237).	Town of Camden (10–03–0303P).	February 18, 2011; February 25, 2011; *The Delaware State News*.	The Honorable Richard E. Maly, Mayor, Town of Camden, 1783 Friends Way, Camden, DE 19934.	June 27, 2011	100003
Kent (FEMA Docket No.: B–1237).	Unincorporated areas of Kent County (10–03–0303P).	February 18, 2011; February 25, 2011; *The Delaware State News*.	The Honorable P. Brooks Banta, President, Kent County Levy Court, Administrative Complex, 555 South Bay Road, Room 243, Dover, DE 19901.	June 27, 2011	100001
Florida:					
Seminole (FEMA Docket No.: B–1235).	City of Altamonte Springs (11–04–7292P).	October 27, 2011; November 3, 2011; *The Orlando Sentinel*.	The Honorable Patricia Bates, Mayor, City of Altamonte Springs, 225 Newburyport Avenue, Altamonte Springs, FL 32701.	October 20, 2011	120290

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Seminole (FEMA Docket No.: B–1235).	Unincorporated areas of Seminole County (11–04–7523P).	October 27, 2011; November 3, 2011; *The Orlando Sentinel*.	The Honorable Brenda Carey, Chair, Seminole County Board of Commissioners, 1101 East 1st Street, Sanford, FL 32771.	October 20, 2011	120289
Seminole (FEMA Docket No.: B–1240).	Unincorporated areas of Seminole County (11–04–8756X).	November 4, 2011; November 11, 2011; *The Orlando Sentinel*.	The Honorable Brenda Carey, Chair, Seminole County Board of Commissioners, 1101 East 1st Street, Sanford, FL 32771.	October 26, 2011	120289
St. Johns (FEMA Docket No.: B–1235).	Unincorporated areas of St. Johns County (11–04–4627P).	October 5, 2011; October 12, 2011; *The St. Augustine Record*.	The Honorable Joseph Bryan, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	February 9, 2012	125147
Georgia:					
Cherokee (FEMA Docket No.: B–1240).	Unincorporated areas of Cherokee County (10–04–8275P).	October 7, 2011; October 14, 2011; *The Cherokee Tribune*.	The Honorable L. B. Ahrens, Jr., Chairman, Cherokee County Board of Commissioners, 1130 Bluffs Parkway, Canton, GA 30114.	February 13, 2012	130424
Columbia (FEMA Docket No.: B–1235).	Unincorporated areas of Columbia County (11–04–5127P).	November 2, 2011; November 9, 2011; *The Columbia County News-Times*.	The Honorable Ron C. Ross, Chairman, Columbia County Board of Commissioners, 630 Ronald Reagan Drive, Building B, 2nd Floor, Evans, GA 30809.	October 27, 2011	130059
Nevada:					
Clark (FEMA Docket No.: B–1235).	City of Henderson (11–09–3801P).	October 6, 2011; October 13, 2011; *The Las Vegas Review-Journal*.	The Honorable Andy A. Hafen, Mayor, City of Henderson, 240 Water Street, Henderson, NV 89015.	February 10, 2012	320005
Clark (FEMA Docket No.: B–1235).	Unincorporated areas of Clark County (11–09–3801P).	October 6, 2011; October 13, 2011; *The Las Vegas Review-Journal*.	The Honorable Susan Brager, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89155.	February 10, 2012	320003
Oklahoma: Oklahoma (FEMA Docket No.: B–1228).	City of Oklahoma City (10–06–1424P).	September 13, 2011; September 20, 2011; *The Journal Record*.	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma City, OK 73102.	January 18, 2012	405378
Puerto Rico: Puerto Rico (FEMA Docket No.: B–1237.	Commonwealth of Puerto Rico (10–02–1752P).	October 13, 2011; October 20, 2011; *El Nuevo Dia*.	The Honorable Ruben Flores-Marzan, Chairperson, Puerto Rico Planning Board, Roberto Sanchez Vilella Governmental Center, North Building, 16th Floor, De Diego Avenue International Baldorioty de Castro Avenue, San Juan, PR 00940.	October 6, 2011	720000
Texas:					
Bell (FEMA Docket No.: B–1234).	City of Temple (10–06–3631P).	September 27, 2011; October 4, 2011; *The Temple Daily Telegram*.	The Honorable William A. Jones III, Mayor, City of Temple, 2 North Main Street, Temple, TX 76501.	February 1, 2012	480034
Bexar (FEMA Docket No.: B–1234).	City of San Antonio (11–06–1853P).	October 6, 2011; October 13, 2011; *The San Antonio Express-News*.	The Honorable Julian Castro, Mayor, City of San Antonio, 100 Military Plaza, San Antonio, TX 78205.	February 10, 2012	480045
Bexar (FEMA Docket No.: B–1237).	City of San Antonio (11–06–0604P).	November 4, 2011; November 11, 2011; *The San Antonio Express-News*.	The Honorable Julian Castro, Mayor, City of San Antonio, 100 Military Plaza, San Antonio, TX 78205.	March 12, 2012	480045
Bexar (FEMA Docket No.: B–1237).	Unincorporated areas of Bexar County (11–06–3419P).	November 16, 2011; November 23, 2011; *The Daily Commercial Recorder*.	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	March 22, 2012	480035
Collin (FEMA Docket No.: B–1234).	City of McKinney (11–06–0938P).	October 5, 2011; October 12, 2011; *The McKinney Courier-Gazette*.	The Honorable Brian Loughmiller, Mayor, City of McKinney, 222 North Tennessee Street, McKinney, TX 75069.	February 9, 2012	480135
Collin (FEMA Docket No.: B–1234).	City of Richardson (11–06–2276P).	October 4, 2011; October 11, 2011; *The Dallas Morning News*.	The Honorable Bob Townsend, Mayor, City of Richardson, 411 West Arapaho Road, Richardson, TX 75080.	February 8, 2012	480184
Denton (FEMA Docket No.: B–1237).	Town of Flower Mound (11–06–2301P).	October 25, 2011; November 1, 2011; *The Denton Record-Chronicle*.	The Honorable Melissa D. Northern, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, TX 75028.	February 29, 2012	480777
Denton (FEMA Docket No.: B–1237).	Unincorporated areas of Denton County (11–06–1910P).	October 28, 2011; November 4, 2011; *The Denton Record-Chronicle*.	The Honorable Mary Horn, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	October 21, 2011	480774
Johnson and Tarrant (FEMA Docket No.: B–1234).	City of Burleson (11–06–2791P).	October 12, 2011; October 19, 2011; *The Burleson Star*.	The Honorable Ken Shetter, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	February 16, 2012	485459
Medina (FEMA Docket No.: B–1234).	City of Castroville (11–06–0606P).	October 6, 2011; October 13, 2011; *The Castroville News Bulletin*.	The Honorable Robert Lee, Mayor, City of Castroville, 1209 Fiorella Street, Castroville, TX 78009.	October 28, 2011	480932
Montgomery (FEMA Docket No.: B–1237).	Unincorporated areas of Montgomery County (11–06–3114P).	October 26, 2011; November 2, 2011; *The Conroe Courier*.	The Honorable Alan Sadler, Montgomery County Judge, 501 North Thompson Street, Suite 401, Conroe, TX 77301.	October 19, 2011	480483

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Tarrant (FEMA Docket No.: B–1234).	City of Arlington (10–06–3532P).	September 2, 2011; September 9, 2011; *The Fort Worth Star-Telegram*.	The Honorable Dr. Robert N. Cluck, Mayor, City of Arlington, 101 West Abram Street, Arlington, TX 76010.	January 9, 2012	485454
Tarrant (FEMA Docket No.: B–1237).	City of Crowley (11–06–1037P).	November 3, 2011; November 10, 2011; *The Crowley Star*.	The Honorable Billy P. Davis, Mayor, City of Crowley, 201 East Main Street, Crowley, TX 76036.	March 9, 2012	480591
Tarrant (FEMA Docket No.: B–1234).	City of Dalworthington Gardens (10–06–3532P).	September 2, 2011; September 9, 2011; *The Fort Worth Star-Telegram*.	The Honorable Michael R. Tedder, Mayor, City of Dalworthington Gardens, 2600 Roosevelt Drive, Dalworthington Gardens, TX 76016.	January 9, 2012	481013
Tarrant (FEMA Docket No.: B–1234).	City of Fort Worth (11–06–2791P).	October 12, 2011; October 19, 2011; *The Fort Worth Star-Telegram*.	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	February 16, 2012	480596
Tarrant (FEMA Docket No.: B–1237).	City of Fort Worth (11–06–2373P).	November 1, 2011; November 8, 2011; *The Fort Worth Star-Telegram*.	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	March 7, 2012	480596
Tarrant (FEMA Docket No.: B–1234).	City of White Settlement (11–06–1375P).	September 28, 2011; October 5, 2011; *The Grizzly Detail Newspaper*.	The Honorable Jerry R. Burns, Mayor, City of White Settlement, 214 Meadow Park Drive, White Settlement, TX 76108.	September 21, 2011	480617
Victoria (FEMA Docket No.: B–1237).	City of Victoria (11–06–1656P).	November 3, 2011; November 10, 2011; *The Victoria Advocate*.	The Honorable Will Armstrong, Mayor, City of Victoria, 105 West Juan Linn Street, Victoria, TX 77901.	March 9, 2012	480638
Utah: Box Elder (FEMA Docket No.: B–1235).	City of Willard (11–08–0207P).	September 28, 2011; October 5, 2011; *The Box Elder News Journal*.	The Honorable Ken Braegger, Mayor, City of Willard, 80 West 50 South, Willard, UT 84340.	February 2, 2012	490011
Virginia:					
Fauquier (FEMA Docket No.: B–1234).	Unincorporated areas of Fauquier County (11–03–0275P).	July 27, 2011; August 3, 2011; *The Fauquier Times-Democrat*.	The Honorable Raymond E. Graham, Chairman, Fauquier County Board of Supervisors, 10 Hotel Street, Suite 208, Warrenton, VA 20186.	December 1, 2011	510055
Henrico (FEMA Docket No.: B–1237).	Unincorporated areas of Henrico County (10–03–0514P).	December 14, 2010, December 21, 2010, *The Richmond Times-Dispatch*.	Mr. Virgil R. Hazelett, Henrico County Manager, 4301 East Parham Road, Henrico, VA 23228.	April 20, 2011	510077
Prince William (FEMA Docket No.: B–1234).	Unincorporated areas of Prince William County (11–03–0494P).	September 14, 2011; September 21, 2011; *The News & Messenger*.	The Honorable Corey A. Stewart, Chairman at Large, Prince William County Board of Supervisors, 1 County Complex Court, Prince William, VA 22192.	January 19, 2012	510119
Wyoming:					
Campbell (FEMA Docket No.: B–1235).	City of Gillette (11–08–0780P).	October 18, 2011; October 25, 2011; *The News-Record*.	The Honorable Tom Murphy, Mayor, City of Gillette, 201 East 5th Street, Gillette, WY 82717.	February 22, 2012	560007
Campbell (FEMA Docket No.: B–1240).	City of Gillette (11–08–0781P).	October 21, 2011; October 28, 2011; *The News-Record*.	The Honorable Tom Murphy, Mayor, City of Gillette, 201 East 5th Street, Gillette, WY 82717.	February 27, 2012	560007
Campbell (FEMA Docket No.: B–1235).	Unincorporated areas of Campbell County (11–08–0780P).	October 18, 2011; October 25, 2011; *The News-Record*.	The Honorable Stephen F. Hughes, Chairman, Campbell County Board of Commissioners, 500 South Gillette Avenue, Suite 1100, Gillette, WY 82717.	February 22, 2012	560081
Campbell (FEMA Docket No.: B–1240).	Unincorporated areas of Campbell County (11–08–0781P).	October 21, 2011; October 28, 2011; *The News-Record*.	The Honorable Stephen F. Hughes, Chairman, Campbell County Board of Directors, 500 South Gillette Avenue, Suite #1100, Gillette, WY 82716.	February 27, 2012	560081

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: May 14, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–12714 Filed 5–24–12; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 77, No. 102
Friday, May 25, 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

Farm Service Agency

7 CFR Parts 761 and 764

RIN 0560–AI17

Microloan Operating Loans

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) proposes to modify Operating Loan (OL) application, eligibility, and security requirements for microloans (ML) that would serve the unique operating needs of very small family farm operations. The intended effect of this proposed rule is to make the OL Program more widely available and attractive to smaller operators through reduced application requirements, more timely application processing, and added flexibility in meeting the managerial ability eligibility requirement. This proposed rule also would remove provisions for the low documentation (Lo-Doc) application process for OLs from the existing direct loan regulations.

DATES: We will consider comments that we receive by July 24, 2012.

ADDRESSES: We invite you to submit comments on this rule and the new information collection request. In your comments, include the Regulation Identifier Number (RIN), and volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Director, Loan Making Division (LMD), FSA, USDA, 1400 Independence Avenue SW., Stop 0522, Washington, DC 20250–0522.

Comments will be available for inspection online at *www.regulations.gov* and at the mail address listed above between 8 a.m. and 4:30 p.m., except holidays. A copy of this proposed rule is also available through the FSA home page at *http://www.fsa.usda.gov/.*

FOR FURTHER INFORMATION CONTACT: Connie Holman; telephone: (202) 690–0756. Persons with disabilities or who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

FSA has a long history of providing agricultural credit to the Nation's farmers and ranchers through its OL Program. Throughout this rule, any reference to ''farm'' or ''farmer'' also includes ''ranch'' or ''rancher,'' respectively; in this document, the word ''operator'' refers to farmers who operate a farm. FSA's OL Program is designed to finance the farm operating needs of family farms for operators who meet the program eligibility requirements. Among other things, eligible applicants must be unable to obtain sufficient credit from other sources; have sufficient applicable education, on-the-job training, or farming experience; have an acceptable credit history; and have adequate collateral for the proposed loan. (See 7 CFR 764.101 and 764.252 for a full explanation of OL eligibility requirements.) OL funds may be used for such things as annual or term operating purposes to refinance certain debts; pay normal farm operating and family living expenses; purchase livestock, equipment, and other materials essential to a farm operation, and may also be used for some minor improvements to farm real estate, such as wells and essential repairs to buildings. (See 7 CFR 764.251 for a complete list of OL funds uses.) OL funds cannot be used to finance the purchase of real estate. The maximum loan amount for OLs is $300,000, and repayment can be amortized up to 7 years depending on the specific loan purpose and expected useful life of the collateral. (See 7 CFR 761.8(a)(2) and 764.254(b)(1)(ii).) For example, an annual OL used to finance crop input costs such as seed, fertilizer, and chemicals, will generally be due in 1 year, while a term OL to finance equipment, livestock, or grape vines may be extended up to 7 years. As specified in 7 CFR 764.254(a)(3), the interest rate charged is the OL rate in effect at the time of loan approval or at the time of loan closing, whichever is lower. FSA's direct loan interest rates are adjusted as often as monthly and are available on the FSA Web site at: *http://www.fsa.usda.gov/daflp.rates.htm* and from any FSA office.

In on-going efforts to improve the OL Program, FSA evaluated the unique needs of small farm operations and identified unintended barriers to their applying for OLs, and is proposing to simplify the application process and add flexibility for meeting loan eligibility and security requirements to encourage their participation. FSA is proposing an ML process within the existing OL Program and using existing OL appropriations that would focus on the financing needs of small farm operations. These small farms, including non-traditional farm operations, currently have limited financing options, as explained below.

With increased awareness among consumers regarding the sources, affordability, and quality of their food, and the wider occurrence of community supported agriculture (CSA) the small specialty producer has increasing opportunities to raise and sell locally. Additionally, low-income neighborhoods with high concentrations of people who are far from a grocery store and have limited access to healthy food choices. These areas (sometimes called ''food deserts'') have gained attention and support from the USDA, the United States Department of the Treasury, the United States Department of Health and Human Services (HHS), and the Obama Administration's *Lets Move* initiative, offering opportunities for niche-type urban farms to market directly to the city neighborhoods.

Operators of these types of small farms are not typically served by agricultural lenders, and may have difficulty obtaining financing from conventional commercial lenders. Consequently, these farmers often rely on credit cards or personal loans, which carry high interest rates and less flexible payment schedules, to finance their operations. Though their specialty produce may not be well known to ag-lending community at-large, there can be a viable market within cultural or ethnic communities.

The 2007 Census of Agriculture shows that 71 percent of all farm

operations gross less than $25,000 per year. Therefore, these operations require smaller financial investments for initial start-up expenses such as hoop houses to extend the growing season, essential tools, irrigation, delivery vehicles, and annual expenses such as seed, fertilizer, utilities, land rents, marketing, and distribution expenses. These expenses are examples of some of the operational needs that may be financed using the ML funds. Minor improvements to farm real estate such as well drilling costs, modest shed and storage structures, and underground irrigation may also be financed using ML funds.

An ML is a type of OL with abbreviated streamlined application process and modified security and eligibility requirements. The major components of the proposed ML process are the application process and flexibility in meeting some of the eligibility and security requirements. These components have been specially designed to make the ML process appeal to small farm operations. The proposed ML application process simplifies the information required to apply by reducing the level of documentation required to more appropriately align with the less complex structure and needs of smaller operations. Additionally, the eligibility requirement for managerial ability, and the loan security requirements for an ML have been modified to be more appropriate for smaller family farms.

With the proposed ML application process, FSA can provide credit to these farmers with reasonable rates and terms. Applicants that otherwise may have chosen credit card financing in lieu of an FSA OL due to the application process or certain eligibility requirements may choose to seek assistance from FSA to start and continue their operations as a result of the simplified application process and eligibility and security requirements. Additionally, the flexibility FSA gives farmers to make loan payments when they sell their products allows them to more efficiently manage their income and resources. Participation in FSA's loan programs provides eligible farms advantages over credit card financing and this is significant because financing costs have a greater impact on smaller start-up operations, which typically have tighter cashflows. These benefits will help small operations progress through the start-up years, build capacity, increase equity, expand their use of FSA's loan programs, and eventually graduate to commercial credit.

The ML application process would significantly streamline requirements compared to FSA's existing OL process. As a result, it would provide an option for farmers who may be intimidated by the documentation requirements that are often perceived as a deterrent to participation in FSA's loan programs. Additionally, FSA believes that the proposed ML application process would provide a financial bridge for many of its successful Youth Loan Program borrowers as they move toward more complex operations. Youth Loans are made to borrowers between the ages of 10 to 20 to finance income producing agriculture-related projects. The maximum amount of a youth loan is $5,000. (See 7 CFR part 764, subpart H for a further description and explanation of the requirements for youth loans.) FSA also views the ML application process as a catalyst for other small farmers to move forward in their farming ventures.

FSA has the responsibility of providing credit counseling and supervision to its direct loan borrowers. While the ML requirements will reduce the burden on loan applicants, it will not reduce the level of counseling and supervision provided by FSA. In fact, the reduced documentation will allow FSA personnel to devote more time to loan analysis and to provide technical assistance to borrowers.

Though MLs are not limited to beginning farmers, they will benefit from the modified alternatives for meeting the managerial experience eligibility requirement by allowing applicants to gain experience while managing their own farm or through a past association with an agricultural-related organization. In the application, the applicant will provide a written description of their apprenticeship relationship (planned or current), or will provide a written description of their past affiliations with an agriculture-related organization explaining how the experience will contribute to the success of managing their own farm operation.

Since the majority of small farms gross $25,000 or less in farm sales, as discussed below, a maximum of $35,000 for an ML should be ample for many beginning farmers starting out. As their financing needs expand, applicants can apply for an OL up to direct maximum loan amount of $300,000 or obtain financing from a commercial lender under the Guaranteed Loan Program.

FSA performed a preliminary analysis of the proposed ML process and evaluated its potential to impact loan losses and program costs. Actual losses will ultimately depend on the demand by, and the risk profile of, the ML borrowers. These variables are currently unknown; however, historical borrower data on OL originations was used to approximate participation. Past demand for smaller OLs provides a baseline indication of potential ML demand. ML baseline demand and associated costs were forecast by varying the maximum ML amount from $15,000 to $35,000 and applying these criteria to historical OL data. In fiscal year 2011, FSA made 14,628 direct operating loans to 10,927 applicants. Slightly less than 31 percent of all these applicants received loans totaling less than $35,000. This indicates the number of MLs made might be quite high, although the potential for increased losses could be minimized as these same applicants received just under 10 percent of the total dollar amount loaned under the direct OL Program, or $103 million out of the $1.037 billion loan portfolio. Because of expected similarities between the operations managed by ML applicants and Youth Loan applicants, such as new operations and operators, loan rates, small amounts of operating expenses, and small loan volume compared to the regular OL Program, an assumption was made that ML borrowers will have the same risk profile as Youth Loan Program participants. Furthermore, exposure to losses would also be partially offset by administrative savings achieved as a result of reductions in workload during the application process.

To implement ML, FSA is proposing changes to the regulations and to the information collection requirements as discussed below. The changes to the regulations are discussed in the same order in which the regulations appear in the Code of Federal Regulations.

Abbreviations and Definitions

Abbreviations and definitions used throughout FSA Farm Loan Programs (FLP) are in 7 CFR 761.2. This rule proposes to add abbreviations and definitions to that section that will be used for loans made through the ML application process. FSA is proposing to add an abbreviation for ''microloan'' and definitions for ''microloan'' and ''apprentice.''

Farm Assessment Requirements

Proposed farm assessment requirements for ML applicants will be significantly reduced. A farm assessment for FSA's direct loan programs is a collaborative effort between FSA and the applicant and currently, it addresses the farm organization and key personnel qualifications, type of farming operation, goals for the operation, adequacy of real estate and chattel

property to conduct the farming operation, historical performance, farm operating plan, loan evaluation, supervisory plan, and training plan. The initial assessment under 7 CFR 761.103 is completed during the application process and is then updated annually with the borrower. As the ML application will require less information to be submitted by the applicant, the farm assessment will also be pared down to a level more proportional to the smaller operations being financed by ML funds. This is expected to benefit both the applicant and the loan staff in terms of time savings and speed of processing the application. The initial assessment for an ML applicant will be in the form of a narrative that will address the type of operation, assistance needed, goals of the operation, marketing plan, supervisory plan, financial viability of the plan, and training plan. These elements reflect the less complicated organizational structure and smaller farm asset base that we would expect to encounter with ML applicants. FSA will still conduct an annual review, but believes that these elements will better evaluate the probability of success for the small farm operations expected to be typical of ML applicants.

ML Application Requirements and Application Processing

A complete ML application would consist of the following:

- An application form;
- A description of the applicant's farm training and experience;
- A balance sheet;
- An annual cash flow budget;
- Applicable environmental information;
- Verification of non-farm income relied upon for loan repayment;
- Past income, expenses, and yields for the most recent production cycle, to the extent practicable; and
- Credit report fee.

A new application form will be available for ML applicants. This form is intended to capture most of the information needed to process an ML, including sections for the applicant to describe their farm training and experience. It will also reduce and simplify the financial statement. For example, no itemization will be required for the ML cash flow budget, which differs from the more detailed farm operating plan and similar income and expense projections as required by the existing OL programs.

Environmental information will still be handled through the county office process, involving FSA staff and NRCS staff as applicable. This will not change from the current process followed for regular OLs.

Verification of non-farm income will only be required if that income is necessary for a feasible plan and sufficient cash flow for debt repayment. This is a change over the existing OL application process, as income is always verified as specified in 7 CFR 764.51(b)(8). If it is necessary to verify debt, debts will be verified through the credit bureau reporting system.

There also are proposed changes to the requirement for reporting of past yields as currently specified in 7 CFR 761.104. Applicants can provide other forms of documentation such as operator's sales receipts, financial statements, contracts, and tax returns. This change will be helpful for operations where past yields have little bearing on the projected plan, such as vegetable operators who plan short term and grow different crops to meet current demand, operators who produce crops using measures such as rows or partial rows versus acres, or operators who grow crops that sell in volumes such as bunches. In some of these cases it will be impracticable, burdensome, and often irrelevant for the farmer to demonstrate accurate yields, especially if a variety of produce is harvested and then sold to the public only hours later. In such cases, past reliable history of income and expenses or cash receipts may be more useful in projecting the future production revenue of a field, greenhouse, or operation. Also, if an operator is changing crop from year to year to meet changing market demands, then production for the past 2 or 3 years may not be applicable to their production model. This modification allows FSA to assist operations that otherwise may have difficulty meeting or documenting production and yield history and will provide sufficient information for a loan official to determine eligibility and feasibility. FSA believes the lower loan limit will mitigate much of the risk of losses.

For incomplete applications, FSA proposes to follow existing direct loan processing procedures. Following current procedures, FSA will inform the applicant, through written correspondence, of any missing items needed to complete the application prior to established regulatory deadlines.

Eligibility

Since MLs are OLs, applicants will be subject to existing OL eligibility requirements. However, FSA proposes to add flexibility in meeting the managerial ability requirement. Current regulations in 7 CFR 764.101(i) require that an OL applicant show managerial ability through the following:

- Has obtained a 4-year college degree in agricultural business, horticulture, animal science, agronomy, or other agricultural-related field;
- Has on-the-job training, such as currently working on a farm as part of an apprenticeship program;
- Has farming experience, such as be an owner, manager, or operator of a farm business for at least one entire production cycle; or
- Have obtained and successfully repaid one FSA Youth-OL.

For ML applicants FSA proposes to add flexibility that will allow applicants to meet the eligibility requirement through either (1) a past association with an agriculture-related organization, such as 4–H Club or Future Farmers of America (FFA), that demonstrates experience in a related enterprise; or (2) by seeking, receiving, and applying guidance on how to manage their own start-up farm operation under an apprenticeship relationship. Only a written description of the current or future apprenticeship will be required in order to determine eligibility.

Meeting the managerial requirement through the agriculture-related organization experience will require the applicant to self certify on the application their involvement, detailing how that experience provides them with the ability to succeed with the operation they seek to finance with ML funds.

The apprenticeship relationship will allow an ML applicant to receive applied guidance and direction from an individual with the skills and knowledge pertinent to the successful operation of the farm enterprise being operated by the applicant. FSA expects that the applicant will consult with the mentor over the course of the production cycle (including issues of crop planning, purchasing from vendors, crop culture or animal husbandry, pest and disease management, networking groups and associations, harvest, marketing, etc.) while operating their own farm and take the initiative to seek and apply advice as appropriate to their needs. Successful completion of the apprenticeship through the first operating cycle will be required as a condition of the loan. FSA loan officials will monitor the borrower's progress and work with the borrower to ensure successful completion of the apprenticeship program during the first operating cycle. If unforeseen circumstances prevent successful completion, FSA loan officials will provide additional guidance to assist the borrower in

successfully completing the requirement.

This expansion of management ability offers the opportunity for ML borrowers to gain the minimum of 3 years farm and management experience needed as part of eligibility for FSA's Farm Ownership (FO) Program, a loan program for the purchase of farm real estate. For those applicants who were not raised in a farming background, or do not have the educational experience necessary to meet the farm managerial ability requirements, or do not have the opportunity to gain management experience while working for someone else's farm operation, the ML process can provide a path to eventual ownership of a family farm.

Limitations

FSA is proposing that the ML application process can be used for an annual or term OL up to a maximum of $35,000. ML applicants would be required to have an outstanding OL principal balance to FSA of no more than $35,000 after the loan is closed. Since the gross value of farm production is usually less than $25,000 for the majority of small income producing farming operations, financing needs for annual production cost are expected to be below the $35,000 maximum loan amount. FSA believes that this loan limit would provide sufficient levels of capital to small operations, which can include beginning farmers, truck farms, niche operations, CSA operations, and operations owned by immigrants who may need assistance establishing themselves in the farming community. Through this proposed rule, FSA is requesting comments on all aspects of the proposed ML process and is specifically interested in comments regarding the limitation of the loan amount.

Security Requirements

FSA is proposing that MLs must be secured by collateral worth at least 100 percent of the loan amount. This differs from the current requirement in 7 CFR 764.104(c) that requires collateral worth at least 150 percent of the loan amount if available. Loans for improvements to farm real estate, such as well drilling, small barn or shed construction, or underground irrigation, may be secured by equipment, foundation livestock, or similar chattel security, if available, as an alternative to a lien on real estate, provided the 100 percent security requirement is met. A lien on real estate will only be required when other security is not available to meet the 100 percent security requirement. For an ML applicant, FSA can take a lien on equipment, or other available security, instead of taking a lien on real estate. Crops and livestock products will be taken as security for annual operating MLs only when other security available does not provide the minimum 100 percent security requirement. For example, when an ML is used to finance cash crops such as vegetables that are marketed at a farmers market, or when produce is grown in measures such as rows, the applicant may choose to offer a tractor as security instead of a lien on the crop. Some start-up or small family farms may not have sufficient equity in equipment or may be renting equipment and, therefore, a cash crop is all that is available to secure an annual ML. In this case, a lien on the crop produced with loan funds may provide security for the loan. FSA believes that flexibility in security requirements is another tool in meeting the needs of small family farms by providing affordable credit alternatives to credit card and high interest financing.

Applicability of Other Regulatory Requirements

Other existing and applicable regulatory requirements pertaining to development of operating plans, loan processing and closing, use of loan funds, loan servicing, and environmental requirements not specifically amended by this proposed rule will apply to MLs, like other OLs.

Lo-Doc OLs

The Lo-Doc OL application process is not widely used, for example only 3 percent of OLs obligated in FY 2010 were Lo-Doc loans. As a result of the Lo-Doc application process not being used, FSA has determined that a new program that changes not only the application process but also some eligibility and security requirements would be more appropriate rather than attempting to revise the Lo-Doc process. A large percentage of applicants that could have applied for a Lo-Doc OL will be able to apply for an ML. Therefore, FSA proposes to remove the Lo-Doc provisions from the *Code of Federal Regulations.* Removal of the Lo-Doc Program is not expected to have a significant impact on the public.

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and, therefore, OMB has not reviewed this proposed rule.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. FSA has determined that this rule will not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, FSA has not prepared a regulatory flexibility analysis.

The term small entities include small businesses, small organizations, and small governmental jurisdictions. For the purposes of assessing the impacts of this rule on small entities, a small business will be as described in the Small Business Administration's Table of Small Business Size Standards by North American Industry Classification System (NAICS) Category (13 CFR

121.201). This includes the following categories and the relative size standards that will apply to the entities requesting microloans. All of the entities that would request a microloan would be small businesses that produce crops and livestock in subsectors 111 and 112 listed under 13 CFR 121.201. These categories cover all primary agricultural production. Under the SBA Small Business Size Standard for these two NAICS subsector categories, the majority of businesses are considered small when they receive less than $750 thousand in annual receipts, the threshold is higher for two subcategories of animal production. (See 13 CFR 121.201, subsectors 112112 and 112310.) This standard does not exclude any of the potential farm loan borrowers who will make use of the proposed modifications to the OL Program. Nevertheless, even if the applicants under the proposed ML Program were considered small entities, there would not be a substantial number affected by the rule.

Overall, this is a new application process and greater options for eligibility and security for small loans within the existing OL Program, so theoretically some of the loans could be made under the existing program. Therefore, small entities in two credit segments have to be considered for this analysis. One segment is the number of existing borrowers who might take advantage of the modifications in eligibility for future loans. The other segment is the number of new borrowers who might never have applied for an FSA operating loan without the modifications. The number of existing borrowers who might make use of the application, eligibility, and security modifications for future loans can be precisely estimated using fiscal year 2011 direct operating loan data. Given that the maximum borrowing limit is $35,000 as proposed in the rule, it is estimated there would be at most 3,340 borrowers with $102.7 million in loans in this segment. However since these are existing borrowers with the same credit needs, this segment will have no additional economic impact. Only the demand by additional borrowers will have an incremental economic impact. This additional demand is more difficult to estimate. Preliminary estimates assume the new borrowers will be younger, below the age of 35, and have relatively low annual sales, less than $10,000 annually. Using data from the 2007 Census of Agriculture, this segment of producers consists of about 14,434 primary operators. Historically FSA direct operating loans have captured only 2 percent of the agricultural credit market, so fewer than 300 borrowers will probably be added. Therefore, about 4,000 entities could be affected by this rule with an economic impact of only about $10.5 million (300 new borrowers times $35,000 in loans per borrower).

Furthermore, the minimal regulatory requirements will impact large and small businesses equally as part of the loan making process since MLs are distinguished based on the size of the loan. ML applicants will have a lower paperwork burden that will be commensurate with the smaller loan amount due to a reduction in documentation required for these loans. Therefore, in accordance with the Regulatory Flexibility Act, FSA is certifying that there would not be a significant economic impact on a substantial number of small entities. Due to the limited number of entities, the economic effects from any additional lending are unlikely to have a substantial impact on entities of any size.

Environmental Review

The environmental impacts of this proposed rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR 799 and 7 CFR part 1940, subpart G). FSA concluded that simplifying the application process and adding flexibility for meeting loan eligibility and security requirements to encourage small farm operation participation in its OL program explained in this proposed rule are administrative in nature and will not have a significant impact on the quality of the human environment either individually or cumulatively. The environmental responsibilities for each prospective applicant will not change from the current process followed for all FLP actions (7 CFR 1940.309). Therefore, FSA will not prepare an environmental impact statement on this proposed rule.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, ''Civil Justice Reform.'' The provisions of this proposed rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule would not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor would this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' The Executive Order imposes requirements on the development of regulatory policies that have tribal implications or preempt tribal laws. The USDA Office of Tribal Relations has concluded that the policies contained in this rule do not, to our knowledge, preempt Tribal law.

As part of an ongoing collaboration, FSA provided government-to-government consultation with Tribal governments to discuss this proposed rule. In February, 2012, the Farm Service Agency (FSA) held three teleconference sessions for all federally recognized Tribal governments. The teleconference session was also offered to intertribal organizations, and individual Native Americans and Alaska Natives. The purpose of these teleconferences was to present information about important program changes and the new Microloan Program. FSA also provided an overview of the subjects to be discussed with the invitation letter prior to the teleconferences. These Tribal Consultation conversations and presentations were held to help guide

USDA in understanding any challenges that may be associated with the implementation of the new Microloan program among Tribal communities and within Tribal governments. A question and answer period was held immediately following each topic presentation by the FSA Administrator and staff from FSA's Farm Loan Programs. This proposed rule incorporates the information FSA received during these Tribal Consultations. In addition, comments from the general public are being requested on this proposed rule for 60 days following its publication in the **Federal Register** and FSA encourages individual Native Americans and Alaska Natives, Tribal governments, and intertribal organizations to provide additional comments during this comment period.

FSA will continue to respond in a timely and meaningful manner to all Tribal government requests for Tribal consultation about this rule and its implementation and will provide additional avenues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives about ways to improve this program and rule in Indian Country.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the following new information collection request that supports the new ML program is being submitted to OMB. FSA is requesting comments from interested individuals and organizations on the information collection activities related to the ML application process as described in this proposed rule. FSA is currently modifying the loan application process in order to provide loans to eligible borrowers through the ML process.

This information collection request will be incorporated into FSA's approved information collection of the same title and OMB control number 0560–0237.

Title: Direct Loan Making.

OMB Control Number: 0560–New.

Type of Request: New Collection.

Abstract: This information collection is required to support the regulation changes in 7 CFR 764, ''Direct Loan Making,'' which establishes the requirements for most of FSA's direct loan programs including the new ML application process. The information collection established in this proposed rule is necessary for FSA to evaluate the applicant's request and determine if eligibility, loan repayment, and security requirements can be met.

Estimate of Burden: Public reporting for this collection of information is estimated to average 4.27 hours.

Type of Respondents: Individuals or households, businesses or other for profit, and farms.

Estimated Number of Respondents: 5,142.

Estimated Average Number of Responses per Respondent: 5.71.

Estimated Total Annual Number of Responses: 29,372.

Estimated Total Annual Burden on Respondents: 21,938 hours.

We are requesting comments on all aspects of this information collection and to help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden 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.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for OMB approval.

E-Government Act Compliance

FSA 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.

List of Subjects

7 CFR Part 761

Accounting, Loan programs-agriculture, Rural areas.

7 CFR Part 764

Agriculture, Disaster assistance, Loan programs-agriculture.

For reasons discussed above, FSA proposes to amend 7 CFR chapter VII as follows:

PART 761—FARM LOAN PROGRAMS; GENERAL PROGRAM ADMINISTRATION

1. The authority citation for part 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

2. Amend § 761.2 as follows:

a. In paragraph (a), remove the abbreviation ''Lo-Doc'' and add an abbreviation, in alphabetical order, for ''ML Microloan'';

b. In paragraph (b), add definitions, in alphabetical order, for ''Apprentice'' and ''Microloan''; and

c. In paragraph (b), remove the definition of ''Low-Documentation Operating loan.''

The additions read as follows:

§ 761.2 Abbreviations and definitions.

* * * * *

(a) * * *

ML Microloan.

* * * * *

(b) * * *

Apprentice means an individual who receives applied guidance and input from an individual with the skills and knowledge pertinent to the successful operation of the farm enterprise being financed.

* * * * *

Microloan is a type of OL of $35,000 or less made under reduced application, eligibility and security requirements.

* * * * *

3. Amend § 761.103 as follows:

a. Revise paragraph (b), introductory text;

b. Redesignate paragraphs (c) through (e) as paragraphs (d) through (f); and

c. Add paragraph (c).

The revision and addition read as follows:

§ 761.103 Farm assessment.

* * * * *

(b) Except for ML, the initial assessment must evaluate, at a minimum, the:

* * * * *

(c) For ML, the Agency will complete a narrative that will evaluate, at a minimum, the:

(1) Type of farming operation and adequacy of resources;

(2) Amount of assistance necessary to cover expenses to carry out the proposed farming plan, including building an adequate equity base;

(3) The goals of the operation;

(4) The financial viability of the plan, including a marketing plan and available production history, as applicable;

(5) Supervisory plan; and

(6) Training plan.

* * * * *

4. Amend § 761.104 by redesignating paragraphs (e) and (f) as (f) and (g), and adding paragraph (e) to read as follows:

§ 761.104 Developing the farm operating plan.

* * * * *

(e) For MLs, when projected yields and unit prices cannot be determined as set forth in paragraphs (c) and (d) of this section because the data is not available or practicable, documentation from other reliable sources may be used.

* * * * *

PART 764—DIRECT LOAN MAKING

4. The authority citation for part 764 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 764.1 [Amended]

5. Amend § 764.1 paragraph (b)(2) by adding the words ''ML and'' immediately following the word ''including''.

6. Revise § 764.51 paragraph (c) to read as follows:

§ 764.51 Loan application.

* * * * *

(c) For an ML request, all of the following criteria must be met:

(1) The loan requested is:

(i) To pay annual or term operating expenses, and

(ii) $35,000 or less and the applicant's total outstanding Agency OL debt at the time of loan closing will be $35,000 or less;

(2) The applicant must submit the following:

(i) Items (1), (2), (3), (6), (7), (9), and (11) of paragraph (b) of this section;

(ii) Financial and production records for the most recent production cycle, if available, and practicable to project the cash flow of the operating cycle, and

(iv) Verification of all non-farm income relied upon for repayment; and

(3) The Agency may require an ML applicant to submit any other information listed in paragraph (b) of this section upon request when specifically needed to make a determination on the loan application.

* * * * *

7. Amend § 764.101 as follows:

a. In paragraph (i)(3) at the end of the first sentence add the text ''or the applicant may have obtained and successfully repaid one FSA Youth-OL''; and

b. Add paragraph (i)(4).

The addition reads as follows:

§ 764.101 General eligibility requirements.

* * * * *

(i) * * *

(4) *Alternatives for ML.* ML applicants also may demonstrate managerial ability by one of the following:

(i) Certification of a past association with an agriculture-related organization, such as 4–H Club or FFA, that demonstrates experience in a related enterprise; or

(ii) A written description of a self directed apprenticeship for the first operating cycle. The applicant will agree as a condition of the loan to seek, receive, and apply guidance, during the first production cycle of production and marketing typical to the applicant's specific operation, with an individual who is knowledgeable of production and marketing practices that are pertinent to the applicant's operation and will provide a developmental partnership to share knowledge, skills, information, and perspective of agriculture to foster professional growth. The intent of this apprenticeship is to provide the applicant with the skills and knowledge necessary to manage their operation on their own. They may continue the apprenticeship beyond the first operating cycle, but they are not required to do so.

§ 764.103 [Amended]

8. Amend § 764.103 as follows:

a. Amend paragraph (c), by adding ''ML'' after the words ''downpayment loans''; and

b. Amend the last sentence of paragraph (e) by removing the words ''conservation loans'' and adding, in their place, the words ''CL, ML''.

9. Amend § 764.251 as follows:

a. Revise paragraph (a), introductory text; and

b. Revise paragraph (b).

The revisions read as follows:

§ 764.251 Operating loan uses.

(a) OL funds may only be used for:

* * * * *

(b) ML funds may be used for any OL purpose.

10. Amend § 764.255 as follows:

a. Revise paragraph (b), introductory text; and

b. Add paragraph (c).

The revision and addition read as follows:

§ 764.255 Security requirements.

* * * * *

(b) Except for MLs, by a:

* * *

(c) For MLs:

(1) All loans must be secured by assets having a security value of at least 100 percent of the loan amount.

(2) A lien is required on foundation livestock or equipment purchased with term ML funds.

(3) Improvements to farm real estate (such as, well drilling, small barns, storage sheds, or underground irrigation) may be secured by equipment, foundation livestock, or similar chattel security if available and adequate to meet the 100 percent security requirement. A lien on real estate will only be taken if other security is not available to adequately meet 100 percent security requirement.

(4) Crops and livestock products may be taken as security for annual operating MLs only when other available security does not meet the 100 percent security requirement.

Signed on April 27, 2012.

Bruce Nelson,

Administrator, Farm Service Agency.

[FR Doc. 2012–12685 Filed 5–23–12; 8:45 am]

BILLING CODE P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1091

[Docket No. CFPB–2012–0021]

RIN 3170–AA24

Procedural Rules To Establish Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule; request for public comment.

SUMMARY: This proposed rule establishes procedures to implement section 1024(a)(1)(C) of Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (12 U.S.C. 5514(a)(1)(C)). Pursuant to this provision, the Bureau of Consumer Financial Protection (Bureau) has the authority to supervise a nonbank covered person when the Bureau has reasonable cause to determine, by order, after notice to the person and a reasonable opportunity to respond, that such person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services. This proposed rule sets forth the procedures by which the Bureau may subject a nonbank covered person to the Bureau's supervisory authority under 12 U.S.C. 5514(a)(1)(C). Under 12 U.S.C. 5514, the Bureau is authorized to require reports from, and conduct examinations of, entities made subject to its supervisory authority in this manner.

DATES: Comments must be received on or before July 24, 2012.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit

comments electronically. You may submit comments, identified by *Docket No. CFPB–2012–0021* or RIN 3170–AA24 by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Administrative Specialist, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.
- *Instructions:* All comments should include the agency name and docket number or RIN for this rule making. Because paper mail in the Washington, DC area and at the bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* Comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and will be subject to public disclosure. Submit only information that you wish to make available publicly. Do not include sensitive personal information, such as account numbers or Social Security numbers. Comments will not be edited to remove any identifying or contact information, such as name and address information, email addresses, or telephone numbers.

FOR FURTHER INFORMATION CONTACT: Christopher Young, Senior Counsel, Office of Nonbank Supervision, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552, at (202) 435–7408.

SUPPLEMENTARY INFORMATION:

I. Background

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) [1] established the Bureau of Consumer Financial Protection (Bureau) on July 21, 2010. One of the Bureau's key responsibilities under the Dodd-Frank Act is the supervision of very large banks, thrifts, and credit unions, and their affiliates,[2] and certain nonbank covered persons.[3]

Under 12 U.S.C. 5514, the Bureau's supervision authority for nonbank covered persons varies by consumer financial product or service market. Specifically, 12 U.S.C. 5514 grants the Bureau authority to supervise nonbank covered persons that offer or provide to consumers: (1) Origination, brokerage, or servicing of residential mortgage loans secured by real estate, and related mortgage loan modification or foreclosure relief services; (2) private education loans; and (3) payday loans.[4] In addition, the Bureau has the authority to supervise any nonbank covered person that it ''has reasonable cause to determine, by order, after notice * * * and a reasonable opportunity * * * to respond'' that such covered person ''is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.'' [5] The Bureau shall base such reasonable cause on complaints collected by the Bureau under 12 U.S.C. 5493(b)(3), or on information collected from other sources.[6] This Proposal sets forth procedures to implement these risk-based provisions.

The Bureau is authorized to supervise nonbank covered persons subject to 12 U.S.C. 5514 by requiring the submission of reports and conducting examinations to: (1) Assess compliance with the requirements of Federal consumer financial law; (2) obtain information about such persons' activities and compliance systems or procedures; and (3) detect and assess risks to consumers and to markets for consumer financial products and services.[7] The Proposed Rule sets forth only procedures by which the Bureau may make a nonbank covered person subject to its supervisory authority under 12 U.S.C. 5514(a)(1)(C) and would not impose new substantive consumer protection requirements on any nonbank entity. Moreover, nonbank entities are subject to the Bureau's regulatory and enforcement authority and any applicable Federal consumer financial law, regardless of whether they are subject to the Bureau's supervisory authority.

II. Summary of the Proposal

This Proposed Rule, if adopted, would govern the process by which a nonbank covered person may become subject to the supervisory authority of the Bureau pursuant to 12 U.S.C. 5514(a)(1)(C). In this Proposal, the Bureau has endeavored to establish an efficient, expeditious, and fair process to exercise the Bureau's authority under 12 U.S.C. 5514(a)(1)(C). Under the proposed process, the Bureau would provide a nonbank covered person a notice (Notice or Notice of Reasonable Cause) stating that the Bureau may have reasonable cause to determine that such covered person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services. The Proposal establishes mechanisms to provide the nonbank covered person a reasonable opportunity to respond to the Notice. The Bureau believes that the procedures established by this Proposed Rule would provide a recipient of a Notice (respondent) with a more robust process than required by Section 1024(a)(1)(C). For example, to satisfy the statutory requirement that the Bureau provide a reasonable opportunity to respond, the Bureau need not offer respondents an opportunity to participate in a supplemental oral response. The Proposed Rule, however, if adopted,

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

[2] *See* 12 U.S.C. 5515(a). The Bureau also has certain authorities relating to the supervision of other banks, thrifts, and credit unions. *See* 12 U.S.C. 5516(c)(1), (e).

[3] The provisions of 12 U.S.C. 5514 apply to nondepository (nonbank) covered persons and expressly exclude from coverage persons described in 12 U.S.C. 5515(a) or 5516(a). A ''covered person'' means ''(A) any person that engages in offering or providing a consumer financial product or service; and (B) any affiliate of a person described [in (A)] if such affiliate acts as a service provider to such person.'' 12 U.S.C. 5481(6); *see also* 12 U.S.C. 5481(5) (defining ''consumer financial product or service.''). Under 12 U.S.C. 5514(d), subject to certain exceptions, ''to the extent that Federal law authorizes the Bureau and another Federal agency to * * * conduct examinations, or require reports from a [nonbank covered person] under such law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to * * * conduct examinations [and] require reports * * * with regard to a [nonbank covered person], subject to those provisions of law.''

[4] 12 U.S.C. 5514(a)(1)(A), (D), and (E). The Bureau's supervision authority also extends to service providers of these entities. *See* 12 U.S.C. 5514(e) (establishing the Bureau's supervisory authority relating to service providers); *see also,* 12 U.S.C. 5481(26) (defining ''service provider'').

[5] 12 U.S.C. 5514(a)(1)(C). The Bureau also has the authority to supervise any ''larger participant of a market for other consumer financial products or services,'' as defined by rule by the Bureau. 12 U.S.C. 5514(a)(1)(B), (a)(2). An initial rule to define who is a larger participant in other markets must be issued by July 21, 2012; a notice of proposed rulemaking for this initial rule was published in the **Federal Register** on February 17, 2012 at 77 FR 9592.

[6] 12 U.S.C. 5514(a)(1)(C).

[7] 12 U.S.C. 5514(b)(1); *see also* 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'').

would provide such an opportunity to respondents.

To provide a reasonable opportunity to respond to a Notice, the Proposed Rule would require that a Notice include a description of the basis for the assertion that the Bureau may have reasonable cause to determine that a respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services. A Notice is intended to afford a respondent the opportunity to evaluate the assertions set forth therein and to formulate an appropriate response. The Proposed Rule would provide a respondent with two opportunities to respond to a Notice—first in writing and then, if requested by a respondent, through a supplemental oral response generally to be conducted by telephone. Under the Proposed Rule, a respondent would be required to include with the written response records, documents, or other items supporting the arguments set forth in the response that a respondent wants the Bureau's Assistant Director for Nonbank Supervision (Assistant Director) and the Bureau's Director (Director) to consider. A supplemental oral response, if requested, would provide a respondent with the opportunity to present arguments to the Bureau's Assistant Director or her or his designee.

Under the Proposed Rule, a Notice of Reasonable Cause would *not* constitute a notice of charges for any alleged violation of Federal consumer financial law or other law. The proceedings under the Proposed Rule would be informal and would not constitute an adjudicatory proceeding under section 554 of the Administrative Procedure Act (APA).[8] Appropriately, under the informal process that would be established by the Proposed Rule if made final, no discovery would be permitted, a supplemental oral response would not constitute a hearing on the record, and no witnesses would be permitted to be called as part of a supplemental oral response.

Under the Proposed Rule, the Bureau's Deputy Assistant Director for Nonbank Supervision (Deputy) would commence a proceeding by issuing a Notice. The response (both written and oral—if any) would then be considered by the Bureau's Assistant Director, who would provide to the Bureau's Director a recommended determination. The Director would make the final determination in any proceeding by adopting without revision, modifying, or rejecting the Assistant Director's recommended determination. The result would be either an order subjecting a respondent to the Bureau's supervisory authority under 12 U.S.C. 5514, or a notice stating that a respondent is not subject, as a result of the proceeding, to the Bureau's supervisory authority.

In addition, under the Proposed Rule there would be two ways in which a respondent could consent to the Bureau's supervisory authority. First, the Proposed Rules provides for an expedited method by which a respondent may execute the consent agreement form attached to the Notice that is served on the respondent and file it with the Assistant Director in lieu of a response. Second, under the Proposed Rule, at any time during a proceeding, a respondent may voluntarily consent to the Bureau's supervisory authority under such terms as the parties may agree.

The Proposed Rule also generally provides that if a determination by the Director results in an order bringing a respondent within the Bureau's supervisory authority under 12 U.S.C. 5514, the respondent would be permitted, after two years (and no more than annually thereafter), to petition the Director for the termination of such an order. However, under the Proposed Rule, where a respondent voluntarily consents to the Bureau's supervisory authority for a specified period of time, the respondent would not be permitted to petition for the termination of supervision during the period specified in the consent agreement. A petition for termination of an order provides a method for a respondent to inform the Bureau of actions taken and progress made to reduce the risks to consumers after the issuance of the order. Further, the Proposed Rule makes clear that nothing in the rule affects the relief the Bureau may seek in any civil action or administrative adjudication.

Finally, the Proposed Rule provides that if the Bureau otherwise issues a notice of charges against a person under 12 CFR 1081.200,[9] the Bureau may, in its sole discretion, also provide a notice and opportunity to respond as required by 12 U.S.C. 5514(a)(1)(C) in the notice of charges. In such a circumstance, the procedures set forth in proposed § 1091.101—§ 1091.113 would not apply to the proceedings.

III. Legal Authority

A. Rulemaking Authority

The Bureau is issuing this Proposed Rule pursuant to its authority under: (1) 12 U.S.C. 5512(b)(1), which grants the Bureau the authority to prescribe rules as may be necessary and appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions of those laws; (2) 12 U.S.C. 5514(a)(1)(C), which authorizes the Bureau to supervise a nonbank covered person when it has reasonable cause to determine, by order, after notice to the person, and a reasonable opportunity to respond, that such person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services; and (3) 12 U.S.C. 5514(b)(7), which authorizes the Bureau to prescribe rules to facilitate the supervision of nonbank covered persons under 12 U.S.C. 5514(a)(1).

B. Effective Date

The Proposed Rule relates solely to agency procedure and practice and, thus, is not subject to the 30-day delayed effective date for substantive rules under section 553(d) of the APA.[10] Although not required, the Proposal provides that the final rule will be effective 30 days after publication in the **Federal Register**.

IV. Section-by-Section Description

Section .100 Scope and Purpose

Proposed § 1091.100 sets forth the scope and purpose of the Proposed Rule. It states that the part sets forth procedures to implement 12 U.S.C. 5514(a)(1)(C) and to facilitate the supervision of nonbank covered persons under 12 U.S.C. 5514(b)(7).

Section 1091.101 Definitions

Proposed § 1091.101 defines terms used in the Proposed Rule. If a term is defined in the Dodd-Frank Act, the Proposal generally incorporates that definition, with clarifications and modifications where necessary. The Bureau seeks comment on each of the definitions set forth in the Proposed Rule and any suggested clarification, modifications, or alternatives.

Assistant Director. Under the Proposal, the term ''Assistant Director'' means the Bureau's Assistant Director for Nonbank Supervision or her or his

[8] *See* 5 U.S.C. 554 and 556 (setting forth APA procedures for adjudications determined on the record after an opportunity for an agency hearing).

[9] 12 CFR 1081.200 sets forth the procedures for the commencement of an adjudicative proceeding by the Bureau under section 1053 of the Dodd-Frank Act, 12 U.S.C. 5563, and also the contents of the notice of charges in such a proceeding.

[10] 5 U.S.C. 551 *et seq.*

designee. This proposed definition provides that, in the event there is no Assistant Director, the Director of the Bureau may designate an alternative Bureau employee to perform the functions of the Assistant Director.

Bureau. The Proposal provides that the term ''Bureau'' means the Bureau of Consumer Financial Protection.

Consumer. The Proposal incorporates the definition of the term ''consumer'' set forth in 12 U.S.C. 5481(4), which defines ''consumer'' as an individual or an agent, trustee, or representative acting on behalf of an individual.

Consumer financial product or service. The Proposal incorporates the definition of the term ''consumer financial product or service'' set forth in 12 U.S.C. 5481(5). The Proposal provides that the term ''consumer financial product or service'' means any financial product or service as defined in 12 U.S.C. 5481(15) that is described in one or more categories under: (a) 12 U.S.C. 5481(15) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or (b) clause (i), (iii), (ix), or (x) of 12 U.S.C. 5481(15)(A) [11] and is delivered, offered, or provided in connection with a consumer financial product or service referred to in (a).

Decisional employee. The Proposal states that the term ''decisional employee'' means any employee of the Bureau who has not engaged in: (a) assisting the Deputy in either determining whether to issue a Notice of Reasonable Cause, or presenting the Deputy's position in support of a Notice of Reasonable Cause, either in writing or in a supplemental oral response, to the Assistant Director; or (b) assisting the Assistant Director in the preparation of a recommended determination.

Deputy. The Proposal states that the term ''Deputy'' means the Bureau's Deputy Assistant Director for Nonbank Supervision or her or his designee. If there is no Deputy, the term shall mean any alternative Bureau employee designated by the Assistant Director or Director to fulfill the duties of the Deputy under this part.

Director. The Proposal states that the term ''Director'' means the Director of the Bureau or her or his designee. If there is no Director, the term shall mean a person authorized to perform the functions of the Director in accordance with the law, of her or his designee.

Executive Secretary. The Proposal states that the term ''Executive Secretary'' means the Executive Secretary of the Bureau.

Nonbank covered person. The provisions of 12 U.S.C. 5514 relate to ''covered persons'' as defined in 12 U.S.C. 5481(6) that are not insured depository institutions or credit unions, or, in the case of such entities with assets of more than $10 billion, their affiliates, as set forth in 12 U.S.C. 5515 and 5516. The Proposal therefore excludes from the definition of ''nonbank covered persons'' persons described in 12 U.S.C. 5515(a) and 5516(a), and provides that the term ''nonbank covered person'' means, except for persons described in 12 U.S.C. 5515(a) and 5516(a): (a) any person that engages in offering or providing a consumer financial product or service; and (b) any affiliate of a person described in (a) if such affiliate acts as a service provider to such person.

Notice of Reasonable Cause and Notice. The Proposal states that the terms ''Notice of Reasonable Cause'' and ''Notice'' mean a Notice issued under § 1091.102.

Person. The Proposal incorporates the definition of ''person'' set forth in 12 U.S.C. 5481(19). The Proposal therefore states that the term ''person'' means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

Respondent. The Proposal states that the term ''respondent'' means a person who has been issued a Notice of Reasonable Cause by the Deputy under § 1091.102.

Response. The Proposal states that the term ''response'' means the response to a Notice of Reasonable Cause filed by a respondent with the Assistant Director under § 1091.105.

Section 1091.102 Issuance of Notice of Reasonable Cause

Proposed § 1091.102 relates to the issuance of a Notice of Reasonable Cause, which initiates the proceedings that culminate in a determination by the Director under § 1091.109 of the Proposed Rule, or a respondent's voluntary consent to supervision by the Bureau. Section 1091.102 provides that the Deputy is authorized to issue a Notice of Reasonable Cause and, consistent with 12 U.S.C. 5514(a)(1)(C), that such Notice shall be based on complaints collected by the Bureau, or on information from other sources.

The Bureau seeks comment on the issuance of a Notice of Reasonable Cause and any suggested modifications or alternatives.

Section 1091.103 Contents of Notice

Proposed § 1091.103 details the required content of a Notice. To ensure that a respondent has a reasonable opportunity to address the substance of a Notice, proposed § 1091.103 provides that a Notice must set forth, among other things, the basis for the assertion that the Bureau may have reasonable cause to determine that a respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.

Under proposed § 1091.103, a Notice must also contain a statement informing a respondent how to file a timely response, and of the required contents of a response. A Notice must also inform a respondent that he or she may request a supplemental oral response, and that a respondent may, in lieu of filing a response, voluntarily consent to the Bureau's supervisory authority under 12 U.S.C. 5514 by filing an executed consent form attached to a Notice served on a respondent. Section 1091.103 further provides that a Notice shall inform a respondent that a failure to respond, as set forth in a Notice, may result in a determination by the Director without further opportunity to respond by the respondent. As set forth in proposed § 1091.103, a Notice must also inform a respondent of the various timelines associated with the process.

The Bureau seeks comment on the proposed contents of a Notice and any suggested modifications or alternatives.

Section 1091.104 Service of Notice

Proposed § 1091.104 provides that a Notice shall be served pursuant to methods including electronic transmission (where a respondent has consented), personal service, first class U.S. Mail, or commercial courier or express delivery service. Proposed § 1091.104 further requires that the Deputy submit a copy of a Notice and any attached documents, records or other items to the Assistant Director, who shall proceed as set forth in the Proposal.

The Bureau seeks comment on the proposed requirements relating to the service of a Notice and any suggested modifications or alternatives.

[11] Under these clauses, the term ''financial product or service'' is generally defined to include, subject to certain exclusions: (1) Extending credit and servicing loans, 12 U.S.C. 5481(15)(A)(i); (2) providing real estate settlement services or performing appraisals of real estate or personal property, 12 U.S.C. 5481(15)(A)(iii); (3) collecting, analyzing, maintaining, or providing consumer report information or other account information used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service, 12 U.S.C. 5481(15)(A)(ix); and (4) collecting debt related to any consumer financial product or service, 12 U.S.C. 5481(15)(A)(x).

Section 1091.105 Response

Proposed § 1091.105 sets forth the requirements for responding to a Notice of Reasonable Cause. Specifically, § 1091.105 provides that any response must be filed within 20 days of service of a Notice, and the failure to file a timely response shall result in a waiver of a respondent's right to respond, authorize the Assistant Director to issue a recommended determination, and the Director a final determination, on the basis of the Notice. Proposed § 1091.105 further provides that a respondent may respond to a Notice of Reasonable Cause either by contesting that it is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services, or by voluntarily consenting to the Bureau's supervisory authority under 12 U.S.C. 5514. Where a respondent wishes to contest the assertions in a Notice, proposed § 1091.105 mandates that the response: (1) Set forth the basis for a respondent's contention that the respondent should not be subject to supervision pursuant to 12 U.S.C. 5514(a)(1)(C); (2) include all records, documents, or other items upon which a respondent relies; and (3) include an affidavit signed by the respondent attesting that the information contained in the response is true, accurate, and without any omission that would cause the response to be materially misleading. The Proposed Rule further provides that documents, records or other items submitted by a respondent with a response shall be deemed confidential supervisory information under 12 CFR 1070.2(i)(1)(iv). In addition, under proposed § 1091.105, if a respondent wishes also to present arguments in a supplemental oral response, the respondent must make such a request in the response. A failure to do so will constitute a waiver of a respondent's opportunity to present a supplemental oral response.

Finally, proposed § 1091.105 states that the failure to timely raise an issue in, or submit records, documents, or other items with, the response constitutes a waiver of a respondent's right to raise the issue, or submit the records, documents, or other items, at any future stage of consideration under this Proposed Rule and in any petition for judicial review. The Bureau intends for the waiver to remove any incentive for a respondent to wait until after filing a response, such as at a supplemental oral response or during judicial review, to raise an argument or present documents or other information for the first time. This will help ensure that the Bureau is aware of all relevant issues upon which a respondent wishes to rely at the earliest opportunity before reaching a determination under this Proposed Rule.

The Bureau seeks comment on the proposed contents of and requirements relating to the response and any suggested modifications or alternatives.

Section 1091.106 Supplemental Oral Response

Proposed § 1091.106 provides that a respondent may request a supplemental oral response and sets forth the procedures for the conduct of a supplemental oral response. Under proposed § 1091.106, supplemental oral responses will generally be held via telephone. In the Bureau's view, conducting such oral responses by telephone allows for more flexibility and is less burdensome than conducting an in person response.

Proposed § 1091.106 further provides that the Assistant Director may impose limitations on the conduct of a supplemental oral response and provides a non-exhaustive set of such limitations. The Bureau believes that providing the Assistant Director with authority to impose such limitations will help ensure that a supplemental oral response focuses on a respondent's and Deputy's arguments supporting their respective legal and factual assertions in the matter.

Proposed § 1091.106 further makes clear that no discovery will be permitted, and no witnesses will be called, in connection with a supplemental oral response. This limitation is appropriate given the informal nature of the procedures set forth in this Proposed Rule. The prohibition on discovery and the calling of witnesses in connection with a supplemental oral response also furthers the Bureau's objective of providing a timely and efficient determination process, saving both the Bureau and respondents the time and expenses typically expended on discovery.

Proposed § 1091.106 also prescribes the timing of a supplemental oral response. Specifically, under the proposed section, within 14 days of receiving a respondent's request for a supplemental oral response, the Assistant Director shall serve on a respondent a notice advising of the date, time, and relevant information relating to the conduct of a supplemental oral response, with a copy to the Deputy. To allow a respondent and the Deputy sufficient time to prepare for a supplemental oral response, and to make arrangements to participate, proposed § 1091.106 provides that a supplemental oral response shall be scheduled not less than ten days after the date of such service. Finally, proposed § 1091.106 states that if a respondent fails to participate in a scheduled supplemental oral response, such a failure constitutes a respondent's waiver of the opportunity to present a supplemental oral response.

The Bureau seeks comment on the proposed procedures for a supplemental oral response and any suggested modifications or alternatives.

Section 1091.107 Manner of Filing Papers

Proposed 1091.107 provides for filing of papers in a proceeding under the Proposed Rule by electronic transmission under such conditions as specified by the Assistant Director or Director. This section also authorizes other methods of filing and service if a respondent demonstrates electronic filing is not practicable and the Assistant Director or Director permits an alternative method of filing or service.

The Bureau seeks comment on the proposed manner of filing papers and any suggested modifications or alternatives.

Section 1091.108 Recommended Determination

Proposed § 1091.108 provides that the Assistant Director shall make a recommended determination and submit to the Director either a proposed order that would bring a respondent within the Bureau's supervisory authority under 12 U.S.C. 5514, or a proposed notification containing the determination that a respondent is not subject to the Bureau's supervisory authority under 12 U.S.C. 5514 on the basis of the proceeding. Under proposed § 1091.108, if a respondent has not voluntarily consented to the Bureau's supervisory authority, and has not requested the opportunity to present a supplemental oral response, a recommended determination shall be made not later than 45 days from the receipt of a timely-filed response, or not later than 45 days after the service of a Notice of Reasonable Cause when a respondent fails to file a timely response. If a respondent has requested the opportunity to present a supplemental oral response, a recommended determination shall be made not later than 90 days after the service of a Notice of Reasonable Cause. Proposed § 1091.108 further sets forth the required content of the Assistant Director's recommended determination, and the documents and items that must accompany the recommended

determination sent to the Director by the Assistant Director.

The Bureau seeks comment on the proposed content of, and procedures relating to, the recommended determination and any suggested modifications or alternatives.

Section 1091.109 Determination by the Director

Proposed § 1091.109 provides that, not later than 45 days after receipt of the Assistant Director's recommended determination, the Director shall make a final determination by adopting without revision, modifying, or rejecting the Assistant Director's recommended determination. Under the proposed section, the Director shall issue to a respondent, with copies to the Assistant Director and Deputy, an order bringing a respondent within the Bureau's supervisory authority under 12 U.S.C. 5514, or a notification containing the determination that a respondent is not subject to the Bureau's supervisory authority under 12 U.S.C. 5514 on the basis of the proceeding. Proposed § 1091.109 also provides that the Director may rely on the assistance and advice only of decisional employees in reaching a final determination.

The Bureau seeks comment on the proposed content of, and procedures relating to, the determination and any suggested modifications or alternatives.

Section 1091.110 Petition for Termination of Order

Proposed § 1091.110 provides that a respondent may petition the Director for the termination of an order bringing a respondent within the Bureau's supervisory authority under 12 U.S.C. 5514, and sets forth the required contents of such a petition. Under proposed § 1091.110, a respondent may so petition no sooner than two years after the issuance of the order, and no more frequently than annually thereafter, except that in the case of a voluntary consent to supervision, a respondent may not petition for early termination of the supervisory authority period set forth in the consent agreement. A petition is a respondent's opportunity to inform the Bureau of the actions taken and the progress made to reduce risk to consumers after the issuance of an order. A petition should set forth the reasons supporting a respondent's petition for the termination of the order. Under proposed § 1091.110, the Deputy would be permitted to file a response to a petition for termination setting forth the Deputy's recommendation to terminate or modify the order, or to deny the petition, and the reasons supporting such a recommendation within 30 days of her or his receipt of a copy of a petition. Proposed § 1091.110 further provides that within 90 days of a respondent submitting a petition for termination, the Director shall either terminate or modify the order, or deny the petition. This section also specifies the manner in which a petition for termination must be filed.

The Bureau seeks comment on the proposed content of, and procedures relating to, the petition for termination of an order and any suggested modifications or alternatives.

Section 1091.111 Construction of Time Limits

Proposed § 1091.111 provides common rules for computing time limits, taking into account the effect of weekends and holidays on time periods that are ten days or less. This section also sets forth when filing or service is effective. With regard to time limits for responsive papers, proposed § 1091.111 incorporates a three-day extension for mail service, and a one-day extension for overnight delivery and electronic transmission. A one-day extension for service by electronic transmission reflects that electronic transmissions may result in delays in actual receipt by the person served.

The Bureau seeks comment on the proposed construction of time limits and any suggested modifications or alternatives.

Section 1091.112 Change of Time Limits and Effect of Deadlines

Proposed § 1091.112 provides that requests for the extension of time may be granted in the limited circumstances in which the extension is necessary to prevent substantial prejudice. The Bureau intends for this section to further the Bureau's goal of ensuring the timely conclusion of matters. Accordingly, the section provides that requests for the extension of time are strongly disfavored and may only be granted when a party makes a strong showing that the denial of the request would substantially prejudice the party. Finally, proposed § 1091.112 states that deadlines for action by the Assistant Director or Director established in this Proposed Rule confer no substantive rights on respondents.

The Bureau seeks comment on the proposed procedures relating to the change of time limits and effect of deadlines and any suggested modifications or alternatives.

Section 1091.113 Voluntary Consent to Bureau's Authority

Proposed § 1091.113 provides that nothing in the Proposed Rule shall affect a person's ability to voluntarily consent, at any time, to the Bureau's supervisory authority under 12 U.S.C. 5514 as mutually agreed to by the parties. Voluntary consent under this section is an alternative to voluntarily consenting to the Bureau's supervision as provided under proposed § 1091.103(b), which allows a respondent to execute and file a consent agreement form in lieu of filing a written response. Proposed § 1091.113 also provides that a consent agreement that specifies the period during which the person will be subject to the Bureau's supervisory authority precludes such a person from petitioning for the termination of the order under proposed § 1091.110 during the agreed-to supervisory period. Additionally, proposed § 1091.113 provides that a person entering into a consent agreement waives any right to judicial review of that agreement.

The Bureau seeks comment on the proposed procedures relating to a respondent's voluntary consent to the Bureau's authority under 12 U.S.C. 5514 and any suggested modifications or alternatives.

Section 1091.114 Notice and Response Included in Adjudication Proceeding Otherwise Brought by the Bureau

Proposed § 1091.114 provides that if the Bureau issues a notice of charges against a person under 12 CFR 1081.200,[12] the Bureau may, in its sole discretion, also provide the notice and opportunity to respond required by 12 U.S.C. 5514(a)(1)(C) in the notice of charges. In such a circumstance, the procedures set forth in proposed § 1091.101–§ 1091.113 would not apply to the proceedings. The Bureau intends to use the administrative adjudication proceedings set forth in 12 CFR 1081.200 to provide notice and a reasonable opportunity to respond as required by 12 U.S.C. 5514(a)(1)(C) only in certain cases where the Bureau has otherwise brought an administrative action against a respondent. The Bureau believes that the flexibility provided by this section would enhance efficiency and reduce burdens to respondents and the Bureau by allowing a determination under 12 U.S.C. 5514(a)(1)(C) and an

[12] 12 CFR 1081.200 sets forth the procedures for the commencement of an adjudicative proceeding by the Bureau under 12 U.S.C. 5563, and also the contents of the notice of charges in such a proceeding.

adjudicative proceeding to be handled in a single forum.

The Bureau seeks comment on the proposed procedures relating to providing notice and a reasonable opportunity to respond under 12 U.S.C. 5514(a)(1)(C) in an adjudicative proceeding brought by the Bureau pursuant to 12 part CFR 1081.200 and any suggested modifications or alternatives.

Section 1091.115 No Limitation on Relief Sought in Civil Action or Administrative Adjudication

This section clarifies that nothing in this part shall be construed to limit the relief the Bureau may seek in any civil action or administrative adjudication.

The Bureau seeks comment on this section and any suggested modifications or alternatives.

V. Request for Comment

The Proposed Rule relates solely to agency procedure and practice and, thus, is not subject to the notice-and-comment requirements of the APA.[13] Although the Proposed Rule is exempt from these requirements, the Bureau invites comment on all aspects of this notice of proposed rulemaking and on the specific issues upon which comment is solicited elsewhere herein, including on any appropriate modifications or exceptions to the Proposed Rule.

VI. Section 1022(b)(2) of the Dodd-Frank Act (12 U.S.C. 5512(b)(2))

In developing the Proposed Rule, the Bureau has considered the potential benefits, costs, and impacts, and has consulted or offered to consult with the prudential regulators and the Federal Trade Commission, including with regard to consistency with any prudential market, or systemic objectives administered by such agencies.[14]

Under 12 U.S.C. 5514(a)(1)(C), the Bureau has the authority to supervise any nonbank covered person that it ''has reasonable cause to determine, by order, after notice * * * and a reasonable opportunity * * * to respond'' that such covered person ''is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.'' The Proposed Rule is intended to provide an efficient, expeditious, and fair process to implement 12 U.S.C. 5514(a)(1)(C).[15] Although a rule is not necessary to implement this statutory provision, the Proposed Rule, if adopted, establish a consistent procedure applicable to all affected entities, and provide transparency regarding the applicable process prior to commencement of a proceeding. Absent the Proposed Rule, the public would lack any guidance regarding the Bureau's process under 12 U.S.C. 5514(a)(1)(C). Nonbank covered persons will incur certain costs in considering and responding to a Notice from the Bureau under the rule, but these costs would generally exist in the absence of the rule.

For major provisions of the Proposal, the Bureau considered the benefits and costs of certain alternatives. For example, the Proposed Rule would provide respondents an opportunity to participate in a supplementary oral response, which would generally be conducted via telephone. The Bureau believes that the proposed approach, if adopted, would benefit covered persons by offering an additional method of responding to a Notice compared with the alternative of not permitting any oral response. At the same time, the Bureau believes that the proposed approach would be less costly than the alternative of requiring that all oral responses be conducted in person at a designated location. Also in connection with supplemental oral responses, the Proposed Rule would permit, but not require, a respondent to be represented by counsel. The Bureau considered requiring representation by counsel, but opted to provide respondents with the opportunity to receive the benefits of representation, while not mandating that respondents incur the costs of such representation.

The Proposed Rule also permits respondents to consent to the Bureau's supervisory authority under standard terms in lieu of filing a response, or to enter into a negotiated agreement at any time consenting to the Bureau's supervisory authority. The Bureau believes that this approach, if adopted, would provide a streamlined resolution process that would reduce the costs to the Bureau and those respondents who wish to consent to the Bureau's supervisory authority, compared to the alternative of permitting only negotiated consent agreements.

The Proposed Rule will have no unique impact on insured depository institutions or insured credit unions with $10 billion or less in assets as described in 12 U.S.C. 5516(a). Nor would the Proposed Rule have a unique impact on rural consumers.

The Bureau requests comments on the potential benefits, costs, and impacts of the Proposed Rule.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.[16]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[17]

As discussed above in section V, a notice of proposed rulemaking is not required for this rulemaking. The Proposed Rule therefore is not a ''rule'' as defined by the RFA.[18] Nevertheless, the Bureau opted to issue a notice of proposed rulemaking to receive public comment.

An IRFA would not otherwise be required because the Proposed Rule, if

[13] 5 U.S.C. 553(b)(A).

[14] The provisions of 12 U.S.C. 5512(b)(2)(A) address the consideration of the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in 12 U.S.C. 5516; and the impact on consumers in rural areas. The provisions of 12 U.S.C. 5512(b)(2)(B) further address consultation between the Bureau and other federal agencies during the rulemaking process. The manner and extent to which these provisions apply to procedural rules and to benefits, costs and impacts that are compelled by statutory changes rather than discretionary Bureau action is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the described analyses and consultations.

[15] The Bureau notes that there is little publicly available data with which to effectively measure or quantify the benefits, costs, and impacts of the Proposed Rule. Where benefits or costs are not readily quantifiable or where data is not reasonably available, the Bureau will conduct qualitative analyses relying on information from available sources.

[16] 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consultation with the Small Business Administration and an opportunity for public comment.

[17] 5 U.S.C. 609.

[18] 5 U.S.C. 601(2) (''the term 'rule' means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law * * *.'')

adopted, would not have a significant economic impact on any small entities. The Proposed Rule sets forth only procedures by which a nonbank covered person may become subject to the Bureau's current supervisory authority pursuant to 12 U.S.C. 5514(a)(1)(C). The Proposed Rule establishes a transparent and streamlined process by which the Bureau would exercise its existing legal authority and would not impose new substantive requirements. Accordingly, the undersigned certifies that this Proposed Rule will not have a significant impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

The Bureau has determined that the Rule does not impose any new recordkeeping, reporting or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 12 CFR Part 1091

Administrative practice and procedures, Consumer protection, Credit, Trade practices.

Authority and Issuance

For the reasons set forth above, the Bureau proposes to add part 1091 to Chapter X in Title 12 of the Code of Federal Regulations to read as set forth below.

Title 12—Banks and Banking

Chapter X—Bureau of Consumer Financial Protection

PART 1091—PROCEDURAL RULES TO ESTABLISH SUPERVISORY AUTHORITY OVER CERTAIN NONBANK COVERED PERSONS BASED ON RISK DETERMINATION

Sec.

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1091.113 Voluntary consent to Bureau's authority.
1091.114 Notice and response included in adjudication proceeding otherwise brought by the Bureau.
1091.115 No limitation on relief sought in civil action or administrative adjudication.

Authority: Sections 1022(b)(1), 1024(a)(1)(C), and 1024(b)(7) of Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203 (12 U.S.C. 5512(b)(1), 5514(a)(1)(C), and 5514(b)(7)).

§ 1091.100 Scope and purpose.

This part implements section 1024(a)(1)(C) of Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203 (12 U.S.C. 5514(a)(1)(C)) (Dodd-Frank Act), and establishes rules to facilitate the Bureau's supervision authority over certain nonbank covered persons pursuant to section 1024(b)(7) of the Dodd-Frank Act (12 U.S.C. 5514(b)(7)).

§ 1091.101 Definitions.

For the purposes of this part, the following definitions apply:

Assistant Director means the Bureau's Assistant Director for Nonbank Supervision or her or his designee. If there is no Assistant Director, the Director may designate an alternative Bureau employee to fulfill the duties of the Assistant Director under this part.

Bureau means the Bureau of Consumer Financial Protection.

Consumer means an individual or an agent, trustee, or representative acting on behalf of an individual.

Consumer financial product or service means any financial product or service, as defined in 12 U.S.C. 5481(15) that is described in one or more categories under:

(1) 12 U.S.C. 5481(15) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or

(2) Clause (i), (iii), (ix), or (x) of 12 U.S.C. 5481(15)(A) and is delivered, offered, or provided in connection with a consumer financial product or service referred to in subparagraph (1) of this paragraph.

Decisional employee means any employee of the Bureau who has not engaged in:

(1) Assisting the Deputy in either determining whether to issue a Notice of Reasonable Cause, or presenting the Deputy's position in support of a Notice of Reasonable Cause, either in writing or in a supplemental oral response, to the Assistant Director; or

(2) Assisting the Assistant Director in the preparation of a recommended determination.

Deputy means the Bureau's Deputy Assistant Director for Nonbank Supervision or her or his designee. If there is no Deputy, the term shall mean any alternative Bureau employee designated by the Assistant Director or Director to fulfill the duties of the Deputy under this part.

Director means the Director of the Bureau or her or his designee. If there is no Director, the term shall mean a person authorized to perform the functions of the Director in accordance with the law, or her or his designee.

Executive Secretary means the Executive Secretary of the Bureau.

Nonbank covered person means, except for persons described in 12 U.S.C. 5515(a) and 5516(a):

(1) Any person that engages in offering or providing a consumer financial product or service; and

(2) Any affiliate of a person described in subparagraph (1) of this paragraph if such affiliate acts as a service provider to such person.

Notice of Reasonable Cause and Notice mean a Notice issued under § 1091.102.

Person means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

Respondent means a person who has been issued a Notice of Reasonable Cause under § 1091.102.

Response means the response to a Notice of Reasonable Cause filed by a respondent with the Assistant Director under § 1091.105.

§ 1091.102 Issuance of Notice of Reasonable Cause.

(a) The Deputy is authorized to issue a Notice of Reasonable Cause to a nonbank covered person stating that the Bureau may have reasonable cause to determine that the nonbank covered person is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.

(b) A Notice of Reasonable Cause shall be based on:

(1) Complaints collected through the system under 12 U.S.C. 5493(b)(3); or

(2) Information from other sources.

(c) Except as provided in § 1091.114, a notice required under 12 U.S.C. 5514(a)(1)(C) shall contain the information set forth in § 1091.103, and be served on respondent as described in § 1091.104.

§ 1091.103 Contents of Notice.

(a) A Notice of Reasonable Cause shall contain the following:

(1) A description of the basis for the assertion that the Bureau may have reasonable cause to determine that a

respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services; and

(2) A statement informing a respondent that:

(i) A respondent may file with the Assistant Director a written response to a Notice of Reasonable Cause no later than 20 days after a Notice is served on a respondent;

(ii) The written response shall include the elements addressed in § 1091.105(b):

(iii) A respondent may request in its response to a Notice an opportunity to present a supplemental oral response to the Assistant Director as set forth in § 1091.106;

(iv) A failure to timely file a response to a Notice shall constitute a waiver of a respondent's right to respond, and may result in a default determination by the Director, based on the Notice, that a respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services and the issuance of a decision and order subjecting a respondent to the Bureau's supervisory authority pursuant to 12 U.S.C. 5514(a)(1)(C);

(v) The Assistant Director shall serve a respondent with a notice of the date and time of a supplemental oral response, if a respondent has requested the opportunity to present a supplemental oral response, within 14 days of the Assistant Director's receipt of a timely-filed response; and

(vi) If a respondent has not requested the opportunity to present a supplemental oral response, the Assistant Director shall, not later than 45 days of receiving a timely-filed response, or not later than 45 days after the service of a Notice of Reasonable Cause when a respondent fails to file a timely response, provide a recommended determination to the Director including either a proposed decision and order subjecting a respondent to the Bureau's supervisory authority pursuant to 12 U.S.C. 5514(a)(1)(C), or a proposed notification that the Bureau has determined not to subject a respondent to the Bureau's supervisory authority at that time, pursuant to § 1091.108.

(b) A Notice shall be accompanied by a form of consent agreement by which a respondent may voluntarily consent to the Bureau's authority to supervise a respondent under 12 U.S.C. 5514. A completed and executed form of consent agreement under this paragraph:

(1) Shall not constitute an admission that a respondent is a nonbank covered person that has engaged, or is engaging, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services;

(2) Shall result in an order by the Director that a respondent is subject to the Bureau's supervisory authority under 12 U.S.C. 5514 for a period of two years from the date of such order; and

(3) Shall include a provision that a respondent entering into a consent agreement waives any right to judicial review of such consent agreement.

(c) Nothing in this section shall be construed as requiring the Bureau to produce any documents or information to a respondent other items than as set forth in this section.

§ 1091.104 Service of Notice.

(a) A Notice shall be served on a respondent as follows:

(1) *To individuals.* A Notice shall be served on a respondent that is an individual by delivering a copy of the Notice to the individual or to an agent authorized by appointment or by law to receive such a Notice. Delivery, for purposes of this paragraph, means handing a copy of a Notice to the individual; or leaving a copy at the individual's office with a clerk or other person in charge thereof; or leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or sending a copy of a Notice addressed to the individual through the U.S. Postal Service by Registered Mail, Certified Mail or Express Mail delivery, or by third-party commercial carrier, for overnight delivery and obtaining a confirmation of receipt.

(2) *To corporations or entities.* Notice shall be served on a person other than an individual by delivering a copy of a Notice to an officer, managing or general agent, or any other agent authorized by appointment or law to receive such a Notice, by any method specified in paragraph (a)(1) of this section.

(3) *Upon persons registered with the Bureau.* In addition to any other method of service specified in paragraph (a)(1) or (a)(2) of this section, Notice may be served on a person currently registered with the Bureau by sending a copy of a Notice addressed to the most recent business address shown on the person's registration form by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of receipt or attempted delivery.

(4) *Upon persons in a foreign country.* Notice may be served on a person in a foreign country by any method specified in paragraph (a)(1) or (2) of this section, or by any other method reasonably calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country.

(5) *Record of service.* The Bureau shall maintain and file a record of service of a Notice on a respondent, identifying the party given Notice, the method of service, the date of service, the address to which service was made, and the person who made service. If service is made in person, the certificate of service shall state, if available, the name of the individual to whom a Notice was given. If service is made by U.S. Postal Service Registered Mail, Certified Mail or Express Mail, the Bureau shall maintain the confirmation of receipt or attempted delivery.

(6) *Waiver of service.* In lieu of service as set forth in paragraph (a)(1) or (a)(2) of this section, the party may be provided a copy of a Notice by First Class Mail or other reliable means if a waiver of service is obtained from the party.

(b) The Deputy shall promptly submit a copy of a Notice and a copy of the certificate of service to the Assistant. The Assistant Director shall proceed as set forth in this Proposal upon receipt of a Notice.

§ 1091.105 Response.

(a) *Timing.* Within 20 days of service of a Notice, a respondent shall file any response with the Assistant Director according to the instructions set forth in a Notice.

(b) *Content of the response.* (1) The response shall set forth the basis for a respondent's contention that the respondent is not a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.

(2) The response shall include all documents, records or other evidence a respondent wishes to use to support the arguments or assertions set forth in the response. Documents, records or other items submitted by a respondent with a response shall be deemed confidential supervisory information under 12 CFR 1070.2(i)(1)(iv).

(3) Any request to present a supplemental oral response must be included in the response. A respondent's failure to request to present a supplemental oral response shall constitute the respondent's waiver of the opportunity to present a supplemental oral response.

(4) A response shall include an affidavit or declaration, made by the individual respondent if a natural person, or, if a corporate or other entity that is not a natural person, by an officer, managing or general member or partner authorized to represent the respondent, affirming that the response is true and accurate and does not contain any omissions that would cause the response to be materially misleading.

(5) Notwithstanding any other provisions of this paragraph, a respondent may respond by voluntarily consenting to the Bureau's authority to supervise the respondent under 12 U.S.C. 5514 by completing and executing the consent agreement form provided to the respondent with a Notice of Reasonable Cause in accordance with § 1091.103(b).

(c) *Default.* Failure of a respondent to file a response within the time period set forth in paragraph (a) of this section shall constitute a waiver of the respondent's right to respond, and shall, based on the Notice, authorize the Assistant Director, without further notice to the respondent, to issue a proposed decision and order as provided in § 1091.108(c)(1) and the Director to issue a decision and order as provided in § 1091.109(a)(1).

(d) *Waiver.* A respondent shall be deemed to have waived the right, at any future stage of the Assistant Director's or the Director's consideration of the matter and in any petition for judicial review, to rely on any argument, record, document, or other information that the respondent does not raise or include in its response.

(e) *No Discovery.* There shall be no discovery in connection with a response.

§ 1091.106 Supplemental oral response.

(a) A respondent may request in a response under § 1091.105 the opportunity to present to the Assistant Director a supplemental oral response in support of a respondent's assertion that the respondent is not a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.

(b) The conduct of a supplemental oral response shall be subject to the following procedures:

(1) A supplemental oral response shall be conducted by telephone unless the Assistant Director directs that it be conducted in some other manner.

(2) The Assistant Director may impose any limitations on the conduct of a supplemental oral response, including but not limited to establishing a time limit for the presentation of a supplemental oral response, and limiting the subjects to be addressed in a supplemental oral response.

(3) There shall be no discovery permitted or witnesses called in connection with a supplemental oral response.

(4) If a respondent is a corporate or other entity, and not a natural person, the respondent shall be represented in any supplemental oral response by:

(i) An officer, managing or general member or partner authorized to represent the respondent; or

(ii) An attorney in good standing of the bar of the highest court of any state.

(5) If a respondent is a natural person, the respondent shall be represented in any supplemental oral response by:

(i) Herself or himself; or

(ii) An attorney in good standing of the bar of the highest court of any state.

(6) The Assistant Director shall cause a recording of a supplemental oral response to be made. A respondent may purchase a copy or transcript of the recording at the respondent's own expense.

(c) The Deputy may participate in any supplemental oral response conducted under this section.

(d) The Assistant Director shall serve on a respondent, within 14 days after the Assistant Director receives the respondent's timely-filed response requesting a supplemental oral response, a notice setting forth the date, time and general information relating to the conduct of a supplemental oral response. The date of a supplemental oral response shall be scheduled not less than ten days after the date the respondent is served with the notice of supplemental oral response.

(e) The notice of supplemental oral response shall be served on a respondent pursuant to § 1091.107.

(f) The Assistant Director shall send a copy of the notice of supplemental oral response to the Deputy.

(g) A respondent's failure to participate in a supplemental oral response scheduled by the Assistant Director shall constitute the respondent's waiver of the opportunity to present a supplemental oral response.

§ 1091.107 Manner of filing and serving papers.

Unless otherwise specified by the Assistant Director or Director, a respondent shall file the response and any other paper with the Executive Secretary at the mailing or electronic address provided by the Bureau, and the Assistant Director and Director shall serve any paper, other than a Notice as set forth in § 1091.104, on a respondent, by:

(a) Electronic transmission upon any condition specified by the Assistant Director or Director; or

(b) Any of the following methods if a respondent demonstrates electronic filing is not practicable and the Assistant Director or Director permits:

(1) Personal delivery;

(2) Delivery through a reliable commercial courier service or overnight delivery service; or

(3) Mailing the papers by first class, registered, certified, or Express mail.

§ 1091.108 Recommended determination.

(a) If a respondent did not voluntarily consent to the Bureau's supervision authority, and did not request the opportunity to present a supplemental oral response, not later than 45 days after receipt of a timely-filed response, or not later than 45 days after the service of a Notice of Reasonable Cause when a respondent fails to file a timely response, the Assistant Director shall make a recommended determination whether there is reasonable cause for the Bureau to determine that the respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services which should result in an order subjecting the respondent to the Bureau's authority under 12 U.S.C. 5514(a)(1)(C).

(b) If a respondent did request the opportunity to present a supplemental oral response, not later than 90 days after service of a Notice of Reasonable Cause, the Assistant Director shall make a recommended determination whether there is reasonable cause for the Bureau to determine that the respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services which should result in an order subjecting the respondent to the Bureau's authority under 12 U.S.C. 5514(a)(1)(C).

(c) Upon making the recommended determination described in paragraphs (a) and (b) of this section, the Assistant Director shall submit to the Director either:

(1) A proposed decision and order that would subject a respondent to the Bureau's supervisory authority pursuant to 12 U.S.C. 5514(a)(1)(C) if adopted by the Director; or

(2) A proposed notification that a respondent should not be subjected to the Bureau's supervisory authority

under 12 U.S.C. 5514(a)(1)(C) based on the proceedings. Such a notification shall have no precedential effect and shall not prevent the issuance of another Notice of Reasonable Cause pursuant to either § 1091.102, or the procedures set forth in § 1091.114, at any time, or from issuance of a decision and order subjecting a respondent to the Bureau's authority pursuant to either of those sections.

(d) Any proposed decision and order issued by the Assistant Director pursuant to paragraph (c)(1) of this section shall set forth:

(1) A statement that the Assistant Director has preliminarily determined based on reasonable cause that a respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services;

(2) The basis for the Assistant Director's determination; and

(3) A proposed order directing that, pursuant to this determination, as of a specified date a respondent shall be subject to the Bureau's supervisory authority under 12 U.S.C. 5514.

(e)(1) The Assistant Director shall include with the recommended determination submitted to the Director copies of the following:

(i) The Notice of Reasonable Cause;

(ii) The record of service of a Notice of Reasonable Cause;

(iii) A respondent's response and any documents, records or other items filed with the written response;

(iv) Any document, record, or other item considered by the Assistant Director to be material in making a recommended determination; and

(v) A recording of a supplemental oral response, if a supplemental oral response was conducted, and/or a transcript if a transcript was prepared at a respondent's request or if requested by the Director.

(2) The requirement that the Assistant Director provide to the Director the items described in subparagraph (1) of this paragraph shall confer no substantive rights on a respondent and any omission of an item may be cured by the Assistant Director to the extent applicable.

§ 1091.109 Determination by the Director.

(a) Not later than 45 days after receipt of the Assistant Director's recommended determination, the Director shall, after considering the recommended determination and all documents, records, and other items submitted therewith by the Assistant Director, make a determination either adopting without revision, modifying, or rejecting the Assistant Director's recommended determination, and shall issue to respondent, with copies to the Assistant Director and the Deputy:

(1) A decision and order subjecting the respondent to the Bureau's supervisory authority pursuant to 12 U.S.C. 5514(a)(1)(C); or

(2) A notification that the Director has determined that the respondent is not subject to the Bureau's supervisory authority under 12 U.S.C. 5514(a)(1)(C) as a result of the proceedings. Such notification shall have no precedential effect and shall not prevent the issuance of another Notice of Reasonable Cause pursuant to either § 1091.102, or the procedures set forth in § 1091.114, at any time, or the issuance of an order subjecting the respondent to the Bureau's authority pursuant to either of those sections.

(b) Any decision and order issued by the Director pursuant to paragraph (a)(1) of this section shall set forth:

(1) That the Director adopts the Assistant Director's proposed decision and order without revision as the Director's decision and order; or that the Director rejects or modifies the Assistant Director's proposed determination for reasons set forth by the Director;

(2) A statement that the Director has determined that the Bureau has reasonable cause to determine that a respondent is a nonbank covered person that is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services;

(3) The basis for the Director's determination, which may be an adoption of the basis set forth in Assistant Director's proposed decision; and

(4) An order directing that, pursuant to this determination, as of a specified date a respondent shall be subject to the Bureau's supervisory authority under 12 U.S.C. 5514 and informing a respondent that a respondent may petition for termination of the Bureau's supervisory authority after two years from the date of the order, and no more than annually thereafter.

(c) Only decisional employees may advise and assist the Director in the consideration and disposition of a proceeding under this part.

(d) A decision and order issued pursuant to paragraph (a)(1) of this section shall constitute final agency action under 5 U.S.C. 704.

(e) Any item required to be served on a respondent under this section shall be served pursuant to § 1091.107.

§ 1091.110 Petition for termination of order.

(a) Any person subject to an order issued pursuant to § 1091.109(a)(1) may, no sooner than two years after issuance of such an order and no more frequently than annually thereafter, petition the Director for termination of the order.

(b) A petition for termination submitted pursuant to paragraph (a) of this section shall set forth the reasons supporting termination of the order, including any actions taken by a respondent since issuance of the order to address the conduct that led to issuance of the order, and may include any supporting information or evidence that the petitioner believes is relevant to the Director's determination of the matter.

(c) A petition for termination shall be filed by the petitioner with the Executive Secretary at the mailing or electronic address provided by the Bureau.

(d) The Director shall, promptly upon receipt of a petition for termination, send a copy of same to the Deputy.

(1) The Deputy may, within 30 days of her or his receipt of a copy of a petition for termination, file with the Director a response to the petition stating whether the Deputy recommends that the order should be terminated, modified, or that the petition for termination should be denied and the basis for such recommendation.

(2) The Deputy shall serve a copy of the response to a petition for termination on the petitioner at the time of filing it with the Director.

(e) Not later than 90 days after submission of a petition under paragraph (a) of this section, the Director shall issue a written decision either terminating or modifying the order, or denying the petition. If the Director modifies the order or denies the petition, the Director shall explain the basis for his or her decision with respect to the petition and send the written decision to the petitioner and the Deputy.

(1) The Director shall serve the written decision on a petition for termination of order on a respondent pursuant to § 1091.107.

(2) The Director shall send a copy of the written decision on a petition for termination of order to the Assistant Director and Deputy promptly upon issuing the written decision.

(f) Any item required to be served on a petitioner in this section shall be served pursuant to § 1091.107.

(g) The decision of the Director made pursuant to paragraph (e) of this section shall constitute final agency action under 5 U.S.C. 704.

§ 1091.111 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this part, or by order of the Assistant Director or Director, the date of the act or event that commences the designated period of time is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday as set forth in 5 U.S.C. 6103(a). When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time, except when the time period within which an act is to be performed is ten days or less, not including any additional time allowed for in paragraph (c) of this section.

(b) *Filing or service of papers.* Filing and service are deemed to be effective:

(1) In the case of personal service or same day commercial courier delivery, upon actual receipt by the person served;

(2) In the case of overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection; or

(3) In the case of electronic transmission, including email, upon transmission.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits are calculated as follows:

(1) If service is made by first class, registered, or certified mail, add three calendar days to the prescribed period;

(2) If service is made by express mail or overnight delivery service, add one calendar day to the prescribed period; or

(3) If service is made by electronic transmission, add one calendar day to the prescribed period.

§ 1091.112 Change of time limits and effect of deadlines.

(a) Except as otherwise provided by law, the Assistant Director until the issuance of a recommended determination, or the Director at any time thereafter, may extend the time limits prescribed by this part or by any notice or order issued pursuant to this part. Any request for an extension of a time limit by a respondent must be for good cause shown, in writing, and filed with the Assistant Director or Director, as appropriate. The mere filing of a written request for an extension does not alleviate a respondent of the obligation to meet an applicable time limit absent written confirmation that an extension has been granted.

(b) In considering all requests for extensions of time filed pursuant to paragraph (a) of this section, the Assistant Director or Director, as appropriate, shall adhere to a policy of strongly disfavoring such requests, except in circumstances where the requesting party makes a strong showing that the denial of the request would substantially prejudice its case.

(c) Deadlines for action by the Deputy, Assistant Director or the Director established in this part confer no substantive rights on respondents.

§ 1091.113 Voluntary consent to Bureau's authority.

(a) Notwithstanding any other provision, pursuant to a consent agreement agreed to by the Bureau, a person may voluntarily consent to the Bureau's supervisory authority under 12 U.S.C. 5514, and such voluntary consent agreement shall not be subject to any right to judicial review.

(b) The consent agreement of any person, pursuant to paragraph (a) of this section, that specifies the duration of time that such person will be subject to the Bureau's authority under 12 U.S.C. 5514 shall not be eligible for a petition for termination of order pursuant to § 1091.110, and a respondent entering into a consent agreement waives any right to judicial review of such consent agreement.

§ 1091.114 Notice and response included in adjudication proceeding otherwise brought by the Bureau.

(a) Notwithstanding sections § 1091.102 through § 1091.104, the Bureau may, in its sole discretion, provide the notice and opportunity to respond required by 12 U.S.C. 5514(a)(1)(C) in a notice of charges otherwise brought by the Bureau pursuant to 12 CFR 1081.200 and the adjudication proceedings pursuant to that part.

(b) If the Bureau chooses to proceed in the manner described in paragraph (a) of this section, it shall so indicate in the notice of charges, and any order of the Director resulting from the notice of charges shall constitute the order referred to in 12 U.S.C. 5514(a)(1)(C).

(c) If the Bureau proceeds pursuant to paragraph (a) of this section, the provisions of § 1091.100 through § 1091.113 will be inapplicable to such proceeding. If the Bureau proceeds pursuant to this part, then the provisions of 12 CFR part 1081 shall be inapplicable to such proceedings.

§ 1091.115 No limitation on relief sought in civil action or administrative adjudication.

Nothing in this part shall be construed to limit the relief the Bureau may seek in any civil action or administrative adjudication, including but not limited to, seeking an order to have a person deemed subject to the Bureau's supervisory authority under 12 U.S.C. 5514 for the reasons set forth in 12 U.S.C. 5514(a)(1)(C) or otherwise.

Dated: May 20, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–12718 Filed 5–24–12; 8:45 am]

BILLING CODE 4810–AM–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2012–4]

Electronic Filing in the Copyright Office of Notices of Intention To Obtain a Section 115 Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office is proposing to amend its regulations for filing Notices of Intention to obtain a Section 115 compulsory license with the Copyright Office to provide an option for electronically filing the notice. By law, such notices may be filed in the Office only when the public records of the Copyright Office do not identify the copyright owner of the musical work and include an address at which notice can be served. In addition, the Copyright Office is proposing to clarify in its regulations that it does not examine Notices of Intention filed with the Office for legal sufficiency and to include a Privacy Act Advisory Statement.

DATES: Comments are due no later than 5:00 p.m. Eastern Daylight Time July 9, 2012.

ADDRESSES: The Copyright Office strongly prefers that comments be submitted electronically. A rulemaking page containing a comment form is posted on the Copyright Office Web site at *http://copyright.gov/docs/section115/efilings/comments/.* The Web site interface requires submitters to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browse button. To meet accessibility standards, all comments must be

uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Copyright Office at 202–707–8380 for special instructions.

FOR FURTHER INFORMATION CONTACT:

Tanya Sandros, Deputy General Counsel, or Stephen Ruwe, Attorney-Advisor, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

Section 115 of the Copyright Act, 17 U.S.C., provides that ''[w]hen phonorecords of a nondramatic musical work have been distributed to the public in the United States under the authority of the copyright owner, any other person * * * may, by complying with the provisions of this section, obtain a compulsory license to make and distribute phonorecords of the work.'' 17 U.S.C. 115(a)(1).

Included among the conditions that must be met to use the Section 115 compulsory license is the requirement that a person who wishes to obtain a compulsory license ''shall, before or within thirty days after making, and before distributing any phonorecords of the work, serve notice of intention to do so on the copyright owner. If the registration or other public records of the Copyright Office do not identify the copyright owner and include an address at which notice can be served, it shall be sufficient to file the notice of intention in the Copyright Office. The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.'' 17 U.S.C. 115(b)(1).

In 2004, the Copyright Office (''Office'') amended 37 CFR 201.18, the regulations governing Notices of Intention to obtain a Section 115 compulsory license (''Notices''), in order to make the license more functional. 69 FR 34578 (June 22, 2004). Among the 2004 amendments to 37 CFR 201.18 was a provision that allowed that a Notice ''may designate any number of nondramatic musical works, provided that the copyright owner of each designated work or, in the case of any work having more than one copyright owner, any one of the copyright owners is the same and that the information required under paragraphs (d)(1)(i) through (iv) of this section does not vary [*i.e.,* name and contact information of licensee; name and contact information of primary entity making and distributing phonorecords, and information concerning yearly accounting periods]. For purposes of this section, a Notice which lists multiple works shall be considered a composite filing of multiple Notices and fees shall be paid accordingly if filed in the Copyright Office under paragraph (f) of this section (*i.e.,* a separate fee, in the amount set forth in § 201.3(e)(1), shall be paid for each work listed in the Notice).'' 37 CFR 201.18(a)(4). The 2004 amendments also allowed licensees to serve Notices directly on copyright owners or designated agents by means of an electronic transmission when the copyright owner or designated agent has a written public policy that it can accommodate such submissions. 37 CFR 201.18(a)(7).

Earlier in the 2004 rulemaking process the Office also considered whether to allow a licensee to file a Notice in the Office in an electronic format. The Office determined that it was not prepared to accept electronically filed Notices because it did not have in place the systems that would accommodate such filings but that the Office anticipated that such filings would be accepted in the future. The Office did provide that in the case where the licensee intends to license a high volume of nondramatic musical works under section 115 and would endure significant hardships if required to submit the Notices under the standard practices, the licensee may contact the Licensing Division of the Copyright Office to inquire whether special arrangements could be made for submission of the Notice electronically. 69 FR 11566, 11570 (March 11, 2004).

The Office is aware of a growing need for an electronic filing system for filing Section 115 Notices with the Copyright Office because of the large number of works being used under the compulsory license where service of the Notice cannot be made effectively on the copyright owner. To meet this need, the Office is now preparing to accept specific types of electronically filed Notices addressing multiple nondramatic musical works. Hence, the Office is proposing to amend its regulations in § 201.18 by providing for use of an online system for submission of Notices covering multiple nondramatic musical works.

II. Proposed Procedures and Regulatory Amendments

The Office proposes to amend its regulations to allow prospective licensees to make electronic filings of Notices addressing multiple nondramatic musical works, provided that the information required under paragraphs (d)(1)(i) through (iv) of § 201.18 does not vary. In addition, the Office is proposing to clarify its rules for submission of Notices in a paper format that contain multiple titles of nondramatic musical works.

The Office has reviewed the Notices recently filed with the Licensing Division in the traditional paper format and observed that parties have filed such Notices that address multiple works for which the public records of the Office do not identify the copyright owner. Although paragraph (d)(1)(v)(C) of § 201.18 requires that a Notice include the copyright owner of the work only ''if known,'' the Office has not questioned Notices filed in a paper format addressing multiple works where such ''unknown'' ownership is shared across each work addressed in the Notice, *i.e.,* no copyright owner can be identified for any of the works listed. Such paper filings do not present a problem for the Office to process. The Office is now entering key pieces of information, e.g., name of the song, licensee, and date received, from the Notice into a spreadsheet (currently located on the Copyright Office Web page at *http://www.copyright.gov/licensing/115.pdf*), making it possible to identify easily who filed a Notice for a particular work. However, because the current rules do not expressly address the Office's acceptance of Notices with multiple titles in the case where no copyright owner of any of the works can be identified, the Office proposes to amend its regulations to clarify that a Notice filed in a paper format may list multiple works in a single Notice when any of the following circumstances apply: in the case where no copyright owner can be identified from the Copyright Office records for any of the works listed in the Notice; in the case where the copyright owner of each work listed in the Notice is the same and the records of the Copyright Office do not include an address at which notice can be served; or for works having more than one copyright owner, in the case where the works listed in the Notice share a common copyright owner and the records of the Copyright Office do not include an address at which notice

can be served on any of the copyright owners for the subject works. The Office is maintaining these distinctions for the paper filings at this time because it provides more concise information to the public reviewing the Notices and facilitates the recordkeeping process for the Office.

The Office has also determined that Notices addressing multiple nondramatic musical works may be submitted electronically as XML files. Electronically submitted Notices will be maintained in a database that can be searched using any of the included fields of information. While the search capability of the electronically filed Notices will not be directly available to the public for technical reasons during the initial rollout of this service, a request may be made to the Licensing Division for a search of the database during the interim period. As such, the Office proposes to allow Notices to be filed in the Office in electronic format regardless of whether the copyright owner of each designated work is the same, provided that the Notice does not include a nondramatic musical work when the identity and address of at least one of its copyright owners may be found in the public record of the Copyright Office.

As part of the process of accepting electronically filed Notices, the Office is also proposing to adopt regulations governing payment for electronically filed Notices in order to provide a means to authenticate the licensee submitting the Notice (see below) and to facilitate an efficient implementation of the interim system. Specifically, the Office is proposing that during the introduction of the online filing process, parties that wish to use the Office's online system for electronically filing Notices be required to maintain a deposit account pursuant to § 201.6(b) of the Copyright Office regulations for payment of the Notice filing fees set forth in § 201.3(e)(1) of the Office's regulations, an option that can be easily implemented. *See* Circular 5: How to Open and Maintain a Copyright Office Deposit Account at: *http://www.copyright.gov/circs/circ05.pdf.* Use of a deposit account will allow the Office to make any necessary fee payments immediately and it avoids the need to solve the technological and security issues associated with providing a credit card payment in this first iteration of the system.

In addition, the Office proposes not to require an electronic signature during the initial rollout of the filing process, although the Office anticipates adding an electronic signature requirement in later versions of the system. Instead, a remitter will have to create an online account to file the Notice electronically and, as noted above, provide payment via a Copyright Office deposit account. The Office is adopting this approach because the online system will be able to use the deposit account information to reasonably verify and authenticate the identity of the person submitting and validating Notices. In addition, the Office will require that the person submitting the Notices provide contact information and attest to his or her authority to file Notices on behalf of the subject Licensee.

In order to accommodate a filer of a Notice identifying only one or a few titles who does not have a deposit account, the Office intends in the future to upgrade the online filing system to require an electronic signature and to accept additional payment options, e.g., credit card payments. At the moment, however, the focus is on offering a mechanism for filing Notices with large numbers of titles in a manner that can easily be administered by the Office at this time. The Office is also reviewing its fee for filing Notices as part of a larger project to review its fees for registration and services. Any changes to the fees for filing Notices of Intention to Obtain a Compulsory License will be addressed in that process. *See* 77 FR 18742 (March 28, 2012).

III. Additional Amendments

The Office is also taking this opportunity to clarify the extent to which the Office examines the Notices. First, the Office does not examine Notices for legal sufficiency. Rather, the determination of whether a Notice filed in the Office is sufficient as a matter of law under this section shall, if necessary, be made by a court of competent jurisdiction. For that reason, a person or entity filing a Notice of Intention to obtain a Section 115 compulsory license should take care to comply with all the statutory and regulatory requirements pertaining to such Notices. However, the Office will notify a prospective licensee when a Notice was not accompanied by payment of the required fee. Such a Notice is considered an incomplete submission and the Notice shall be deemed filed only as of the date the Office has received both the Notice and the applicable fee.

In addition, the Office is proposing to amend its regulations for Notices to include a Privacy Act Advisory Statement in § 201.18 in addition to providing this information on its Web site. The Privacy Act Advisory Statement fulfills the Office's obligation to notify the public that Notices with personally identifying information filed with the Office become public records.

IV. Pilot Program

While the Office is proposing to amend its regulations to accept electronic filing of the Section 115 Notices of Intent to Obtain a Compulsory License, it needs to fully test the system before making it available to the public for actual, valid submissions of Notices. Thus, members of the public are invited to participate in a Beta test of the proposed electronic system. Parties wishing to participate in Beta testing should contact Tracie Coleman in the Licensing Division of the Copyright Office at 202–707–3600, *tmau@loc.gov.* The Beta testing will require participants to upload ''test'' Notices to the Beta version of the electronic system to ensure proper functionality. ''Test'' Notices uploaded during the Beta testing phase will not require the submission of a filing fee, and they will not have any legal effect or otherwise be considered valid for licensing purposes. The Beta testing will be limited to selected participants until system testing is complete.

V. Conclusion

The Copyright Office hereby seeks comment from the public on the proposals identified herein concerning Notices of Intention to obtain a Section 115 compulsory license.

List of Subjects in 37 CFR Part 201

Copyright.

Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes to amend part 201 of 37 CFR as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 201.4 [Amended]

2. Amend § 201.4(a)(1)(iii) by removing ''Original, signed notices'' at the beginning of the paragraph and adding ''Notices'' in its place.

3. Amend § 201.18 as follows:

a. By revising paragraph (a)(4);

b. By adding a new paragraph (e)(5);

c. By redesignating paragraph (g) as new paragraph (h);

d. By adding a new paragraph (g);

e. By adding a new paragraph (i).

The additions and revisions to § 201.18 read as follows:

§ 201.18 Notice of intention to obtain a compulsory license for making and distributing phonorecords of nondramatic musical works.

(a) * * *

(4) A Notice of Intention shall be served or filed for nondramatic musical works embodied, or intended to be embodied, in phonorecords made under the compulsory license. For purposes of this section and subject to subparagraphs (ii) and (iii), a Notice filed with the Copyright Office which lists multiple works shall be considered a single Notice and fees shall be paid in accordance with the fee schedule set forth in § 201.3(e)(1) if filed in the Copyright Office under paragraph (f)(3) of this section. Payment of the applicable fees for a Notice submitted electronically under this paragraph shall be made through a deposit account established under § 201.6(b).

(i) Except as provided for in paragraph (a)(7), a Notice of Intention served on a copyright owner or agent of a copyright owner may designate any number of nondramatic musical works provided that that the information required under paragraphs (d)(1)(i) through (iv) of this section does not vary and that the copyright owner of each designated work is the same, or in the case of any work having more than one copyright owner, that any one of the copyright owners is the same and is the copyright owner served.

(ii) A Notice of Intention filed in the Copyright Office in paper form may designate any number of nondramatic musical works provided that that the information required under paragraphs (d)(1)(i) through (iv) of this section does not vary, and that the copyright owner of each designated work (or, in the case of works having more than one copyright owner, any one of the copyright owners) is the same and the registration records or other public records of the Copyright Office do not identify the copyright owner(s) of such work(s) and include an address for any such owner(s) at which notice can be served. For purposes of this subparagraph, in the case of works having more than one copyright owner, a single Notice must identify an actual person or entity as the common copyright owner; the common copyright owner may not be identified as ''unknown.'' However, a single Notice may include multiple works for which no copyright owners can be identified for any of the listed works.

(iii) A Notice of Intention filed in the Copyright Office in electronic format may designate multiple nondramatic musical works, regardless of whether the copyright owner of each designated work (or, in the case of any work having more than one copyright owner, any one of the copyright owners) is the same, provided that the information required under paragraphs (d)(1)(i) through (iv) of this section does not vary, and that for any designated work, the records of the Copyright Office do not include an address at which notice can be served.

* * * * *

(e) * * *

(5) If the Notice is filed in the Office electronically, the person or entity intending to obtain the compulsory license or a duly authorized agent of such person or entity shall, rather than signing the Notice, attest that he or she has the appropriate authority of the licensee, including any related entities listed, if applicable, to submit the electronically filed Notice on behalf of the licensee.

* * * * *

(g) *Filing date and legal sufficiency of Notices.* The Copyright Office will notify a prospective licensee when a Notice was not accompanied by payment of the required fee. Notices shall be deemed filed as of the date the Office receives both the Notice and the fee, if applicable. If the prospective licensee fails to remit the required fee, the Notice will be deemed not to have been filed with the Office. However, the Copyright Office does not review Notices for legal sufficiency or interpret the content of any Notice filed with the Copyright Office under this section. Furthermore, the Copyright Office does not screen Notices for errors or discrepancies and it does not generally correspond with a prospective licensee about the sufficiency of a Notice. If any issue (other than an issue related to fees) arises as to whether a Notice filed in the Copyright Office is sufficient as a matter of law under this section, that issue shall be determined not by the Copyright Office, but shall be subject to determination by a court of competent jurisdiction. Prospective licensees are therefore cautioned to review and scrutinize Notices to assure their legal sufficiency before filing them in the Copyright Office.

(h) *Harmless errors.* Harmless errors in a Notice that do not materially affect the adequacy of the information required to serve the purposes of section 115(b)(1) of title 17 of the United States Code, shall not render the Notice invalid.

(i) *Privacy Act Advisory Statement.* The authority for receiving the personally identifying information included within a Notice of Intention to obtain a compulsory license is found in 17 U.S.C. 115 and § 201.18. Personally identifying information is any personal information that can be used to identify or trace an individual, such as name, address or telephone numbers. Furnishing the information set forth in § 201.18 is voluntary. However, if the information is not furnished, it may affect the sufficiency of Notice of Intention to obtain a compulsory license and may not entitle the prospective licensee to the benefits available under 17 U.S.C. 115. The principal uses of the requested information are the establishment and maintenance of a public record of the Notices of Intention to obtain a compulsory license received in the Licensing Division of the Copyright Office. Other routine uses include public inspection and copying, preparation of public indexes, preparation of public catalogs of copyright records including online catalogs, and preparation of search reports upon request.

Dated: May 18, 2012

Maria A. Pallante,

Register of Copyrights.

[FR Doc. 2012–12652 Filed 5–24–12; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0935, FRL–9677–9]

Approval and Promulgation of Air Quality Implementation Plans; State of Florida; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval of two revisions to the Florida state implementation plan (SIP) submitted by the State of Florida through the Florida Department of Environmental Protection (FDEP) on March 19, 2010, and August 31, 2010. Additionally, EPA is proposing a limited approval of a draft SIP revision submitted by FDEP on April 13, 2012, for parallel processing. Collectively, these three SIP revisions address regional haze for the first implementation period. Specifically, these SIP revisions address the requirements of the Clean Air Act (CAA or Act), and EPA's rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas (national parks and wilderness areas) caused by emissions of air pollutants

from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. EPA is proposing a limited approval of these SIP revisions to implement the regional haze requirements for Florida on the basis that these revisions, as a whole, strengthen the Florida SIP. Previously, EPA proposed a limited disapproval of the Florida regional haze SIP because of deficiencies in Florida's regional haze SIP arising from the remand by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to EPA of the Clean Air Interstate Rule (CAIR). Consequently, EPA is not proposing to take action in this rulemaking to address the State's reliance on CAIR to meet certain regional haze requirements.[1]

DATES: Comments must be received on or before June 25, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0935, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4–RDS@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* EPA–R04–OAR–2010–0935, 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–2010–0935.'' 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: Sara Waterson or Michele Notarianni, 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. Sara Waterson can be reached at telephone number (404) 562–9061 and by electronic mail at waterson.sara@epa.gov. Michele Notarianni can be reached at telephone number (404) 562–9031 and by electronic mail at *notarianni.michele@epa.gov.*

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I. National Technology Transfer and Advancement Act (NTTAA)

I. What action is EPA proposing to take?

EPA is proposing a limited approval of two Florida SIP revisions submitted by FDEP on March 19, 2010, and August 31, 2010. Today, EPA is also proposing a limited approval of a draft SIP revision submitted by FDEP on April 13, 2012, for parallel processing. See section II of this proposed rulemaking for more detail on parallel processing. These three SIP revisions address regional haze requirements for Florida under CAA sections 301(a) and 110(k)(3). EPA is proposing a limited approval of these SIP revisions because the revisions, as a whole, strengthen the Florida SIP. Throughout this document, references to Florida's (or FDEP's or the State's) ''regional haze SIP'' refer to Florida's original March 19, 2010, regional haze SIP revision, as later supplemented in a SIP revision submitted August 31, 2010, and in a draft SIP revision dated April 13, 2012.[2] This proposed rulemaking explains the basis for EPA's proposed limited approval action.[3]

In a separate action, EPA has previously proposed a limited disapproval of the Florida regional haze SIP because of deficiencies in the State's regional haze SIP arising from the State's reliance on CAIR to meet certain regional haze requirements. *See* 76 FR 82219 (December 30, 2011). EPA is not proposing to take action in today's rulemaking on issues associated with Florida's reliance on CAIR in its regional haze SIP.[4] EPA will address this in a separate rulemaking.

II. What is parallel processing?

Parallel processing refers to a concurrent state and federal proposed rulemaking action. Generally under this process, the state submits a copy of the proposed SIP revisions to EPA before conducting its public hearing. *See, e.g.,* 40 CFR part 51, Appendix V. EPA reviews this proposed state action and prepares a notice of proposed rulemaking. EPA publishes this notice of proposed rulemaking in the **Federal Register** and solicits public comment during approximately the same time frame during which the state is holding its public hearing. The state and EPA thus provide for public comment periods on both the state and the federal actions in parallel.

As mentioned above, on April 13, 2012, Florida submitted a draft regional haze SIP revision along with a request for parallel processing. Florida provided the SIP revision for public comment on April 13, 2012, but the State has not yet finalized the SIP revision. Through today's proposed rulemaking, EPA is proposing parallel limited approval for this draft SIP revision.

Once the April 13, 2012, revision is state-effective, Florida will need to provide EPA with a formal SIP revision request to incorporate the revision into the Florida SIP. After Florida submits the formal SIP revision request (including a response to any public comments raised during the State's public participation process), EPA will evaluate any changes to the SIP revision from what is proposed in today's action. If any such changes are found by EPA to be significant, the Agency intends to re-propose the action based upon the revised submission. If the changes render the SIP revision not approvable, EPA would re-propose the action as a disapproval of the revision. If there are no significant changes, EPA will prepare a final rulemaking notice for the SIP revision.

The FDEP-requested parallel processing allows EPA to begin to take action on the State's draft SIP revision in advance of the submission of the formal SIP revision. As stated above, the final rulemaking action by EPA will occur only after the SIP revision has been: (1) Adopted by Florida, (2) evaluated for changes, and (3) submitted formally to EPA for incorporation into the SIP.

III. What is the background for EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles ($PM_{2.5}$) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., SO_2, NO_X, and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range[5] in many Class I areas[6] (i.e., national parks and

[2] The April 13, 2012, draft SIP revision evaluates BART and reasonable progress provisions for several of Florida's EGUs.

[3] Under CAA sections 301(a) and 110(k)(6) and EPA's long-standing guidance, a limited approval results in approval of the entire SIP submittal, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision. *Processing of State Implementation Plan (SIP) Revisions,* EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992, (1992 Calcagni Memorandum) located at *http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf.*

[4] Florida's SIP revisions rely on CAIR to address BART requirements related to both nitrogen oxides (NOx) and sulfur dioxide (SO_2). However, EPA's replacement rule for CAIR (i.e., the ''Transport Rule,'' also known as the Cross-State Air Pollution Rule) includes Florida only in the trading program to cover NOx. States such as Florida that are subject to the requirements of the Transport Rule trading program only for NOx must still address BART for SO_2 and other visibility impairing pollutants. On December 30, 2011, EPA proposed a limited disapproval of the Florida regional haze SIP because of deficiencies in the State's regional haze SIP arising from the State's reliance on CAIR to meet certain regional haze requirements. In that action, EPA also proposed to issue a federal implementation plan (FIP) to address the deficiencies in Florida's SIP associated with the BART requirements for NOx for electrical generating units (EGUs) based on EPA's proposed revisions to the RHR allowing states to substitute participation in the trading programs under the Transport Rule for source-specific BART. However, EPA did not propose a plan to address the deficiencies associated with the BART requirements for SO_2 since the Transport Rule does not cover SO_2 emissions from Florida EGUs. Because Florida also relied on CAIR in assessing the need for emissions reductions for SO_2 from EGUs to satisfy BART requirements, the State is currently re-evaluating EGUs with respect to SO_2 BART requirements.

[5] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[6] Areas designated as mandatory Class I areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. *See* 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. *See* 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes

memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. *See* 64 FR 35715 (July 1, 1999).

B. Requirements of the CAA and EPA's Regional Haze Rule (RHR)

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I areas which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment.'' *See* 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713), the RHR. The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in section IV of this preamble. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands.[7] 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments, and various federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the states and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of particulate matter (PM) and other pollutants leading to regional haze.

The Visibility Improvement State and Tribal Association of the Southeast (VISTAS) RPO is a collaborative effort of state governments, tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the southeastern United States. Member state and tribal governments include: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the Eastern Band of the Cherokee Indians.

IV. What are the requirements for Regional Haze SIPs?

A. The CAA and the RHR

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and EPA's implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview as the principal metric or unit for expressing visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithm function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction itself because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[8]

The deciview is used in expressing RPGs (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by anthropogenic air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, i.e., anthropogenic sources of air pollution would no longer impair visibility in Class I areas.

in boundaries, such as park expansions. *See* 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I area is the responsibility of a ''Federal Land Manager.'' *See* 42 U.S.C. 7602(i). When the term ''Class I area'' is used in this action, it means a ''mandatory Class I Federal area.''

[7] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

[8] The preamble to the RHR provides additional details about the deciview. *See* 64 FR 35714, 35725 (July 1, 1999).

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP submittal and periodically review progress every five years, i.e., midway through each 10-year implementation period. To do this, the RHR requires states to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to states regarding how to calculate baseline, natural, and current visibility conditions in documents titled, EPA's *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003 (EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*) (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance'') and *Guidance for Tracking Progress Under the Regional Haze Rule,* September 2003 (EPA–454/B–03–004 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*) (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

For the first regional haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000—2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals (RPGs)

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the states that establish two RPGs (i.e., two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each (approximately) 10-year implementation period. The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural (i.e., ''background'') visibility conditions. In setting RPGs, states must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in EPA's RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in EPA's *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program* (''EPA's Reasonable Progress Guidance''), July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1). In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' or the ''glidepath'') and the emissions reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress which states are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each state with one or more Class I areas (''Class I state'') must also consult with potentially ''contributing states,'' i.e., other nearby states with emissions sources that may be affecting visibility impairment at the Class I state's areas. *See* 40 CFR 51.308(d)(1)(iv).

D. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources [9] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the state. Under the RHR, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emissions limits for each applicable source. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts (MW), a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X, and PM. EPA has stated that states should use their best judgment in determining whether

[9] The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7).

VOC or NH_3 compounds impair visibility in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emissions sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the state should not be higher than 0.5 deciview.

In their SIPs, states must identify potential BART sources, described as ''BART-eligible sources'' in the RHR, and document their BART control determination analyses. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor.

A regional haze SIP must include source-specific BART emissions limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP. *See* CAA section 169(g)(4); 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source.

As noted above, the RHR allows states to implement an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART. Under regulations issued in 2005 revising the regional haze program, EPA made just such a demonstration for CAIR. *See* 70 FR 39104 (July 6, 2005). EPA's regulations provide that states participating in the CAIR cap-and trade program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or which remain subject to the CAIR FIP in 40 CFR part 97 need not require affected BART-eligible EGUs to install, operate, and maintain BART for emissions of SO_2 and NO_X. *See* 40 CFR 51.308(e)(4). Because CAIR did not address direct emissions of PM, states were still required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant. Challenges to CAIR, however, resulted in the remand of the rule to EPA. *See North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008).

EPA issued a new rule in 2011 to address the interstate transport of NO_X and SO_2 in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (''the Transport Rule,'' also known as the Cross-State Air Pollution Rule). On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal than would BART in the states in which the Transport Rule applies. *See* 76 FR 82219. Based on this proposed finding, EPA also proposed to revise the RHR to allow states to substitute participation in the trading programs under the Transport Rule for source-specific BART. EPA has not yet taken final action on that rule. Also on December 30, 2011, the D.C. Circuit issued an order addressing the status of the Transport Rule and CAIR in response to motions filed by numerous parties seeking a stay of the Transport Rule pending judicial review. In that order, the D.C. Circuit stayed the Transport Rule pending the court's resolutions of the petitions for review of that rule in *EME Homer Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The court also indicated that EPA is expected to continue to administer CAIR in the interim until the court rules on the petitions for review of the Transport Rule.

E. Long-Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIP a 10 to 15 year strategy for making reasonable progress, section 51.308(d)(3) of the RHR requires that states include a LTS in their regional haze SIPs. The LTS is the compilation of all control measures a state will use during the implementation period of the specific SIP submittal to meet applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the state. *See* 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with the contributing states in order to develop coordinated emissions management strategies. *See* 40 CFR 51.308(d)(3)(i). In such cases, the contributing state must demonstrate that it has included, in its SIP, all measures necessary to obtain its share of the emissions reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between states may be required to sufficiently address interstate visibility issues. This is especially true where two states belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) Emissions reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. *See* 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI) LTS

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the state must revise its plan to provide for review and

revision of a coordinated LTS for addressing RAVI and regional haze, and the state must submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTS's, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state's LTS must report on both regional haze and RAVI impairment and must be submitted to EPA as a SIP revision.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I areas within the state. The strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through ''participation'' in the IMPROVE network, i.e., review and use of monitoring data from the network. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas in other states;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A state must also make a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d) with the exception of BART. The requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Consultation With States and Federal Land Managers (FLMs)

The RHR requires that states consult with FLMs before adopting and submitting their SIPs. *See* 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

V. What is EPA's analysis of Florida's regional haze SIP revisions?

On March 19, 2010, FDEP submitted a revision to the Florida SIP to address regional haze requirements as required by EPA's RHR. On August 31, 2010, FDEP submitted an additional SIP revision to address regional haze requirements. Specifically, Florida's August 31, 2010, SIP revision adopted amendments to rescind its Reasonable Progress Control Technology Rule and to modify its technical justification to rely on CAIR and the Industrial Boiler Maximum Achievable Control Technology (MACT) rule. Further, on April 13, 2012, FDEP submitted a draft SIP revision to evaluate BART and reasonable progress provisions for several of Florida's EGUs.

A. Affected Class I Areas

Florida has three Class I areas where visibility is an important value within its borders: Everglades National Park, Chassahowitzka Wilderness Area, and Saint (St.) Marks Wilderness Area. Florida is responsible for developing a regional haze SIP that addresses these Class I areas and for consulting with other states whose sources impact the areas.

The Florida regional haze SIP establishes RPGs for visibility improvement at Everglades National Park, Chassahowitzka Wilderness Area, and St. Marks Wilderness Area, and a LTS to achieve those RPGs within the first regional haze implementation period. In developing the LTS for the areas, Florida considered both emissions sources inside and outside of Florida that may cause or contribute to visibility impairment in Florida's Class I areas. The State also identified and considered emissions sources within Florida that may cause or contribute to visibility impairment in Class I areas in neighboring states as required by 40 CFR 51.308(d)(3). The VISTAS RPO worked with the State in developing the technical analyses used to make these determinations, including state-by-state contributions to visibility impairment in specific Class I areas, which included the Class I areas in Florida and those areas affected by emissions from Florida.

B. Determination of Baseline, Natural, and Current Visibility Conditions

As required by the RHR and in accordance with EPA's 2003 Natural Visibility Guidance, Florida calculated baseline/current and natural visibility conditions for its Class I areas, as summarized below.

1. Estimating Natural Visibility Conditions

Natural background visibility, as defined in EPA's 2003 Natural Visibility Guidance, is estimated by calculating the expected light extinction using default estimates of natural concentrations of fine particle components adjusted by site-specific estimates of humidity. This calculation uses the IMPROVE equation, which is a formula for estimating light extinction from the estimated natural concentrations of fine particle components (or from components

measured by the IMPROVE monitors). As documented in EPA's 2003 Natural Visibility Guidance, EPA allows states to use ''refined'' or alternative approaches to 2003 EPA guidance to estimate the values that characterize the natural visibility conditions of the Class I areas. One alternative approach is to develop and justify the use of alternative estimates of natural concentrations of fine particle components. Another alternative is to use the ''new IMPROVE equation'' that was adopted for use by the IMPROVE Steering Committee in December 2005.[10] The purpose of this refinement to the ''old IMPROVE equation'' is to provide more accurate estimates of the various factors that affect the calculation of light extinction. Florida opted to use this refined approach, referred to as the ''new IMPROVE equation,'' for its Class I areas.

Natural visibility conditions using the new IMPROVE equation were calculated separately for each Class I area by VISTAS. Natural background visibility, as defined in EPA's 2003 Natural Visibility Guidance, is estimated by calculating the expected light extinction using default estimates of natural concentrations of fine particle components adjusted by site-specific estimates of humidity.

The new IMPROVE equation takes into account the most recent review of the science [11] and it accounts for the effect of particle size distribution on light extinction efficiency of sulfate, nitrate, and organic carbon. It also adjusts the mass multiplier for organic carbon (particulate organic matter) by increasing it from 1.4 to 1.8. New terms are added to the equation to account for light extinction by sea salt and light absorption by gaseous nitrogen dioxide. Site-specific values are used for Rayleigh scattering (scattering of light due to atmospheric gases) to account for the site-specific effects of elevation and temperature. Separate relative humidity enhancement factors are used for small and large size distributions of ammonium sulfate and ammonium nitrate and for sea salt. The terms for the remaining contributors, elemental carbon (light-absorbing carbon), fine soil, and coarse mass terms, do not change between the original and new IMPROVE equations.

2. Estimating Baseline Conditions

FDEP estimated baseline visibility conditions at Florida's Class I areas using available monitoring data from IMPROVE monitoring sites in Everglades National Park, Chassahowitzka Wilderness Area, and St. Marks Wilderness Area. IMPROVE data records for the Everglades had four years of complete data and no substitution of data was made. However, Chassahowitzka and St. Marks both required data substitution to make their records complete. This substitution was made in accordance with EPA guidance for tracking progress which can be found at *http://www.epa.gov/ttn/oarpg/t1/memoranda/rh_tpurhr_gd.pdf*. As explained in section IV.B, baseline visibility conditions are the same as current conditions for the first regional haze SIP. A five-year average of the 2000 to 2004 monitoring data was calculated for each of the 20 percent worst and 20 percent best visibility days at the Florida Class I areas. Appendix B of the Florida regional haze SIP presents the data and calculations for the 20 percent best and worst days for the baseline period of 2000–2004 for the three Class I areas in Florida. This data is also provided at the following Web site: *http://www.metro4-sesarm.org/vistas/SesarmBext_20BW.htm*.

3. Summary of Baseline and Natural Conditions

Baseline visibility on the 20 percent worst days is better at Everglades (22.3 deciviews) than Chassahowitzka (25.7 deciviews) or St. Marks (26.3 deciviews). On the other hand, natural background visibility is slightly worse for Everglades (12.1 deciviews) than either Chassahowitzka (11.0 deciviews) or St. Marks (11.7 deciviews). The natural and baseline conditions for Florida's Class I areas for both the 20 percent worst and best days are presented in Table 1 below.

TABLE 1—NATURAL BACKGROUND AND BASELINE CONDITIONS FOR THE FLORIDA CLASS I AREAS

Class I areas	Average for 20 percent worst days (dv[12])	Average for 20 percent best days (dv)
Natural Background Conditions		
Everglades National Park	12.1	5.2
Chassahowitzka Wilderness Area	11.0	5.9
St. Marks Wilderness Area	11.7	5.4
Baseline Visibility Conditions (2000–2004)		
Everglades National Park	22.3	11.7
Chassahowitzka Wilderness Area	25.7	15.5
St. Marks Wilderness Area	26.3	14.4

[12] The term, ''dv,'' is the abbreviation for ''deciview.''

[10] The IMPROVE program is a cooperative measurement effort governed by a steering committee composed of representatives from federal agencies (including representatives from EPA and the FLMs) and RPOs. The IMPROVE monitoring program was established in 1985 to aid the creation of Federal and State implementation plans for the protection of visibility in Class I areas. One of the objectives of IMPROVE is to identify chemical species and emission sources responsible for existing anthropogenic visibility impairment. The IMPROVE program has also been a key participant in visibility-related research, including the advancement of monitoring instrumentation, analysis techniques, visibility modeling, policy formulation and source attribution field studies.

[11] The science behind the revised IMPROVE equation is summarized in Appendix B.2 of the March 19, 2010, Florida regional haze submittal and in numerous published papers. See for example: Hand, J.L., and Malm, W.C., 2006, *Review of the IMPROVE Equation for Estimating Ambient Light Extinction Coefficients—Final Report.* March 2006. Prepared for Interagency Monitoring of Protected Visual Environments (IMPROVE), Colorado State University, Cooperative Institute for Research in the Atmosphere, Fort Collins, Colorado. *http://vista.cira.colostate.edu/improve/publications/GrayLit/016_IMPROVEeqReview/IMPROVEeqReview.htm*; and Pitchford, Marc., 2006, *Natural Haze Levels II: Application of the New IMPROVE Algorithm to Natural Species Concentrations Estimates.* Final Report of the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup. September 2006 *http://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt.*

4. Uniform Rate of Progress

In setting the RPGs, Florida considered the uniform rate of progress needed to reach natural visibility conditions by 2064 (''glidepath'') and the emission reduction measures needed to achieve that rate of progress over the period of the SIP to meet the requirements of 40 CFR 51.308(d)(1)(i)(B). As explained in EPA's Reasonable Progress Guidance document, the uniform rate of progress is not a presumptive target, and RPGs may be greater, lesser, or equivalent to the glidepath.

Florida's SIP presents two sets of graphs for its Class I areas, one for the 20 percent best days and one for the 20 percent worst days. Florida constructed the graph for the worst days (*i.e.,* the glidepath) in accordance with EPA's 2003 Tracking Progress Guidance by plotting a straight graphical line from the baseline level of visibility impairment for 2000–2004 to the level of visibility conditions representing no anthropogenic impairment in 2064 for its areas. For the best days, the graph includes a horizontal straight line spanning from baseline conditions in 2004 out to 2018 to depict no degradation in visibility over the implementation period of the SIP. Florida's SIP shows that the State's RPGs for its areas provide for improvement in visibility for the 20 percent worst days over the period of the implementation plan and ensure no degradation in visibility for the 20 percent best days over the same period, in accordance with 40 CFR 51.308(d)(1).

For the Everglades National Park, the overall visibility improvement necessary to reach natural conditions is the difference between baseline visibility of 22.30 deciviews for the 20 percent worst days and natural conditions of 12.09 deciviews, *i.e.,* 10.21 deciviews. Over the 60-year period from 2004 to 2064, this would require an average improvement of 0.170 deciview per year to reach natural conditions. Hence, for the 14-year period from 2004 to 2018, in order to achieve visibility improvements at least equivalent to the uniform rate of progress for the 20 percent worst days at Everglades National Park, Florida would need to project at least 2.380 deciviews over the first implementation period (*i.e.,* 0.170 deciview × 14 years = 2.380 deciviews) of visibility improvement from the 22.3 deciviews baseline in 2004, resulting in visibility levels at or below 19.92 deciviews in 2018. Similarly, Chassahowitzka Wilderness Area would need a 0.245 deciview annual improvement over the 14-year first implementation period or 3.435 deciview improvement from a baseline of 25.75 deciviews to 22.31 deciviews in 2018 and St. Marks Wilderness Area would need a 0.244 deciview annual improvement over the 14-year first implementation period or 3.416 deciview improvement from a baseline of 26.31 deciviews to 22.89 deciviews in 2018.

C. Long-Term Strategy/Strategies

As described in section IV.E of this action, the LTS is a compilation of state-specific control measures relied on by the state for achieving its RPGs. Florida's LTS for the first implementation period addresses the emissions reductions from federal, state, and local controls that take effect in the State from the end of the baseline period starting in 2004 until 2018. The Florida LTS was developed by the State, in coordination with the VISTAS RPO, through an evaluation of the following components: (1) Identification of the emissions units within Florida and in surrounding states that likely have the largest impacts currently on visibility at the State's Class I areas; (2) estimation of emissions reductions for 2018 based on all controls required or expected under federal and state regulations for the 2004–2018 period (including BART); (3) comparison of projected visibility improvement with the uniform rate of progress for the State's Class I areas; and (4) application of the four statutory factors in the reasonable progress analysis for the identified emissions units to determine if additional reasonable controls were required.

In a separate action proposing limited disapproval of the regional haze SIPs of a number of states, EPA noted that these states relied on the trading programs of CAIR to satisfy the BART requirement and the requirement for a LTS sufficient to achieve the state-adopted reasonable progress goals. *See* 76 FR 82219 (December 30, 2011). In that action, EPA proposed a limited disapproval of Florida's regional haze SIP submittal insofar as the SIP relied on CAIR. For that reason, EPA is not taking action on that aspect of Florida's regional haze SIP in this action.

1. Emissions Inventory for 2018 With Federal and State Control Requirements

The emissions inventory used in the regional haze technical analyses was developed by VISTAS with assistance from Florida. The 2018 emissions inventory was developed by projecting 2002 emissions and applying reductions expected from Federal and state regulations affecting the emissions of VOC and the visibility-impairing pollutants NO_X, PM, and SO_2. The BART Guidelines direct states to exercise judgment in deciding whether VOC and NH_3 impair visibility in their Class I area(s). As discussed further in section V.C.3, VISTAS performed modeling sensitivity analyses which demonstrated that anthropogenic emissions of VOC and NH_3 do not significantly impair visibility in the VISTAS region. Thus, while emissions inventories were also developed for NH_3 and VOC, and applicable federal VOC reductions were incorporated into Florida's regional haze analyses, Florida did not further evaluate NH_3 and VOC emissions sources for potential controls under BART or reasonable progress.

VISTAS developed emissions for five inventory source classifications: Stationary point and area sources, off-road and on-road mobile sources, and biogenic sources. Stationary point sources are those sources that emit greater than a specified tonnage per year, depending on the pollutant, with data provided at the facility level. Stationary area sources are those sources whose individual emissions are relatively small, but due to the large number of these sources, the collective emissions from the source category could be significant. VISTAS estimated emissions on a countywide level for the inventory categories of: (a) Stationary area sources; (b) off-road (or non-road) mobile sources (*i.e.,* equipment that can move but does not use the roadways); and (c) biogenic sources (which are natural sources of emissions, such as trees). On-road mobile source emissions are estimated by vehicle type and road type, and are summed to the countywide level.

There are many federal and state control programs being implemented that VISTAS and Florida anticipate will reduce emissions between the end of the baseline period and 2018. Emissions reductions from these control programs are projected to achieve substantial visibility improvement by 2018 in the Florida Class I areas. The control programs relied upon by Florida include CAIR; EPA's NO_X SIP Call; North Carolina's Clean Smokestacks Act; consent decrees for Tampa Electric, Virginia Electric and Power Company, Gulf Power-Plant Crist; NO_X and/or VOC reductions from the control rules in 1-hour ozone SIPs for Atlanta, Birmingham, and Northern Kentucky; North Carolina's NO_X Reasonably Available Control Technology rule for Philip Morris USA and Norandal USA in the Charlotte/Gastonia/Rock Hill 1997 8-hour ozone nonattainment area; federal 2007 heavy duty diesel engine

standards for on-road trucks and buses; federal Tier 2 tailpipe controls for on-road vehicles; federal large spark ignition and recreational vehicle controls; and EPA's non-road diesel rules. Controls from various federal MACT rules were also utilized in the development of the 2018 emission inventory projections. These MACT rules include the industrial boiler/process heater MACT (referred to as ''Industrial Boiler MACT''), the combustion turbine and reciprocating internal combustion engines MACTs, and the VOC 2-, 4-, 7-, and 10-year MACT standards.

Effective July 30, 2007, the D.C. Circuit mandated the vacatur and remand of the Industrial Boiler MACT Rule.[13] This MACT was vacated since it was directly affected by the vacatur and remand of the Commercial and Industrial Solid Waste Incinerator Definition Rule. EPA proposed a new Industrial Boiler MACT rule to address the vacatur on June 4, 2010, (75 FR 32006) and issued a final rule on March 21, 2011 (76 FR 15608). The VISTAS modeling included emissions reductions from the vacated Industrial Boiler MACT rule, and Florida did not redo its modeling analysis when the rule was re-issued. Even though Florida's modeling is based on the vacated Industrial Boiler MACT limits, the State's modeling conclusions are unlikely to be affected because the expected reductions due to the vacated rule were relatively small compared to the State's total SO_2, $PM_{2.5}$, and coarse particulate matter (PM_{10}) emissions in 2018 (i.e., 0.1 to 2.5 percent, depending on the pollutant, of the projected 2018 SO_2, $PM_{2.5}$, and PM_{10} inventory). Thus, EPA does not expect that differences between the vacated and final Industrial Boiler MACT emissions limits would affect the adequacy of the existing Florida regional haze SIP. If there is a need to address discrepancies between projected emissions reductions from the vacated Industrial Boiler MACT and the Industrial Boiler MACT issued March 21, 2011 (76 FR 15608), EPA expects Florida to do so in the State's five-year progress report.

Below in Tables 2 and 3 are summaries of the 2002 baseline and 2018 estimated emission inventories for Florida.

TABLE 2—2002 EMISSIONS INVENTORY SUMMARY FOR FLORIDA

[tons per year (tpy)]

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	40,995	302,833	46,147	57,244	1,657	518,721
Area	404,302	28,872	58,878	443,346	37,446	40,491
On-Road Mobile	520,757	460,503	7,779	11,148	17,922	20,687
Off-Road Mobile	272,072	180,627	17,415	18,281	134	20,614
Fires	42,724	15,942	75,717	85,263	3,102	4,057
Biogenic	1,522,031	36,320	0	0	0	0
Total	2,802,881	1,025,097	205,936	615,282	60,261	604,570

TABLE 3—2018 EMISSIONS INVENTORY SUMMARY FOR FLORIDA (TPY)

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	45,233	126,542	46,316	56,478	4,805	213,387
Area	489,975	30,708	72,454	578,516	40,432	38,317
On-Road Mobile	219,554	148,486	3,994	8,178	25,885	2,506
Off-Road Mobile	183,452	127,885	11,868	12,497	171	7,536
Fires	51,527	19,791	88,756	98,470	3,157	4,129
Biogenic	1,522,031	36,320	0	0	0	0
Total	2,511,772	489,732	223,388	754,139	74,450	265,875

2. Modeling To Support the LTS and Determine Visibility Improvement for Uniform Rate of Progress

VISTAS performed modeling for the regional haze LTS for the 10 southeastern states, including Florida. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. VISTAS used the following modeling system:

- Meteorological Model: The Pennsylvania State University/National Center for Atmospheric Research Mesoscale Meteorological Model is a nonhydrostatic, prognostic, meteorological model routinely used for urban- and regional- scale photochemical, $PM_{2.5}$, and regional haze regulatory modeling studies.
- Emissions Model: The Sparse Matrix Operator Kernel Emissions modeling system is an emissions modeling system that generates hourly gridded speciated emission inputs of mobile, non-road mobile, area, point, fire, and biogenic emission sources for photochemical grid models.
- Air Quality Model: The EPA's Models-3/Community Multiscale Air Quality (CMAQ) modeling system is a photochemical grid model capable of addressing ozone, PM, visibility, and acid deposition at a regional scale. The photochemical model selected for this study was CMAQ version 4.5. It was modified through VISTAS with a module for Secondary Organics Aerosols in an open and transparent manner that was also subjected to outside peer review.

CMAQ modeling of regional haze in the VISTAS region for 2002 and 2018 was carried out on a grid of 12x12 kilometer cells that covers the 10 VISTAS states (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia) and states adjacent to them. This grid is nested within a larger national CMAQ modeling grid of 36x36 kilometer grid cells that covers the continental United

[13] *See NRDC* v. *EPA,* 489 F.3d 1250 (D.C. Cir. 2007).

States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. Selection of a representative period of meteorology is crucial for evaluating baseline air quality conditions and projecting future changes in air quality due to changes in emissions of visibility-impairing pollutants. VISTAS conducted an in-depth analysis which resulted in the selection of the entire year of 2002 (January 1–December 31) as the best period of meteorology available for conducting the CMAQ modeling. The VISTAS states modeling was developed consistent with EPA's *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze*, located at *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf*, (EPA–454/B–07–002), April 2007, and the EPA document, *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,* located at *http://www.epa.gov/ttnchie1/eidocs/eiguid/index.html*, EPA–454/R–05–001, August 2005, updated November 2005 (''EPA's Modeling Guidance'').

VISTAS examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the regional haze assessment of the LTS and for use in the modeling assessment. The modeling assessment predicts future levels of emissions and visibility impairment used to support the LTS and to compare predicted, modeled visibility levels with those on the uniform rate of progress. In keeping with the objective of the CMAQ modeling platform, the air quality model performance was evaluated using graphical and statistical assessments based on measured ozone, fine particles, and acid deposition from various monitoring networks and databases for the 2002 base year. VISTAS used a diverse set of statistical parameters from the EPA's Modeling Guidance to stress and examine the model and modeling inputs. Once VISTAS determined the model performance to be acceptable, VISTAS used the model to assess the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the uniform rate of progress.

In accordance with 40 CFR 51.308(d)(3), Florida provided the appropriate supporting documentation for all required analyses used to determine the State's LTS. The technical analyses and modeling used to develop the glidepath and to support the LTS are consistent with EPA's RHR and interim and final EPA Modeling Guidance. EPA accepts the VISTAS technical modeling to support the LTS and determine visibility improvement for the uniform rate of progress because the modeling system was chosen and simulated according to EPA Modeling Guidance. EPA proposes to agree with the VISTAS model performance procedures and results, and that CMAQ is an appropriate tool for the regional haze assessments for the Florida LTS and regional haze SIP.

3. Relative Contributions to Visibility Impairment: Pollutants, Source Categories, and Geographic Areas

An important step toward identifying reasonable progress measures is to identify the key pollutants contributing to visibility impairment at each Class I area. To understand the relative benefit of further reducing emissions from different pollutants, source sectors, and geographic areas, VISTAS developed emission sensitivity model runs using CMAQ to evaluate visibility and air quality impacts from various groups of emissions and pollutant scenarios in the Class I areas on the 20 percent worst visibility days.

Regarding which pollutants are most significantly impacting visibility in the VISTAS region, VISTAS' contribution assessment, based on IMPROVE monitoring data, demonstrated that ammonium sulfate is the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the VISTAS and neighboring states. On the 20 percent worst visibility days in 2000–2004, ammonium sulfate accounted for 75 to 87 percent of the calculated light extinction at the inland Class I areas in VISTAS, and 69 to 74 percent of the calculated light extinction for all but one of the coastal Class I areas in the VISTAS states. In contrast, ammonium nitrate contributed five percent or less of the calculated light extinction at the VISTAS Class I areas on the 20 percent worst visibility days. Particulate organic matter (organic carbon) accounted for 20 percent or less of the light extinction on the 20 percent worst visibility days at the VISTAS Class I areas. In particular, for Chassahowitzka and St. Marks Wilderness Areas, sulfate particles resulting from SO_2 emissions contribute roughly 71 percent to the calculated light extinction on the haziest days. The Everglades National Park is somewhat different than any of the other Class I areas in the VISTAS area with a greater relative influence from organic carbon. The ammonium sulfate contribution, while still significant, was only 40 percent of the calculated light extinction on the haziest days while organic carbon accounted for 45 percent.

VISTAS grouped its 18 Class I areas into two types, either ''coastal'' or ''inland'' (sometimes referred to as ''mountain'') sites, based on common/similar characteristics (e.g., terrain, geography, meteorology), to better represent variations in model sensitivity and performance within the VISTAS region, and to describe the common factors influencing visibility conditions in the two types of Class I areas. Florida's Class I areas are ''coastal'' areas.

Results from VISTAS' emission sensitivity analyses indicate that sulfate particles resulting from SO_2 emissions are the dominant contributor to visibility impairment on the 20 percent worst days at all Class I areas in VISTAS, including the Florida areas. Florida concluded that reducing SO_2 emissions from EGU and non-EGU point sources in the VISTAS states would have the greatest visibility benefits for the Florida Class I areas. Because ammonium nitrate is a small contributor to $PM_{2.5}$ mass and visibility impairment on the 20 percent worst days at the coastal Class I areas in VISTAS, the benefits of reducing NO_X and NH_3 emissions at these sites are small.

The VISTAS sensitivity analyses show that VOC emissions from biogenic sources such as vegetation also contribute to visibility impairment. However, control of these biogenic sources of VOC would be extremely difficult, if not impossible. The anthropogenic sources of VOC emissions are minor compared to the biogenic sources. Therefore, controlling anthropogenic sources of VOC emissions would have little if any visibility benefits at the Class I areas in the VISTAS region, including Florida. The sensitivity analyses also show that reducing organic carbon from point sources, ground level sources, or fires is projected to have small to no visibility benefit at the VISTAS Class I areas.

Florida considered the factors listed in under 40 CFR 51.308(d)(3)(v) and in section IV.E of this action to develop its LTS as described below. Florida, in conjunction with VISTAS, demonstrated in its SIP that elemental carbon (a product of highway and non-road diesel engines, agricultural burning, prescribed fires, and wildfires), fine soils (a product of construction activities and activities that generate fugitive dust), and ammonia are relatively minor contributors to visibility impairment at the Class I areas

in Florida. Florida considered agricultural and forestry smoke management techniques to address visibility impacts from elemental carbon. With regard to smoke management, Florida has a certified Smoke Management Plan (SMP) meeting the intent of EPA's 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires* available at: *http://www.epa.gov/ttncaaa1/t1/memoranda/firefnl.pdf*. EPA Region 4 acknowledged receipt of this SMP and its certification in February 2002. The SMP follows the requirements for such a plan contained in EPA's *Interim Air Quality Policy on Wildland and Prescribed Fires.* The Florida Division of Forestry operates a burn authorization program that considers the potential for smoke from the burn impacting smoke sensitive receptors (*e.g.,* airports, roads, hospitals, urban areas). The SMP provides alternatives for burning and is considerate of minimizing air pollutants. With regard to fine soils, the State considered those activities that generate fugitive dust, including construction activities. With regard to the impact of construction activities, rule 62–296.320, F.A.C., General Pollution Emission Limiting Standards, addresses construction related activities. In particular, section (4)(c) of the rule, Unconfined Emissions of Particulate Matter, provides that reasonable precautions be taken to prevent or eliminate emissions. For example, the rule addresses paving and maintenance of roads, parking areas, and yards and the application of water or chemicals to control emissions during construction. With regard to ammonia, the State has chosen not to develop controls for ammonia emissions from Florida sources in this first implementation period because of its relatively minor contribution to visibility impairment. EPA proposes to concur with the State's technical demonstration showing that elemental carbon, fine soils, and ammonia are not significant contributors to visibility in the State's Class I areas, and therefore, proposes to find that Florida has adequately satisfied 40 CFR 51.308(d)(3)(v).

The emissions sensitivity analyses conducted by VISTAS predict that reductions in SO_2 emissions from EGU and non-EGU industrial point sources will result in the greatest improvements in visibility in the Class I areas in the VISTAS region, more than any other controllable visibility-impairing pollutant. The VISTAS sensitivity analysis projects visibility benefits in all three of Florida's Class I areas from SO_2 reductions from EGUs in nearby VISTAS states. Additional, smaller benefits are projected from SO_2 emissions reductions from non-utility industrial point sources. SO_2 emissions contributions to visibility impairment from other RPO regions are substantial in comparison to the VISTAS states' contributions, and thus, controlling sources outside of the VISTAS region is predicted to provide significant improvements in visibility in the Class I areas in VISTAS.

Taking the VISTAS sensitivity analyses results into consideration, Florida concluded that the greatest visibility benefits on the 20 percent worst days for the Florida Class I areas and Okefenokee in Georgia are projected to result from further reducing SO_2 from EGUs. The Everglades is somewhat different than any of the other Class I areas in the VISTAS area with a greater relative influence from carbon (VOC) and boundary conditions. Contributions from other RPOs are comparatively small, and the greatest benefits would likely be from further EGU reductions within Florida, Georgia, and Alabama. Additional benefits are projected from SO_2 emission reductions from non-utility, industrial point sources. The pattern of relative SO_2 contributions from non-EGUs among the various VISTAS states is similar to the pattern of relative SO_2 contributions from EGUs. The State chose to focus solely on evaluating certain SO_2 sources contributing to visibility impairment to the State's Class I areas for additional emissions reductions for reasonable progress in this first implementation period (described in sections V.C.4 and V.C.5 of this action). EPA proposes to agree with the State's analyses and conclusions used to determine the pollutants and source categories that most contribute to visibility impairment in the Class I areas, and proposes to find the State's approach to focus on developing a LTS that includes largely additional measures for point sources of SO_2 emissions to be appropriate.

SO_2 sources for which it is demonstrated that no additional controls are reasonable in this current implementation period will not be exempted from future assessments for controls in subsequent implementation periods or, when appropriate, from the five-year periodic SIP reviews. In future implementation periods, additional controls on these SO_2 sources evaluated in the first implementation period may be determined to be reasonable, based on a reasonable progress control evaluation, for continued progress toward natural conditions for the 20 percent worst days and to avoid further degradation of the 20 percent best days. Similarly, in subsequent implementation periods, the State may use different criteria for identifying sources for evaluation and may consider other pollutants as visibility conditions change over time.

4. Procedure for Identifying Sources To Evaluate for Reasonable Progress Controls in Florida and Surrounding Areas

As discussed in section V.C.3 of this action, through comprehensive evaluations by VISTAS and the Southern Appalachian Mountains Initiative (SAMI),[14] the VISTAS states concluded that sulfate particles resulting from SO_2 emissions account for the greatest portion of the regional haze affecting the Class I areas in VISTAS states, including those in Florida. Utility and non-utility boilers are the main sources of SO_2 emissions within the southeastern United States. VISTAS developed a methodology or criteria for Florida, which enables the State to focus its reasonable progress analysis on those geographic regions and source categories that impact visibility at its Class I areas.

Florida used the VISTAS criteria as a starting point for developing its own methodology. For reasons of better public clarity and understanding, Florida chose to develop a reasonable progress source selection metric of emissions (Q) divided by distance (d) from the Class I area or ''Q/d'' (i.e., 2002 SO_2 emissions in tons/distance in kilometers) that would have the effect of selecting a set of source units similar to that selected using the VISTAS criteria.

Since visibility in Class I areas in or near Florida is expected to improve at very near the uniform rate of progress with current rules, Florida chose a minimum threshold for reasonable evaluation of sources of Q/d = 50. Sources of SO_2 with a Q/d greater than or equal to 50 (''Q/d $\geq$ 50'') were considered eligible for a reasonable progress control evaluation. Use of this threshold to identify sources for evaluation for potential control under reasonable progress assures that many of the largest Florida sources of SO_2 nearest Class I areas are required to

[14] Prior to VISTAS, the southern states cooperated in a voluntary regional partnership ''to identify and recommend reasonable measures to remedy existing and prevent future adverse effects from human-induced air pollution on the air quality related values of the Southern Appalachian Mountains.'' States cooperated with FLMs, EPA, industry, environmental organizations, and academia to complete a technical assessment of the impacts of acid deposition, ozone, and fine particles on sensitive resources in the Southern Appalachians. The SAMI Final Report was delivered in August 2002.

determine reasonable progress, while smaller sources (not expected to provide significant, cost-effective reductions) are excluded. Similarly, Florida provided some bounds in the rule for emissions (Q) and distance (d) to affect which sources would be subject to a reasonable process analysis. First, Florida exempts small (less than 250 tpy SO_2) units, the rationale being that any emissions reductions would be very small and likely not very cost effective. Second, Florida does not consider any sources outside of 300 kilometers from a Class I area. This threshold is consistent with the bounds used in the BART exemption analysis where only sources within this distance from a Class I area were considered. Third, Florida only considered sources that commenced construction or submitted a complete application prior to August 30, 1999, a date after which Florida permit review requires that visibility specifically be addressed. Florida concluded that any sources permitted after that 1999 date had already performed the equivalent of a reasonable progress review as part of its permitting process. Finally, Florida used the 2002 emissions for Q in the Q/d analysis, whereas VISTAS used the projected 2018 emissions. This is important in Florida for two reasons. First, Florida updated some of the model projections concluding that many Florida utilities will convert all of their oil-fired boilers to natural gas with source-specific information to reflect current plans of these utilities. Second, Florida preferred to start with the known largest sources having the potential to impair visibility and make sure that these sources are addressed through reasonable progress rather than base its selection of sources for a reasonable progress control analysis on a model estimate of how emissions might be distributed.

The Florida criterion ($Q/d \geq 50$) captures for reasonable progress analyses the 1st through 9th, 15th, 18th, 19th, 27th, and 30th largest SO_2 sources (2002) in the State. When compared to the VISTAS criteria, Florida's methodology captured 67.6 percent of the total point source SO_2 contribution to visibility impairment in the VISTAS area of influence around each of the Class I areas, while the VISTAS criteria would require 70.5 percent of these SO_2 emissions to be reviewed. EPA believes the approach developed by Florida for the Class I areas in Florida is a reasonable methodology to prioritize the most significant contributors to regional haze and to identify sources to assess for reasonable progress control in the State's Class I areas. EPA proposes that the State's approach is consistent with EPA's Reasonable Progress Guidance and believes that the technical approach of Florida was objective and based on several analyses and compares well to the VISTAS methodology.

5. Application of the Four CAA Factors in the Reasonable Progress Analysis

FDEP identified 32 emissions units at 14 facilities in Florida (see Table 4) with SO_2 emissions that were above the state's minimum threshold for reasonable progress evaluation because they were modeled to have a Q/d of at least 50. Thirty-one of these 32 emissions units are EGUs that were already subject to CAIR. The reasonable progress analysis for these units is discussed in section IV.C.5.B of this action. FDEP identified only one unit not subject to CAIR at Rock Tenn that has a Q/d of at least 50.

TABLE 4—FACILITIES SUBJECT TO REASONABLE PROGRESS ANALYSIS

Facilities With Unit(s) Not Subject to CAIR
Rock Tenn (Jefferson Smurfit) unit 15
Facilities With Unit(s) Subject to CAIR:
City of Gainesville Deerhaven unit 5
Florida Crushed Stone (Central Power and Lime) unit 18
FP&L Manatee units 1, 2
FL&L Port Everglades units 3, 4
FP&L Turkey Point units 1, 2
Gulf Power Crist unit 7
Lakeland Electric CD McIntosh unit 6
JEA Northside/SJRPP units 3, 16, 17, 27
Progress Energy Anclote units 1, 2
Progress Energy Bartow units 1, 2, 3
Progress Energy Crystal River units 1, 2, 3, 4
Seminole Electric Cooperative units 1, 2
Tampa Electric Gannon units 1, 2, 3, 4, 5, 6

In its April 13, 2012, amendment, as summarized in Table 5, FDEP documented that nine of the identified EGUs have shut down, two others will be shut down by December 31, 2013, and two others have taken Federally enforceable permit limits that reduce their contribution to regional haze below Florida's threshold for reasonable progress analysis. The remaining 19 units will be addressed in later actions.

TABLE 5—FACILITIES WITH UNIT(S) SUBJECT TO CAIR THAT HAVE SHUT DOWN, WILL SHUT DOWN BY DECEMBER 31, 2013, OR THAT HAVE ACCEPTED ENFORCEABLE EMISSIONS LIMITS

Shut Down:
Progress Energy Bartow units 1, 2, 3
Tampa Electric Gannon units 1, 2, 3, 4, 5, 6
To Be Shut Down by December 31, 2013:
FP&L Port Everglades units 3, 4
Not Subject to Reasonable Progress Analysis Due to Enforceable Emissions Limits:
Florida Crushed Stone unit 18
JEA Northside unit 27

a. Facilities With Unit(s) Not Subject to CAIR

Florida chose to rely on the Industrial Boiler MACT, which was promulgated on March 21, 2011 (76 FR 15608),[15] in the reasonable progress analysis at Rock Tenn (Smurfit Stone) unit 15. This rule will require reductions in acid gases that will have the co-benefit of reducing SO_2 emissions either through the use of scrubbers or fuel switching. The Rock Tenn (formerly Smurfit-Stone and Jefferson Smurfit) facility in Fernandina Beach, one of the listed reasonable progress sources subject to reasonable progress analysis, is subject to the Industrial Boiler MACT rule.

The State's demonstration is a streamlined control analysis showing that regulations requiring the most stringent level of controls have been adopted for unit 15, and thus, the State did not review the remaining statutory factors for reasonable progress.[16] Florida concluded that any source subject to MACT standards must meet a level of control that is as stringent as the best-controlled 12 percent of sources in the industry. In this case, although the MACT standard is for acid gases rather than for SO_2, FDEP concluded that it is unlikely that the State will identify SO_2 emission controls more stringent than what the MACT standards will require that would be considered reasonable for this facility under reasonable progress.

Since the industrial boiler MACT standard only addresses SO_2 as a co-benefit, EPA would not ordinarily rely on the industrial boiler MACT standard in lieu of a more formal analysis. Therefore, EPA reviewed the supporting documentation regarding the emissions controls projected necessary to comply with the MACT standard for this unit. The facility can pursue a number of options, including Dry Sorbent Injection/Fabric Filter (DIFF), wet scrubbing, or conversion to natural gas to meet the MACT standards. The supporting technical information document for the industrial boiler MACT standard concluded that the least cost option for this unit to meet the MACT standard would be DIFF, and projected the need to install DIFF with a total capital control cost of $35,244,447 and a total annual control cost of $10,084,579.[17] SO_2 emissions are projected to be reduced 68.6 percent. A wet scrubber, which was not projected to be needed to meet the MACT standard for this unit, could reduce emissions by 95 percent, although at a significantly higher cost.

From Florida's reasonable progress assessment, it appears that the 2002 emissions for this unit were 3,242 tons of SO_2 per year and the Q/d was 50.2, just over Florida's threshold of 50 for RP during this planning period. Based on the expected reduction of 68.6 percent from this baseline, the facility would reduce actual emissions by 2,224 tons per year. The resulting estimated cost effectiveness of DIFF for SO_2 is over $4,500 per ton of SO_2 removed for this facility. Further, installation of this control technology would bring the facility's Q/d well below FDEP's threshold of 50. While a wet scrubber would result in a greater emissions reduction, its annual costs are anticipated to be substantially higher and less cost effective. Accordingly, EPA proposes to approve Florida's approach for the Rock Tenn (Smurfit-Stone) facility in Fernandina Beach as being appropriate for this facility for reasonable progress during this planning period because EPA proposes to agree that it will be unlikely that even if Florida prepared a four factor analysis, it would identify SO_2 emission controls that are more stringent than what the MACT standards will require. EPA expects the state to review the status of the facility's progress toward installing SO_2 controls as part of the five-year interim progress reporting requirements.

b. Facilities With Unit(s) Subject to CAIR

Thirty-one of the 32 emissions units identified for a reasonable progress control analysis are EGUs. Two of these units, Florida Crushed Stone (Central Power and Lime) unit 18 and JEA Northside unit 27, have taken federally enforceable permit conditions that limit SO_2 emissions so that they are not subject to reasonable progress analysis. Florida Crushed Stone (Central Power and Lime) unit 18 is a coal-fired power plant which is being converted to a biomass fired boiler. It has received a construction permit that will prohibit the firing of coal once it is converted. Start up, shut down, and bed stabilization will use ultra low sulfur distillate oil. The maximum allowed annual SO_2 emissions are now limited to 591.3 tpy.

JEA Northside unit 27 is a circulating fluidized bed boiler. In 2009, this facility received a federally enforceable permit condition that limits emissions to 0.2 pounds per million British Thermal Units (lb/MMBtu) on a 24-hour average and 0.15 lb/MMBtu on a 30-day rolling average resulting a maximum annual emission rate of 1,816 tons. These limits reduce the Q/d to 26.4 and 26.2, respectively, for the two emissions limits identified above. Hence, Florida determined that the unit does not require a reasonable progress control analysis.

Eleven EGUs are either shut down or will be shut down by December 31, 2013. The remaining 18 EGUs, located at ten facilities, are: City of Deerhaven unit 5; FP&L Manatee units 1, 2; FP&L Turkey Point units 1, 2; Gulf Power Crist unit 7; JEA Northside/SJRPP unit 3; Lakeland Electric CD McIntosh unit 6; Progress Energy Anclote units 1, 2; Progress Energy Crystal River units 1, 2, 3, 4; St. Johns River units 16, 17; and Seminole Electric Cooperative units 1, 2.

Florida evaluated the SO_2 reductions expected from the EGU sector in its submittal to determine whether any additional controls beyond those required by CAIR would be considered reasonable for Florida's EGUs for the first implementation period. All EGU sources identified as subject to reasonable progress review were also subject to CAIR. For EGUs subject to CAIR, Florida relied on EPA's evaluation of a number of factors, including the cost of compliance and the time necessary for compliance. In the CAIR, EPA determined that the earliest reasonable deadline for compliance with the final highly cost effective control levels for reducing emissions was 2015 (70 FR 25197–25198, May 12, 2005). Florida believes that the cost of compliance and the time necessary for compliance are the dominant factors for determining if additional reductions would be reasonable from CAIR sources. Based on detailed analyses in the May 12, 2005, CAIR rule, Florida concluded that CAIR controls satisfy reasonable progress for SO_2 for the first implementation period ending in 2018. Since CAIR was developed using processes similar to the regional haze four-factor approach, Florida believes it is reasonable to accept that CAIR satisfies reasonable progress requirements for CAIR-subject sources. Since the rate of visibility

[15] Although EPA stayed the Industrial Boiler MACT rule pending reconsideration of additional data, EPA expects to take final action to address this data by the end of May 2012. A revised proposal was published December 23, 2011. 76 FR 80598. The stay does not affect any of the conclusions related to reasonable progress.

[16] The BART Guidelines specifically address consideration of MACT standards and streamlined control analyses when the most stringent controls are in place. 70 FR 39163, 39165. Although this facility was evaluated for reasonable progress rather than BART, many of the same considerations are appropriate.

[17] Industrial/Commercial/Institutional Boilers and Process Heaters (Docket# EPA–HQ–OAR–2002–0058), Boiler MACT/Impacts Memo & Appendices, Appendix A–3: Existing Major Source Boiler and Process Heater Cost Detail (Recommended Option), *http://www.epa.gov/ttn/atw/boiler/boilerpg.html.*

improvement in all of the Class I areas in and adjacent to Florida is consistent with the uniform rate of progress, Florida asserted that reasonable progress was met for the subject sources with CAIR.

Many of the emission units subject to reasonable progress analysis, as defined above, either have already reduced SO_2 emissions or will be reducing SO_2 emissions soon. Even though CAIR is not expected to continue to be in effect indefinitely, SO_2 emissions reduction programs are well underway to meeting the amount needed to reach the 2018 projection. These reductions have come about from company decisions to shut down or re-power certain units, or to install new control equipment (scrubbers) in response to the CAIR regulations. On August 8, 2011, EPA published the Transport Rule, which replaced CAIR. As under CAIR, EPA determined in the Transport Rule that Florida is contributing to ozone air quality exceedences in other states. However, unlike CAIR, EPA determined in the Transport Rule that Florida is contributing to SO_2 exceedances in other states. As a result, the Florida facilities with EGUs that previously relied on CAIR to satisfy their reasonable progress assessment obligations for SO_2 will be neither subject to CAIR nor able to rely on its successor, the Transport Rule, to meet their reasonable progress assessment requirements.

Florida is in the process of reevaluating the reasonable progress determinations for these remaining facilities' 18 EGUs and plans to address most of them in a subsequent SIP amendment. For this reason, EPA is taking no action on the determinations for these 18 EGUs at this time. EPA will address these emissions units in separate actions.

6. BART

BART is an element of Florida's LTS for the first implementation period. The BART evaluation process consists of three components: (a) an identification of all the BART-eligible sources, (b) an assessment of whether the BART-eligible sources are subject to BART, and (c) a determination of the BART controls. These components, as addressed by FDEP, are discussed as follows.

a. BART-Eligible Sources

The first phase of a BART evaluation is to identify all of the BART-eligible sources within the state's boundaries. FDEP identified the BART-eligible sources in Florida by utilizing the three eligibility criteria in the BART Guidelines (70 FR 39158) and EPA's regulations (40 CFR 51.301): (1) One or more emissions units at the facility fit within one of the 26 categories listed in the BART Guidelines; (2) the emissions units were not in operation prior to August 7, 1962, and were in existence on August 7, 1977; and (3) these units have the potential to emit 250 tons or more per year of any visibility-impairing pollutant.

The BART Guidelines also direct states to address SO_2, NO_X, and direct PM (including both PM_{10} and $PM_{2.5}$) emissions as visibility-impairment pollutants and to exercise judgment in determining whether VOC or ammonia emissions from a source impair visibility in an area. *See* 70 FR 39160. VISTAS modeling demonstrated that VOC from anthropogenic sources and ammonia from point sources are not significant visibility-impairing pollutants in Florida, as discussed in section V.C.3. of this action. FDEP has determined, based on the VISTAS modeling, that ammonia emissions from the State's point sources are not anticipated to cause or contribute significantly to any impairment of visibility in Class I areas and should be exempt for BART purposes.

b. BART-Subject Sources

The second phase of the BART evaluation is to identify those BART-eligible sources that may reasonably be anticipated to cause or contribute to visibility impairment at any Class I area, i.e., those sources that are subject to BART. The BART Guidelines allow states to consider exempting some BART-eligible sources from further BART review because they may not reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area. Consistent with the BART Guidelines, Florida required each of its BART-eligible sources to develop and submit dispersion modeling to assess the extent of their contribution to visibility impairment at surrounding Class I areas.

i. Modeling Methodology

The BART Guidelines allow states to use the CALPUFF [18] modeling system (CALPUFF) or another appropriate model to predict the visibility impacts from a single source on a Class I area, and therefore, to determine whether an individual source is anticipated to cause or contribute to impairment of visibility in Class I areas, i.e., ''is subject to BART.'' The Guidelines state that EPA believes that CALPUFF is the best regulatory modeling application currently available for predicting a single source's contribution to visibility impairment. 70 FR 39162. Florida, in coordination with VISTAS, used the CALPUFF modeling system to determine whether individual sources in Florida were subject to or exempt from BART.

The BART Guidelines also recommend that states develop a modeling protocol for making individual source attributions and suggest that states may want to consult with EPA and their RPO to address any issues prior to modeling. The VISTAS states, including Florida, developed a ''Protocol for the Application of CALPUFF for BART Analyses.'' Stakeholders, including EPA, FLMs, industrial sources, trade groups, and other interested parties, actively participated in the development and review of the VISTAS protocol.

VISTAS developed a post-processing approach to use the new IMPROVE equation with the CALPUFF model results so that the BART analyses could consider both the old and new IMPROVE equations. FDEP sent a letter and an email to EPA on January 3, 2008, and January 11, 2008, respectively, justifying the need for this post-processing approach, and the EPA Region 4 Regional Administrator sent Florida a letter of approval dated January 17, 2008. Florida's justification included a method to process the CALPUFF output and a rationale on the benefits of using the new IMPROVE equation. The State's letter requesting approval is located in Appendix L on page 206 of the March 19, 2010, Florida regional haze SIP submittal and can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2010–0935. The State's email providing additional documentation and EPA Region 4's approval letter are also in the docket for this action.

ii. Contribution Threshold

For states using modeling to determine the applicability of BART to single sources, the BART Guidelines note that the first step is to set a contribution threshold to assess whether the impact of a single source is sufficient to cause or contribute to visibility impairment at a Class I area.

[18] Note that EPA's reference to CALPUFF encompasses the entire CALPUFF modeling system, which includes the CALMET, CALPUFF, and CALPOST models and other pre and post processors. The different versions of CALPUFF have corresponding versions of CALMET, CALPOST, etc. which may not be compatible with previous versions (e.g., the output from a newer version of CALMET may not be compatible with an older version of CALPUFF). The different versions of the CALPUFF modeling system are available from the model developer on the following Web site: *http://www.src.com/verio/download/download.htm.*

The BART Guidelines state that, ''[a] single source that is responsible for a 1.0 deciview change or more should be considered to 'cause' visibility impairment.'' The BART Guidelines also state that ''the appropriate threshold for determining whether a source 'contributes to visibility impairment' may reasonably differ across states,'' but, ''[a]s a general matter, any threshold that you use for determining whether a source 'contributes' to visibility impairment should not be higher than 0.5 deciviews.'' The Guidelines affirm that states are free to use a lower threshold if they conclude that the location of a large number of BART-eligible sources in proximity of a Class I area justifies this approach.

Florida used a contribution threshold of 0.5 deciview for determining which sources are subject to BART and concluded that the threshold of 0.5 deciview was appropriate in this situation. While Florida has 46 sources with BART-eligible units, they are scattered about the State and, in FDEP's judgment, are not clustered in sufficient quantity to warrant a change to the threshold value of 0.5 deciview. FDEP concluded, and EPA proposes to agree, that a 0.5 deciview threshold was appropriate in this instance and a lower threshold is not warranted.

iii. Identification of Sources Subject to BART

Florida initially identified 46 sources with BART-eligible units. Six BART-eligible sources made changes to their operation in order to exempt from further BART review. These sources are: Georgia Pacific-Palatka; Rock Tenn (Smurfit-Stone)—Fernandina Beach; Rock Tenn (Smurfit-Stone)—Panama City; Mosaic New Wales; Mosaic Riverview; and CF Industries. All of these changes have been incorporated into their air permits and are federally enforceable. Table 6 identifies the remaining 40 BART-eligible sources identified in FDEP's March 19, 2010, submittal, and of these, lists the five sources identified as subject to BART.

TABLE 6—INITIAL LIST OF FLORIDA BART-ELIGIBLE AND SUBJECT-TO-BART SOURCES

Facilities With Unit(s) Subject to BART Analysis
EGUs Subject to BART:[19]
Florida Power Corporation—Crystal River Power Plant (Units 1, 2)
Florida Power & Light—Turkey Point Power Plant (Units 1, 2)
EGUs to be Shut Down by December 31, 2013:
Tallahassee City—Purdom Generating Station (Unit 7)
Non-EGUs Subject to BART:
CEMEX
White Springs Agricultural Chemicals-SR/SC Complex
Facilities With Unit(s) Found Not Subject to BART
EGU CAIR and BART Modeling (PM only) Exempt Sources:[20]
City of Gainesville—Deerhaven Generating Station (Unit 3)
City of Vero Beach—City of Vero Beach Municipal Utilities (Units 2, 3, 4)
City of Tallahassee—Arvah B.Hopkins Generating Station (Units 1, 4)
Florida Power Corp.—Anclote Power Plant (Units 1, 2)
Florida Power Corp.—Bartow Plant (Unit 3)
Florida Power & Light—Cape Canaveral Power Plant (Units 1, 2)
Florida Power & Light—Manatee Power Plant (Units 1, 2)
Florida Power & Light—Martin Power Plant (Units 1, 2)
Florida Power & Light—Port Everglades Power Plant (Units 3, 4)
Florida Power & Light—Putnam Power Plant (Units 3, 4, 5, 6, 7, 8, 9, 10)
Florida Power & Light—Riviera Power Plant (Unit 4)
Gulf Power Company—Crist Electric Generating Plant (Units 6, 7)
Gulf Power Company—Lansing Smith Plant (Units 1, 2)
JEA Northside/SJRPP (Unit 3)
Reliant Energy Indian River—Indian River Plant (Units 2, 3)
Lakeland Electric—Charles Larsen Memorial Power Plant (Unit 4)
Lakeland Electric—C.D. McIntosh, Jr. Power Plant (Units 1, 5)
Tampa Electric Company—Big Bend Station (Units 1, 2, 3)
Non-EGU BART Modeling Exempt Sources:
Atlantic Sugar Association—Atlantic Sugar Mill
Buckeye Florida—Perry
ExxonMobil Production—St Regis Treating Facility and Jay Gas Plant
IFF Chemical Holdings, Inc.
IMC Phosphates Company—South Pierce
International Paper Company—Pensacola Mill
Mosaic—Bartow
Mosaic—Green Bay Plant
Osceola Farms
Sugar Cane Growers Co-Op
U.S. Sugar Corp.—Clewiston Mill and Refinery
Model Plant Exempt Sources:
Solutia Inc.
Lake Worth Util.—Tom G. Smith Plant (Units 6, 9)
Ft. Pierce Utilities Authority—H D King Power Plant (Units 7, 8)

[19] EGUs were only evaluated for PM emissions. Florida relied on CAIR to satisfy BART for SO_2 and NO_X for its EGUs subject to CAIR, in accordance with 40 CFR 51.308(e)(4). Thus, SO_2 and NO_X were not analyzed.

[20] Ibid.

TABLE 6—INITIAL LIST OF FLORIDA BART-ELIGIBLE AND SUBJECT-TO-BART SOURCES—Continued

Sterling Fibers, Inc.
ShutDown Sources:
U.S. Sugar Corp.—Bryant Mill
IMC Phosphates Company—Port Sutton Terminal

Two of the 17 non-EGU facilities (CEMEX and White Springs Agricultural Chemicals-SR/SC Complex) were found to be subject to BART and were required to prepare a full BART determination analysis. Eleven non-EGU sources demonstrated that they are exempt from being subject to BART by modeling less than a 0.5 deciview visibility impact at the affected Class I areas. This modeling involved assessing the visibility impact of emissions of NO_x, SO_2, and PM_{10} as applicable to individual facilities. Two facilities (Solutia Inc. and Sterling Fibers, Inc) were exempt from BART because they met EPA's model plant criteria in the BART Guidelines (70 FR 39162–39163) and thus, were not evaluated further. Two facilities permanently shut down prior to preparing an analysis.

The 23 sources with BART-eligible EGUs relied on Florida's decision to use CAIR emissions limits for SO_2 and NO_X to satisfy their obligation to comply with BART requirements in accordance with 40 CFR 51.308(e)(4). Therefore, EGU sources only modeled PM_{10} emissions. Prior to the CAIR remand, the State's reliance on CAIR to satisfy BART for NO_X and SO_2 for affected CAIR EGUs was fully approvable and in accordance with 40 CFR 51.308(e)(4). In a separate action, EPA has proposed a limited disapproval of the Florida regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the remand of CAIR to EPA by the D.C. Circuit. *See* 76 FR 82219. Consequently, EPA is not taking action in this proposed rulemaking to address the State's reliance on CAIR to meet certain regional haze requirements.

On August 8, 2011, EPA published the Transport Rule which replaced CAIR. As under CAIR, EPA determined in the Transport Rule that Florida is contributing to ozone air quality problems in other states. However, unlike CAIR, EPA determined in CSAPR that Florida is contributing to SO_2 problems in other states. As a result, the Florida facilities with EGUs that previously relied on CAIR to satisfy their BART obligations for SO_2 would no longer be subject to CAIR nor able to rely on its successor, the Transport Rule, to meet their BART assessment requirements.

Accordingly, FDEP has initiated an effort to reassess BART for all of these facilities with BART-eligible EGUs. In its April 13, 2012, proposed SIP amendment, the State evaluated 12 of the 23 affected facilities. Table 7 summarizes the reevaluated facilities with BART-eligible EGUs.

TABLE 7—REEVALUATED FLORIDA BART-ELIGIBLE SOURCES

Facilities With Units Subject to BART Analysis
Existing Controls Meet the Most Stringent Level of Control:
Tampa Electric Company—Big Bend Station (Units 1, 2, 3)
Facilities That Will Shut Down by December 31, 2013:
Florida Power & Light—Port Everglades Power Plant (Units 3, 4)
Facilities With Unit(s) Found Not Subject to BART Analysis
Facilities That Have Shut Down:
City of Tallahassee—Arvah B. Hopkins Generating Station (Unit 4)
Florida Power & Light—Riviera Power Plant (Unit 4)
Florida Power Corp.—Bartow Plant (Unit 3)
Lakeland Electric—Charles Larsen Memorial Power Plant (Unit 4)
Florida Power & Light—Cape Canaveral Power Plant (Units 1, 2)
Ft Pierce Utilities Authority—H D King Power Plant (Units 7, 8)
BART Modeling Exempt Sources (SO_2, NO_X, PM_{10}):
City of Gainesville Deerhaven (Unit 3)
City of Vero Beach—City of Vero Beach Municipal Utilities (Units 2, 3, 4)
Florida Power & Light—Putnam Power Plant (Units 3, 4, 5, 6, 7, 8, 9, 10)
Lake Worth Utilities—Tom G. Smith (Units 6, 9)

Of the 23 EGU BART-eligible facilities, FDEP identified 11 units at eight facilities that have shut down or will be shut down by December 31, 2013,[21] 14 units at four facilities that model a contribution of less than 0.5 deciview when considering all three pollutants contributing to visibility impairment (SO_2, NO_X, PM_{10}), and three units at one facility which has recently installed SO_2 and NO_X controls that the State has determined to be the most stringent level of control available for these sources. The remaining 11 facilities with BART-eligible EGUs subject to CAIR (a total of 20 EGUs) that now have an incomplete BART analysis will be addressed by Florida in a future SIP revision, and by EPA in subsequent actions. Table 8 lists the revised list of BART-eligible sources, those with a completed BART analysis, and sources with an incomplete BART analysis at this time.

[21] Florida had previously identified that the City of Tallahassee—Purdom Generating Station (Unit 7) would be shut down by December 31, 2013, in the State's March 19, 2010, SIP revision.

TABLE 8—REVISED LIST OF BART-ELIGIBLE AND SUBJECT-TO-BART SOURCES

Facilities With Unit(s) With a Complete BART Analysis
EGUs With Existing Controls That Meet the Most Stringent Level of Control:
Tampa Electric Company—Big Bend Station (Units 1, 2, 3)
EGUs To Be Shut Down by December 31, 2013:
City of Tallahassee—Purdom Generating Station (Unit 7)
Florida Power & Light—Port Everglades Power Plant (Units 3, 4)
Non-EGU BART Analyses:
CEMEX
White Springs Agricultural Chemical—SR/SC Complex
Facilities With Unit(s) With an Incomplete BART Analysis
EGUs Subject to CAIR With PM Only BART Analysis[22]
City of Tallahassee—Arvah B.Hopkins Generating Station (Unit 1)
Florida Power Corp.—Anclote Power Plant (Units 1, 2)
Florida Power Corp.—Crystal River Power Plant (Units 1, 2)
Florida Power & Light—Manatee Power Plant (Units 1, 2)
Florida Power & Light—Martin Power Plant (Units 1, 2)
Florida Power & Light—Turkey Point Power Plant (Units 1, 2)
Gulf Power Company—Crist Electric Generating Plant (Units 6, 7)
Gulf Power Company—Lansing Smith Plant (Units 1, 2)
JEA Northside—SJRPP (Unit 3)
Lakeland Electric—C.D. McIntosh, Jr. Power Plant (Units 1, 5)
Reliant Energy Indian River—Indian River Plant (Units 2, 3)
Facilities With Unit(s) Found Not Subject to BART Analysis
EGU CAIR and BART Modeling Exempt Sources (SO_2, NO_X, PM_{10}):
City of Gainesville—Deerhaven Generating Station (Unit 3)
City of Vero Beach—City of Vero Beach Municipal Utilities (Units 2, 3, 4)
Florida Power & Light—Putnam Power Plant (Units 3, 4, 5, 6, 7, 8, 9, 10)
Lake Worth Utilities—Tom G. Smith (Units 6, 9)
EGU-Shut Down Sources:
City of Tallahassee—Arvah B. Hopkins Generating Station (Unit 4)
Florida Power & Light—Riviera Power Plant (Unit 4)
Florida Power Corp.—Bartow Plant (Unit 3)
Lakeland Electric—Charles Larsen Memorial Power Plant (Unit 4)
Ft Pierce Utilities Authority—H D King Power Plant (Units 7, 8)
Florida Power & Light—Cape Canaveral Power Plant (Units 1, 2)
Non-EGU BART Modeling Exempt Sources:
Atlantic Sugar Association—Atlantic Sugar Mill
Buckeye Florida—Perry
ExxonMobil Production—St Regis Treating Facility and Jay Gas Plant
IFF Chemical Holdings, Inc.
IMC Phosphates Company—South Pierce
International Paper Company—Pensacola Mill
Mosaic—Bartow
Mosaic—Green Bay Plant
Osceola Farms
Sugar Cane Growers Co-Op
U.S. Sugar Corp.—Clewiston Mill and Refinery
Non-EGU Model Plant Exempt Sources
Solutia Inc.
Sterling Fibers, Inc.
Non-EGU Shut Down Sources
U.S. Sugar Corp.—Bryant Mill
IMC Phosphates Company—Port Sutton Terminal

[22] EGUs were only evaluated for PM emissions. The Florida relied on CAIR to satisfy BART for SO_2 and NO_X for its EGUs subject to CAIR, in accordance with 40 CFR 51.308(e)(4). Thus, SO_2 and NO_X were not analyzed.

For the 17 non-EGU BART-eligible facilities in Table 8, the two sources found subject to BART and requiring a full BART determination analysis are CEMEX and White Springs Agricultural Chemical—SR/SC Complex. These BART-subject sources were required to complete BART determination modeling, which included an analysis of the five CAA BART factors, to determine appropriate BART controls.

c. BART Determinations

Five BART-eligible sources (i.e., CEMEX, White Springs Agricultural Chemical—SR/SC Complex, City of Tallahassee—Purdom Generating Station, Tampa Electric Company—Big Bend Station (Units 1, 2, 3), and Florida Power and Light (FPL)—Port Everglades (Units 3, 4)) modeled visibility impacts of more than the 0.5 deciview threshold for BART exemption. These five facilities are therefore considered to be subject to BART. Consequently, they each submitted permit applications to the State that included their proposed BART determinations.

In accordance with the BART Guidelines, to determine the level of control that represents BART for each source, the State first reviewed existing controls on these BART-subject sources to assess whether these constituted the best controls currently available, then identified what other technically feasible controls are available, and finally, evaluated the technically feasible controls using the five BART statutory factors. The State's evaluations and conclusions, and EPA's assessment, are summarized below.

i. CEMEX

CEMEX operates an existing Portland cement plant with two Portland cement lines (Lines 1 and 2). These include: two Polysius GEPOL preheater kilns (Kilns 1 and 2); two clinker coolers and associated raw mills; finish mills; cement and clinker handling equipment; coal handling equipment; silos; and air pollution control devices. The nominal capacity of each kiln is 780,000 tpy of clinker. The kiln was subjected to Prevention of Significant Deterioration (PSD) review and Best Available Control Technology determination (BACT) review since 1977 one or more times, and FDEP determined the permitted values compare favorably to recent determinations made throughout the country even for new units. Overall, the controls consist of effective SO_2 scrubbing in the calciner; low raw material sulfur; fabric filter baghouses for PM; and selective non-catalytic reduction (SNCR) for NO_X control. All controls including emissions limits are federally enforceable.

NO_X Kiln Controls: To control emissions of NO_X, CEMEX is required to either operate the installed SNCR system or install a selective catalytic reduction (SCR) system between the preheater and the raw mill to augment or replace the existing SNCR system with an emission limit of 1.2 lb/ton of kiln preheater feed.

SO_2 Kiln Controls: The present SO_2 control system consisting of dry alkali and lime scrubbing in the kiln system and limestone scrubbing in the raw mill is the most stringent control available, and FDEP determined that it constitutes BART.

PM/PM_{10} Kiln Controls: Each subject-to-BART emissions unit at the facility identified as subject to BART is required to control PM/PM_{10} by a baghouse system. Bags/filters in each baghouse control system shall be selected based on a PM design outlet specification of 0.01 grain (gr) per dry standard cubic foot (dscf) and a PM_{10} design outlet specification of 0.007 gr/dscf.

FDEP determined it was not necessary to submit a full five-factor analysis and determined that the controls in place constituted BART.

ii. White Springs Agricultural Chemicals, Inc.

White Springs Agricultural Chemicals, Inc., also known as PCS Phosphate, operates a phosphate complex that processes phosphate rock to produce several products at the Suwannee River/Swift Creek Complex (two plants). The facility consists of one rock grinder, two phosphoric acid plants, two defluorinated phosphate (DFP) plants, one dical process, two diammonium phosphate (DAP) plants, one monoammonium (MAP)/DAP storage building, one MAP/DAP screen/shipping building, four sulfuric acid plants (SAP), two phosphoric acid filters, four superphosphoric acid plants, one green superphosphoric acid plant, the Swift Creek Mine rock dryer, and one acid clarification plant. The facility also has storage silos associated with the Swift Creek Mine and the DFP plant.

Sulfuric acid is produced on-site by burning elemental sulfur, converting the resulting SO_2 to sulfur trioxide, and absorbing it into a recirculating sulfuric acid solution. Phosphoric acid is made by acidulation of phosphate rock with sulfuric acid. Waste gypsum is produced and stacked. The phosphoric acid is reacted with ammonia to make MAP and DAP and phosphoric acid is reacted with limestone and other raw materials to make animal feed ingredients.

SAP C and D plants use the double absorption process to control SO_2 emissions and demisters to control sulfuric acid mist emissions.

All of the DAP/MAP plants include medium to high efficiency wet scrubbers that use phosphoric acid and then pond water to reduce PM from the reactor and granulators. They are also equipped with abatement scrubbers using fresh water for final cleanup. Emissions from the dryers, coolers, mills and screens are controlled by cyclones, wet scrubbers with phosphoric acid or pond water as the scrubbing medium, and by abatement scrubbers using fresh water.

A and B DFP Coolers and Swift Creek Mine Silos use wet cyclonic scrubbers with pond water as the scrubbing medium to control particulate matter emissions.

A and B DFP Plants include cross-flow packed wet scrubber with pond water as the scrubbing medium to control PM emissions.

The X Train Dical Process rotary dryer includes a series of wet venturi and cyclonic scrubbers to control PM emissions.

The #2 Phosphate Rock Grinder, X Train limestone handling, the DFP Feed Prep area, and the DFP Product Silos include fabric filter baghouses designed to recover process or product raw materials and to control PM emissions.

The Swift Creek Mine Rock Dryer and Swift Creek Mine Silos include wet cyclonic scrubber to control PM emissions. The Rock Dryer is fired primarily with natural gas.

FDEP reviewed the facility following the BART Guidelines. For most BART-subject units at the facility, the State performed a full BART determination analysis. However, for some BART-subject units, the State found that the existing controls were the best available and no further review was performed in accordance with the BART Guidelines. *See* 70 FR 39165. In other instances, BART-subject units were modified after August 7, 1977, subject to PSD review, and BACT controls were installed. The State took this into account during the review process, and in these instances, found that the level of controls already in place for BACT are consistent with and determined to be BART.

White Springs submitted its BART permit application with proposed BART determination on the basis of the original design, and compared it to subsequent recent PSD/BACT reviews of similar emissions units at other facilities. FDEP finds that the levels of controls already in place are consistent with those found to be BACT in recent determinations and represent BART for this facility. Emissions limits consistent with this finding were incorporated into the final BART permit with some minor technical adjustments.

iii. City of Tallahassee—Purdom Generating Station

The City of Tallahassee operates the Sam O. Purdom Generating Station. Unit 7 at this facility is a BART-eligible EGU that is fired primarily with fuel oil and natural gas. The unit began operation in 1966 and is a 621 MMBtu per hour steam generator paired with a nominal 44 MW steam-electrical generator. FDEP issued a final air construction Permit No. 120001–008–AC on September 11, 2007, requiring that Unit 7 permanently cease operation no later than December 31, 2013, to satisfy BART.

iv. Tampa Electric Company—Big Bend Station (Units 1, 2, 3)

Tampa Electric Company's Big Bend Station Units 1, 2, and 3 are BART-

eligible coal-fired units with a combined capacity of approximately 1,200 MW. This facility entered into a consent decree with FDEP and EPA to reduce emissions at Big Bend Station. These legally enforceable agreements required the upgrade of the ESP, upgrades to the flue gas desulfurization (FGD) scrubbers for SO_2, and the installation of SCR for NO_X control. The PM emission limit is 0.03lb/MMBtu, the FGD is required to achieve 95 percent reduction efficiency, and the SCR lowers NO_X emissions to 0.12 lb/MMBtu. FDEP has concluded that these are the most stringent controls technically available for this source and, thus, no further analysis for BART is necessary in accordance with the BART Guidelines. *See* 70 FR 39165.

v. Florida Power and Light (FPL)—Port Everglades (Units 3, 4)

On January 24, 2012, Florida Power and Light submitted an application to construct one nominal 1,250 MW combined cycle unit and ancillary equipment at the FPL Port Everglades Plant. The four existing fossil fuel-fired steam generators with a total nominal capacity of 1,200 MW will be shut down and dismantled as part of this project. The BART-eligible units 3 and 4 are scheduled to be demolished in the first quarter of 2013 but not later than December 31, 2013. FDEP included a copy of the permit for informational purposes in Exhibit 2.

vi. EPA Assessment

EPA proposes to agree with Florida's analyses and conclusions for the five BART-subject sources described above. EPA has reviewed the State's analyses and believes that they were conducted in a manner that is consistent with EPA's BART Guidelines and EPA's *Air Pollution Control Cost Manual* (*http://www.epa.gov/ttncatc1/products.html#cccinfo*).

vii. Enforceability of Limits

The BART determinations for each of the five facilities discussed above and the resulting emissions limits and conditions were adopted by Florida and have been incorporated into the facilities' title V operating permits. Copies of these permits were included for informational purposes in an attachment to the Florida Regional Haze SIP submittal of March 19, 2010, and in the April 13, 2012, amendment as Exhibit 2.

7. RPGs

The RHR at 40 CFR 51.308(d)(1) requires states to establish RPGs for each Class I area within the state (expressed in deciviews) that provide for reasonable progress towards achieving natural visibility. VISTAS modeled visibility improvements under existing Federal and state regulations for the period 2004–2018 and additional control measures that the VISTAS states planned to implement in the first implementation period. At the time of VISTAS modeling, some of the other states with sources potentially impacting visibility at Florida's Class I areas had not yet made final control determinations for BART and/or reasonable progress, and thus, these controls were not included in the modeling submitted by Florida. Any controls resulting from those determinations will provide additional emissions reductions and resulting visibility improvement, giving further assurance that Florida will achieve its RPGs. This modeling demonstrates that the 2018 base control scenario provides for an improvement in visibility better than the uniform rate of progress for two of the three Florida Class I areas for the most impaired days over the period of the implementation plan and ensures no degradation in visibility for the least impaired days over the same period.

As shown in Table 9 below, visibility improvements on the 20 percent worst days in Florida's Class I areas are expected to be slightly better than the uniform rate of progress by 2018 for Everglades and Chassahowitzka and slightly less than the uniform rate of progress for St. Marks based on emissions reductions from existing and planned emissions controls. Based on the projected rate of progress, St. Marks would achieve natural conditions by 2067. Also, the RPGs for the 20 percent best days provide greater visibility improvement by 2018 than current best day conditions at all three sites. The modeling supporting the analysis of these RPGs is consistent with EPA guidance prior to the CAIR remand. The regional haze provisions specify that a state may not adopt an RPG that represents less visibility improvement than is expected to result from other CAA requirements during the implementation period. *See* 40 CFR 51.308(d)(1)(vi). Therefore, the CAIR states with Class I areas, including Florida, took into account emissions reductions anticipated from CAIR in determining their 2018 RPGs.[23]

TABLE 9—FLORIDA 2018 RPGS

[In deciviews]

Class I area	Baseline visibility—20% worst days	2018 RPG—20% worst days (improvement from baseline)	Uniform rate of progress at 2018—20% worst days (improvement from baseline)	Baseline visibility—20% best days	2018 RPG—20% best days (improvement from baseline)
Chassahowitzka Wilderness Area	25.75	22.27 (3.48)	22.31 (3.44)	15.51	13.91 (1.60)
Everglades National Park	22.30	19.90 (2.40)	19.92 (2.38)	11.69	11.46 (0.25)
St. Marks Wilderness Area	26.31	23.01 (3.30)	22.89 (3.42)	14.37	12.80 (1.57)

The RPGs for the Class I areas in Florida are based on modeled projections of future conditions that were developed using the best available information at the time the analysis was done. These projections can be expected to change as additional information regarding future conditions becomes available. For example, new sources may be built, existing sources may shut down or modify production in response to changed economic circumstances, and facilities may change their emission characteristics as they install control equipment to comply with new rules. It would be both impractical and resource-intensive to require a state to continually revise its RPGs every time

[23] Many of the CAIR states without Class I areas similarly relied on CAIR emission reductions within the state to address some or all of their contribution to visibility impairment in other states' Class I areas, which the impacted Class I area state(s) used to set the RPGs for their Class I area(s). Certain surrounding non-CAIR states also relied on reductions due to CAIR in nearby states to develop their regional haze SIP submittals.

an event affecting these future projections changed.

EPA recognized the problems of a rigid requirement to meet a long-term goal based on modeled projections of future visibility conditions, and addressed the uncertainties associated with RPGs in several ways. EPA made clear in the RHR that the RPG is not a mandatory standard which must be achieved by a particular date. *See* 64 FR at 35733. At the same time, EPA established a requirement for a midcourse review and, if necessary, correction of the states' regional haze plans. *See* 40 CFR 52.308(g). In particular, the RHR calls for a five-year progress review after submittal of the initial regional haze plan. The purpose of this progress review is to assess the effectiveness of emission management strategies in meeting the RPG and to provide an assessment of whether current implementation strategies are sufficient for the state or affected states to meet their RPGs. If a state concludes, based on its assessment, that the RPGs for a Class I area will not be met, the RHR requires the state to take appropriate action. *See* 40 CFR 52.308(h). The nature of the appropriate action will depend on the basis for the State's conclusion that the current strategies are insufficient to meet the RPGs. Florida specifically committed to follow this process in the LTS portion of its submittal. Any resulting visibility improvement differences resulting from changes in coverage for Florida's EGUs from CAIR will be assessed in the five-year progress report SIP.

D. Coordination of RAVI and Regional Haze Requirements

EPA's visibility regulations direct states to coordinate their RAVI LTS and monitoring provisions with those for regional haze, as explained in sections IV.F and IV.G of this action. Under EPA's RAVI regulations, the RAVI portion of a state SIP must address any integral vistas identified by the FLMs pursuant to 40 CFR 51.304. An *integral vista* is defined in 40 CFR 51.301 as a ''view perceived from within the mandatory Class I area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area.'' Visibility in any mandatory Class I area includes any integral vista associated with that area. The FLMs did not identify any integral vistas in Florida. In addition, the Class I areas in Florida are neither experiencing RAVI, nor are any of the State's sources affected by the RAVI provisions. Thus, the Florida regional haze SIP submittal does not explicitly address the two requirements regarding coordination of the regional haze with the RAVI LTS and monitoring provisions. However, Florida previously made a commitment to address RAVI should the FLM certify visibility impairment from an individual source.[24] EPA proposes to find that this regional haze submittal appropriately supplements and augments Florida's RAVI visibility provisions to address regional haze by updating the monitoring and LTS provisions as summarized below in this section.

In the Florida regional haze SIP submittal, FDEP updated its visibility monitoring program and developed a LTS to address regional haze. Also in this submittal, FDEP affirmed its commitment to complete items required in the future under EPA's RHR. Specifically, FDEP made a commitment to review and revise its regional haze implementation plan and submit a plan revision to EPA by July 31, 2018, and every 10 years thereafter. *See* 40 CFR 51.308(f). In accordance with the requirements listed in 40 CFR 51.308(g) of EPA's regional haze regulations and 40 CFR 51.306(c) of the RAVI LTS regulations, FDEP made a commitment to submit a report to EPA on progress towards the RPGs for each mandatory Class I area located within Florida and in each mandatory Class I area located outside Florida which may be affected by emissions from within Florida. The progress report is required to be in the form of a SIP revision and is due every five years following the initial submittal of the regional haze SIP. Consistent with EPA's monitoring regulations for RAVI and regional haze, Florida will rely on the IMPROVE network for compliance purposes, in addition to any RAVI monitoring that may be needed in the future. *See* 40 CFR 51.305, 40 CFR 51.308(d)(4). Also, the Florida new source review (NSR) rules continue to provide a framework for review and coordination with the FLMs on new sources which may have an adverse impact on visibility in either form (i.e., RAVI and/or regional haze) in any Class I area. The Florida regional haze SIP contains a plan addressing the associated monitoring and reporting requirements. *See* 53 FR 24695 (June 30, 1988).

E. Monitoring Strategy and Other Implementation Plan Requirements

The primary monitoring network for regional haze in Florida is the IMPROVE network. As discussed in section V.B.2 of this action, there are currently three IMPROVE sites in Florida, which serve as the monitoring sites for the three Class I areas in Florida. IMPROVE monitoring data from 2000–2004 serves as the baseline for the regional haze program and is relied upon in the Florida regional haze submittal. In the submittal, Florida states its intention to rely on the IMPROVE network for complying with the regional haze monitoring requirement in EPA's RHR for the current and future regional haze implementation periods.

Data produced by the IMPROVE monitoring network will be used nearly continuously for preparing the five-year progress reports and the 10-year SIP revisions, each of which relies on analysis of the preceding five years of data. The Visibility Information Exchange Web System (VIEWS) web site has been maintained by VISTAS and the other RPOs to provide ready access to the IMPROVE data and data analysis tools. Florida is encouraging VISTAS and the other RPOs to maintain the VIEWS or a similar data management system to facilitate analysis of the IMPROVE data.

In addition to the IMPROVE measurements, FDEP and the local air agencies in the State operate a $PM_{2.5}$ network of the filter-based federal reference method monitors, federal equivalent method continuous monitors and continuous mass monitors, and filter-based speciated monitors. These $PM_{2.5}$ measurements help FDEP characterize air pollution levels in areas across the state, and therefore aid in the analysis of visibility improvement in and near the Class I areas.

F. Consultation With States and FLMs

1. Consultation With Other States

In December 2006 and May 2007, the State Air Directors from the VISTAS states held formal interstate consultation meetings. The purpose of the meetings was to discuss the methodology proposed by VISTAS for identifying sources to evaluate for reasonable progress. The states invited FLM and EPA representatives to participate and to provide additional feedback. The Directors discussed the results of analyses showing contributions to visibility impairment from states to each of the Class I areas in the VISTAS region.

FDEP has evaluated the impact of sources on Class I areas in neighboring states. FDEP sent letters to Alabama and Georgia documenting its analysis using the State's AOI methodology and its approach to address the visibility impairment at the Class I areas in those states. The neighboring states were

[24] The Florida visibility SIP revisions were submitted to EPA on August 27, 1987, and approved by EPA on June 30, 1988 (53 FR 24695).

supportive of the Florida approach. The documentation for these formal consultations is provided in Exhibit 3 of Florida's SIP.

EPA proposes to find that Florida has adequately addressed the consultation requirements in the RHR and appropriately documented its consultation with other states in its SIP submittal.

2. Consultation With the FLMs

Through the VISTAS RPO, Florida and the nine other member states worked extensively with the FLMs from the U.S. Departments of the Interior and Agriculture to develop technical analyses that support the regional haze SIPs for the VISTAS states. FDEP provided a draft plan dated August 27, 2009, to the FLMs (and EPA) for review. Exhibit 3 of the Florida regional haze SIP submittal includes the October 26, 2009, comment letter from the U.S. National Park Service and the U.S. Fish and Wildlife Service, which indicates that the FLMs appear to be generally supportive of the State's regional haze SIP, and were pleased with the technical information summarized in the regional haze SIP narrative. The bulk of the comments requested clarifications to the SIP or raised specific issues on the BART determinations that Florida addressed. FDEP responded to all the comments and made the requested clarifications as specified in its final SIP submittal. To address the requirement for continuing consultation procedures with the FLMs under 40 CFR 51.308(i)(4), FDEP made a commitment in the SIP to ongoing consultation with the FLMs on regional haze issues throughout implementation of its plan, including annual discussions. FDEP also affirms in the SIP that FLM consultation is required for those sources subject to the State's NSR regulations.

G. Periodic SIP Revisions and Five-Year Progress Reports

As summarized in sectionV.D of this action, consistent with 40 CFR 51.308(g), FDEP affirmed its commitment to submitting a progress report in the form of a SIP revision to EPA every five years following this initial submittal of the Florida regional haze SIP. The report will evaluate the progress made towards the RPGs for the mandatory Class I areas located within Florida and in each mandatory Class I area located outside Florida that may be affected by emissions from within Florida. Florida also offered recommendations for several technical improvements that, as funding allows, can support the State's next LTS. These recommendations are discussed in detail in the Florida SIP submittal in Appendix K.

If another state's regional haze SIP identifies that Florida's SIP needs to be supplemented or modified, and if Florida agrees after appropriate consultation, today's action may be revisited or additional information and/or changes will be addressed in the five-year progress report SIP revision.

VI. What action is EPA taking?

EPA is proposing a limited approval of three revisions to the Florida SIP submitted by the State of Florida on March 19, 2010, August 31, 2010, and April 13, 2012, as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308, as described previously in this action.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *. 44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply to this action.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's proposal does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have Federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' Under

Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12 of the NTTAA of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: May 14, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–12777 Filed 5–24–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0336; FRL–3675–6]

Approval and Promulgation of Implementation Plans; Kentucky; Louisville; Fine Particulate Matter 2002 Base Year Emissions Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the fine particulate matter ($PM_{2.5}$) 2002 base year emissions inventory, portion of the State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky on December 3, 2008. The emissions inventory is part of the Kentucky's December 3, 2008, SIP revision that was submitted to meet the nonattainment requirements related to the Commonwealth's portion of the bi-state Louisville, KY–IN nonattainment area for the 1997 annual $PM_{2.5}$ national ambient air quality standards (NAAQS). The bi-state Louisville, KY–IN nonattainment area is comprised of Clark and Floyd Counties in Indiana, in their entireties; the Madison Township portion of Jefferson County, Indiana; and Bullitt and Jefferson Counties in Kentucky, in their entireties. This proposed action only relates to the Kentucky portion (i.e., Bullitt and Jefferson Counties) of this Area. EPA will consider action on the emissions inventory for the Indiana portion of this Area in a separate action. This action is being taken pursuant to section 110 of the Clean Air Act.

DATES: Comments must be received on or before June 25, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0336, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2012–0336,'' 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–2012–0336. 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: Richard Wong, 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) 562–8726. Mr. Wong can be reached via electronic mail at *wong.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Analysis of the Commonwealth's Submittal
III. Proposed Action
IV. Statutory and Executive Order Reviews

I. Background

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter based on a 3-year average of annual mean $PM_{2.5}$ concentrations. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 annual $PM_{2.5}$ NAAQS based upon air quality monitoring data for calendar years 2001–2003. These designations became effective on April 5, 2005. The bi-state Louisville Area (which is comprised of Clark and Floyd Counties in Indiana, in their entireties; the Madison Township portion of Jefferson County, Indiana; and Bullitt and Jefferson Counties in Kentucky in their entireties) was designated nonattainment for the 1997 annual $PM_{2.5}$ NAAQS. *See* 40 CFR 81.318 for Kentucky and 40 CFR 81.315 for Indiana.

Designation of an area as nonattainment starts the process for a state to develop and submit to EPA a SIP under title I, part D of the Clean Air Act (CAA or Act). This SIP must include, among other elements, a demonstration of how the NAAQS will be attained in the nonattainment area as expeditiously as practicable, but no later than the date required by the CAA. Under CAA section 172(b), a state has up to three years after an area's designation as nonattainment to submit its SIP to EPA. For the 1997 $PM_{2.5}$ NAAQS, these SIPs were due April 5, 2008. *See* 40 CFR 51.1002(a).

On December 3, 2008, Kentucky submitted an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, a 2002 base year emissions inventory and other planning SIP revisions related to attainment of the 1997 annual $PM_{2.5}$ NAAQS in the Commonwealth's portion of the bi-state Louisville Area. Subsequently, on March 9, 2011 (76 FR 12860), EPA determined that the bi-state Louisville Area attained the 1997 annual average $PM_{2.5}$ NAAQS. The determination of attainment was based upon complete, quality-assured and certified ambient air monitoring data for the 2007–2009 period, showing that the Area had monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. The requirements for the Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and other planning SIP revisions related to attainment of the standard were suspended as a result of the determination of attainment, so long as the Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. *See* 40 CFR 51.1004(c).

On September 30, 2011, Kentucky withdrew the nonattainment submissions (everything with the exception of the 2002 base year emissions inventory) for its portion of the bi-state Louisville Area as allowed by 40 CFR 51.1004(c). EPA notes that the determination of attainment did not suspend the emissions inventory requirement found in CAA section 172(c)(3), and as such, Kentucky did not withdraw this portion of its December 3, 2008, SIP revision. Section 172(c)(3) of the CAA requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. EPA is now proposing to approve the emissions inventory portion of the SIP revision submitted by the Commonwealth of Kentucky on December 3, 2008, as required by section 172(c)(3).

II. Analysis of the Commonwealth's Submittal

As discussed above, section 172(c)(3) of the CAA requires areas to submit a comprehensive, accurate and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area. Kentucky selected 2002 as base year for the emissions inventory per 40 CFR 51.1008(b). Emissions contained in Kentucky's December 3, 2008, SIP revision cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. A detailed discussion of the emissions inventory development can be found in Appendix H of the Kentucky submittal; a summary is provided below.

The table below provides a summary of the annual 2002 emissions of nitrogen oxides (NO_X), sulfur dioxide (SO_2) and $PM_{2.5}$ included in the Kentucky submittal.

TABLE 1—2002 ANNUAL EMISSIONS FOR THE LOUISVILLE AREA

[Tons per year]

County	Point sources		
	NO_X	SO_2	$PM_{2.5}$
Bullitt	221	391	56
Jefferson	25,915	41,483	830
County	Non-road sources		
	NO_X	SO_2	$PM_{2.5}$
Bullitt	578	50	44
Jefferson	10,989	1,429	720
County	Area sources		
	NO_X	SO_2	$PM_{2.5}$
Bullitt	51	93	804
Jefferson	234	0	1,083
County	Mobile sources		
	NO_X	SO_2	$PM_{2.5}$
Bullitt	2,979	89	43
Jefferson	25,864	917	369

The 172(c)(3) emissions inventory is developed by the incorporation of data from multiple sources. States were required to develop and submit to EPA a triennial emissions inventory according to the Consolidated Emissions Reporting Rule for all source categories (i.e., point, area, nonroad mobile and on-road mobile). This inventory often forms the basis of data that are updated with more recent information and data that also is used in their attainment demonstration modeling inventory. Such was the case in the development of the 2002 emissions inventory that was submitted in the Commonwealth's attainment SIP for its portion of the bi-state Louisville Area. The 2002 emissions inventory was based on data developed with the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) contractors and submitted by the states to the 2002 National Emissions Inventory. Several iterations of the 2002 inventories were developed for the different emissions source categories resulting from revisions and updates to the data. This resulted in the use of version G2 of the updated data to represent the point sources' emissions. Data from many databases, studies and models (e.g., Vehicle Miles Traveled, fuel programs, the NONROAD 2002 model data for commercial marine vessels, locomotives and Clean Air Market Division, etc.) resulted in the inventory submitted in this SIP. The data were developed according to current EPA emissions inventory guidance ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations'' (August 2005) and a quality assurance project plan that was developed through VISTAS and approved by EPA. EPA preliminarily agrees that the process used to develop this inventory was adequate to meet the requirements of CAA section 172(c)(3) and the implementing regulations.

EPA has reviewed Kentucky's emissions inventory and has preliminarily determined that it is adequate for the purposes of meeting section 172(c)(3) emissions inventory requirement. Further, EPA has made the preliminary determination that the emissions were developed consistent with the CAA, implementing regulations and EPA guidance for emission inventories.

III. Proposed Action

EPA is proposing to approve the 2002 base year emissions inventory portion of the SIP revision submitted by the Commonwealth of Kentucky on December 3, 2008. EPA has made the preliminary determination that this action is consistent with section 110 of the CAA.

IV. 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 F43255, 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 Commonwealth, 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

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

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

Dated: May 11, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–12799 Filed 5–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0595; FRL–9677–4]

Approval and Promulgation of Implementation Plans; Ohio; Volatile Organic Compound Emission Control Measures for the Cleveland Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 1, 2011, the Ohio Environmental Protection Agency (Ohio EPA) submitted several volatile organic compound (VOC) rules for approval into its State Implementation Plan (SIP). These rules, which include the source categories covered by the Control Technique Guideline (CTG) documents issued in 2008, as well as several other miscellaneous rule revisions, will help Ohio's effort to attain the 2008 ozone standard. These rules are approvable because they are consistent with the CTG documents issued by EPA in 2008, and satisfy the reasonably available control technology (RACT) requirements of the Clean Air Act (Act).

DATES: Comments must be received on or before June 25, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2011–0595, by one of the following methods:

• *www.regulations.gov:* Follow the on-line instructions for submitting comments.

• *Email: aburano.douglas@epa.gov.*

• *Fax:* (312) 408–2279.

• *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

• *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2011–0595. 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 instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

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 whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Attainment Planning & Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?
II. What action is EPA taking today and what is the purpose of this action?
III. What is EPA's analysis of Ohio's submitted VOC rules?
IV. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What action is EPA taking today and what is the purpose of this action?

EPA is proposing to approve into the Ohio SIP several new VOC and amended VOC rules under Chapter 3745–21 of the Ohio Administrative Code (OAC). These include new fiberglass boat manufacturing, miscellaneous industrial adhesives, and automobile and light-duty truck assembly coatings rules, which are consistent with the CTGs issued in 2008, as well as revisions to definitions and rules for the control of VOC emissions from stationary sources, storage of volatile organic liquids, industrial cleaning solvents, and flatwood paneling coatings. These VOC rules will help Ohio's effort to attain the 2008 ozone standard.

EPA is also proposing to approve into the Ohio SIP amendments to OAC 3745–72, which contain its Low Reid Vapor Pressure Fuel Requirements, so that it is consistent with EPA requirements regarding special provisions for alcohol blends.

III. What is EPA's analysis of Ohio's submitted VOC rules?

As discussed previously, EPA issued new CTGs in 2008. EPA has reviewed Ohio's new VOC rules for the source categories covered by these CTGs, and proposes to find that those rules covered by the 2008 CTGs are consistent with the control measures, definitions, recordkeeping, and test methods in these CTGs and applicable EPA RACT guidance at *www.epa.gov/ttn/naaqs/ozone/ozonetech/#ref.* Ohio's revised VOC rules are also consistent with applicable EPA guidance as described above. Therefore EPA is proposing to approve these rules as meeting the RACT requirements in the Act. A brief discussion of these rules follows.

(1) 3745–21–01—Definitions

Revisions to this section primarily consist of new definitions that are needed to support the new and revised rules. These definitions are consistent with EPA RACT guidance and are approvable.

(2) 3745–21–09—Control of Emissions of VOC From Stationary Sources and Perchloroethylene From Dry Cleaning Facilities

The main revisions in this section are the expiration of the control requirements in 3745–21–09 (C), (U), and (HH) for the ''Surface coating of automobile and light-duty trucks,'' ''Surface coating of miscellaneous metal parts and products,'' and ''Surface coating of automotive/transportation and business machine plastic parts,'' when those sources, in the former Cleveland-Akron-Lorain 1997 8-hour ozone nonattainment area (Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit Counties) become subject to and comply with the new rules (discussed below) based on the new CTGs. These revisions are approvable because the control requirements in the new CTGs are more appropriate and include more stringent emission limits than the rules being replaced.

Additional requirements for flares have been added to 3745–21–09(JJ), (LL), (UU), (ZZ), and (BBB) for ''The Goodyear Tire and Rubber Company,'' ''The Lubrizol Corporation,'' ''British Petroleum Company, Toledo Refinery,'' ''Firestone Synthetic Rubber & Latex Company,'' and ''BF Goodrich Company Akron Chemical Plant.'' An unenforceable numerical emission limit for BF Goodrich's agerite resin D process has been replaced with the appropriate flare control requirements in (DD)(10)(d), as well as the control equipment/flare monitoring requirements in (10)(e), and the requirement in (10)(f) that the control equipment/flare be operated at all times when emissions are vented to it. For the other companies listed above, the flare control requirements in (10)(d) have been enhanced by the addition of the requirements in (10)(e) and (10)(f). The addition of these flare requirements improves the enforceability of the control requirements in 3745–21–09(JJ), (LL), (UU), (ZZ), and (BBB) and they are therefore approvable.

(3) 3745–21–21—Storage of Volatile Organic Liquids in Fixed Roof Tanks and External Floating Roof Tanks

A minor revision was made to (D)(3)(c), which previously referred to the requirements ''listed in paragraphs (D)(3)(c)(i) and (D)(3)(c)(ii).'' This revision consisted of referring to the ''following'' requirements instead of the superfluous reference ''listed in paragraphs (D)(3)(c)(i) and (D)(3)(c)(ii).'' There was no substantive change as a result of this rule revision.

(4) 3745–21–23—Control of VOC Emissions From Industrial Solvent Cleaning Operations

Ohio revised its applicability cutoff in (A)(1)(c) to 3.0 tons VOC emissions per twelve-month rolling period. This cutoff is consistent with the applicability cutoff in several CTGs and is therefore approvable.

Ohio has added alternatives, for manufacturers of coatings, inks or adhesives, to the VOC-content limitations in (C)(1) and the cleaning requirements in (C)(2). These requirements, in (C)(6)(b) are based on the (California) Bay Area Air Quality Management District's rules, which are referenced in EPA's CTG. These requirements apply to cleaning mixing vats, high dispersion mills, grinding mills, tote tanks, and roller mills and consist of four options: (1) The solvent or solvent solution used must either contain less than 1.67 pounds VOC per gallon or have a VOC composite partial vapor pressure of less than or equal to 8 millimeters (mm) of mercury (Hg); (2) several work practices must be implemented, including storing all VOC-containing cleaning materials in closed containers; (3) the emissions from equipment cleaning must be collected and vented to an emission control system with an overall control efficiency of 80 percent or more on a mass basis; or (4) no more than 60 gallons of fresh solvent per month may be used (records of which are required to be kept in (G)((7)), and all VOC-containing cleaning materials must be stored in closed containers. In addition, the owner or operator of a facility engaged in wipe cleaning may not use open containers for the storage of organic compounds to be used for cleaning, or for the storage or disposal of any material impregnated with organic compounds used for cleaning.

Records of the volume of fresh solvent used per month, VOC content in pounds of VOC per gallon or VOC composite pressure are required, if applicable to the option chosen for achieving compliance.

Paragraph (J) includes sufficiently detailed monthly recordkeeping requirements for any facility that determines that it is exempt from the requirements of this rule because emissions are less than 3.0 tons per twelve-month rolling period. These cleaning solvent requirements are therefore approvable because they are consistent with EPA guidance and require adequate recordkeeping.

(5) 3745–21–24—Flat Wood Paneling Coatings

Ohio added a paragraph (H) to provide the proper test methods for use when a facility chooses to comply by use of an add-on control device. These test methods are consistent with, and include, EPA test methods and compliance testing requirements.

Paragraph (K) includes sufficiently detailed daily recordkeeping requirements for any facility that determines it is exempt from the requirements of this rule because emissions are less than 15.0 pounds of VOC per day.

The additions to Ohio's flat wood paneling coating rule are therefore approvable.

(6) 3745–21–27—Boat Manufacturing

This new regulation is based on and is consistent with EPA's 2008 CTG for Fiberglass Boat Manufacturing Materials. The control requirements for fiberglass boat manufacturing operations in the former Cleveland-Akron-Lorain 1997 8-hour ozone nonattainment area apply if the combined emissions of VOC from all such operations equal or exceed 2.7 tons per rolling twelve-month period. This rule covers open molding and gel coat operations, resin and gel coat mixing operations, and resin and gel coat application equipment cleaning operations. Emission limits are consistent with the CTG, as are VOC content and vapor pressure limits applicable to cleaning activities associated with fiberglass boat manufacturing.

Subject facilities can comply by using specified monomer VOC content limits (e.g. production resin applied via atomized spray would need to comply with a weighted average monomer VOC content limit of 28 percent by weight) and a non-monomer VOC content limit of 5 percent. An emission averaging option is also available.

The VOC containing cleaning solutions for routine cleaning of application equipment must either be no more than 5 percent VOC, by weight, or the composite vapor pressure must be no more than 0.50 mmHg. Also, mixing containers that are 55 gallons or greater must be covered. Recordkeeping requirements are also specified to establish applicability and compliance with the applicable limits.

This rule is therefore consistent with RACT and is approvable.

(7) 3745–21–28—Miscellaneous Industrial Adhesives and Sealants

This new regulation is based on and is consistent with EPA's 2008 CTG for Miscellaneous Industrial Adhesive Application Operations. The control requirements for miscellaneous industrial adhesive application operations in the former Cleveland-Akron-Lorain 8-hour ozone nonattainment area apply if the combined emissions of VOC from all such operations equal or exceed 3.0 tons per twelve-month rolling period. Subject adhesive application operations must either meet the specific VOC content limitations, depending upon the application or the substrate being bonded (*e.g.* 0.3 pounds VOC per gallon of adhesive for bonding metal) or use an add-on control system that achieves an overall VOC reduction of at least 85 percent. Specific adhesive application methods (e.g. electrostatic spray) and work practices are required to reduce emissions. Recordkeeping requirements are also specified to establish applicability and compliance with the applicable limits.

This rule is therefore consistent with RACT and is approvable.

(8) 3745–21–29—Control of VOC Emissions From Automobile and Light-Duty Truck Assembly Coating Operations

This new regulation is based on and is consistent with EPA's 2008 CTG for Auto and Light-Duty Truck Assembly Coatings. The control requirements for automobile and light-duty truck assembly coating operations in the former Cleveland-Akron-Lorain 8-hour ozone nonattainment area apply if the combined emissions of VOC from all such operations equal or exceed 3.0 tons per twelve-month rolling period. Specified emission limits, e.g. 12.0 pounds VOC/gallon coating solids deposited for topcoat operations, are consistent with the CTG. As specified in the CTG, compliance with these limits is based on EPA's ''Protocol for Determining the Daily VOC Emission Rate of Automobile and Light-Duty Truck Primer-Surfacer and Topcoat Operations.'' This testing protocol considers the VOC content limit, the transfer efficiency and the efficiency of add-on control to establish compliance with the applicable emission limit.

Work practices for coating-related activities and cleaning materials, such as storing all VOC-containing coatings, thinners, and coating-related waste materials in closed containers are also required. Appropriate compliance procedures and test methods, as well as sufficient recordkeeping requirements to establish compliance and applicability are also included in this regulation.

This rule is therefore consistent with RACT and is approvable.

(9) 3745–72—Low Reid Vapor Pressure Fuel Requirements

Ohio's amendments to OAC 3745–72, which contain its low Reid vapor pressure fuel requirements, are approvable because they are consistent with EPA requirements regarding special provisions for alcohol blends.

Conclusion

EPA is proposing to approve into the Ohio SIP the new rules for fiberglass boat manufacturing (3745–21–27), miscellaneous industrial adhesives (3745–21–28), and automobile and light-duty truck assembly coatings (3745–21–29), as well as amended rules for definitions (3745–21–01), the control of VOC emissions from stationary sources (3745–21–09), storage of volatile organic liquids (3745–21–21), industrial cleaning solvents (3745–21–23), flat wood paneling coatings (3745–21–24), and low Reid vapor pressure fuel requirements (3745–72).

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

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

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

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 14, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–12804 Filed 5–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0234; FRL–9677–7]

Determination of Attainment for the Paul Spur/Douglas PM_{10} Nonattainment Area, Arizona; Determination Regarding Applicability of Clean Air Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Paul Spur/Douglas nonattainment area (NA) in Arizona is currently attaining the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM_{10}) based on certified, quality-assured ambient air monitoring data for the years 2009–2011. Based on our proposed determination that the Paul Spur/Douglas NA is currently attaining the PM_{10} NAAQS, EPA is also proposing to determine that Arizona's obligation to make submissions to meet certain Clean Air Act requirements related to attainment of the NAAQS is not applicable for as long as the Paul Spur/Douglas NA continues to attain the NAAQS and that the obligation on EPA to promulgate a Federal Implementation Plan (FIP) to address the State's attainment-related requirements would also be suspended for as long as the underlying State obligation is suspended.

DATES: Written comments must be received on or before June 25, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0234, using one of the following methods: Via the Federal eRulemaking Portal, at *www.regulations.gov*, please follow the on-line instructions; via Email to *wamsley.jerry@epa.gov*; via mail or delivery to Jerry Wamsley, Air Planning Office, AIR–2, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

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

FOR FURTHER INFORMATION CONTACT: Jerry Wamsley, Air Planning Office, AIR–2, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, telephone number: (415) 947–4111, or email address, *wamsley.jerry@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we'', ''us'' or ''our'' are used, we mean EPA. We are providing the following outline to aid in locating information in this proposal.

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I. Background

A. PM_{10} NAAQS

EPA sets the NAAQS for certain ambient air pollutants at levels required to protect public health and welfare. Particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers, or PM_{10}, is one of these ambient air pollutants for which EPA has established health-based standards. On July 1, 1987, EPA promulgated two primary standards for PM_{10}: a 24-hour standard of 150 micrograms per cubic meter (μg/m³); and, an annual PM_{10} standard of 50 μg/m³. EPA also promulgated secondary PM_{10} standards that were identical to the primary standards. 52 FR 24634; (July 1, 1987).

Effective December 18, 2006, EPA revoked the annual PM_{10} standard but retained the 24-hour PM_{10} standard. 71 FR 61144; (October 17, 2006). An area attains the 24-hour PM_{10} standard when the expected number of days per calendar year with a 24-hour concentration in excess of the standard (referred to herein as ''exceedance''), as determined in accordance with 40 CFR part 50, appendix K, is equal to or less than one.[1] See 40 CFR 50.6 and 40 CFR part 50, appendix K.

B. Designation and Classification of PM_{10} Nonattainment Areas, Including the Paul Spur/Douglas NA

Areas meeting the requirements of section 107(d)(4)(B) of the Clean Air Act (CAA or ''Act'') were designated nonattainment for PM_{10} by operation of law and classified ''moderate'' upon enactment of the 1990 Clean Air Act Amendments. These areas included all former Group I PM_{10} planning areas identified in 52 FR 29383, (August 7, 1987), as further clarified in 55 FR 45799, (October 31, 1990), and any other areas violating the NAAQS for PM_{10} prior to January 1, 1989. A **Federal Register** notice announcing the areas designated nonattainment for PM_{10} upon enactment of the 1990 Amendments, known as ''initial'' PM_{10} nonattainment areas, was published on March 15, 1991, (56 FR 11101); and, a subsequent **Federal Register** document correcting the description of some of these areas was published on August 8, 1991, (56 FR 37654).

As a former ''group I'' area, the Paul Spur/Douglas NA[2] was included in the March 1991 list of initial moderate PM_{10} nonattainment areas. Later, we codified the PM_{10} nonattainment designations and moderate area classifications in 40 CFR part 81 (56 FR 56694; November 6, 1991). For ''moderate'' nonattainment areas, such as the Paul Spur/Douglas NA, CAA section 188(c) of the 1990 Amended Act established an attainment date of December 31, 1994. On January 11, 2011, pursuant to section 188(b)(2) of the CAA, we determined that the Paul Spur/Douglas NA met the PM_{10} NAAQS as of the applicable attainment date, December 31, 1994 (76 FR 1532). Consequently, the Paul Spur/Douglas NA was not reclassified to a ''serious'' PM_{10} nonattainment area. The designation, classification, and boundaries of the Paul Spur/Douglas NA are codified at 40 CFR 81.303.

C. How does EPA make attainment determinations?

Generally, EPA determines whether an area's air quality is meeting the PM_{10} NAAQS based upon complete,[3] quality-assured, and certified data gathered at established state and local air monitoring stations (SLAMS) in the nonattainment area, and entered into the EPA Air Quality System (AQS) database. Data from air monitors operated by State, local, or Tribal agencies in compliance with EPA monitoring requirements must be submitted to AQS. These monitoring agencies certify annually that these data are accurate to the best of their knowledge. Accordingly, EPA relies primarily on data in AQS when determining the attainment status of an area. See 40 CFR 50.6; 40 CFR part 50, appendices J and K; 40 CFR part 53; and, 40 CFR part 58, appendices A, C, D, and E. EPA will also consider air quality data from other air monitoring stations in the nonattainment area provided those stations meet the Federal monitoring requirements for SLAMS, including the quality assurance and quality control criteria in 40 CFR part 58, appendix A. See 40 CFR 58.14 (2006) and 58.20 (2007)[4]; 71 FR 61236, 61242; (October 17, 2006). All valid data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix K.

Attainment of the 24-hour PM_{10} standard is determined by calculating the expected number of exceedances of the standard in a year. The 24-hour PM_{10} standard is attained when the expected number of exceedances averaged over a three-year period is less than or equal to one at each monitoring site within the nonattainment area. Generally, three consecutive years of air quality data are required to show attainment of the 24-hour PM_{10} standard. See 40 CFR part 50 and appendix K.[5]

To demonstrate attainment of the 24-hour PM_{10} standard at a monitoring site, the monitor must provide sufficient data to perform the required calculations in 40 CFR part 50, appendix K. The amount of data required varies with the sampling frequency, data capture rate, and the number of years of record. In all cases, three years of representative monitoring data that meet the 75 percent criterion discussed earlier should be utilized, if available. More than three years may be considered, if all additional representative years of data meeting the 75 percent criterion are utilized. Data not meeting these criteria may also suffice to show attainment; however, such exceptions must be approved by the appropriate Regional Administrator in accordance with EPA guidance. See 40 CFR part 50, appendix K, section 2.3.

II. EPA's Analysis

A. What is the Paul Spur/Douglas NA monitoring network?

The Arizona Department of Environmental Quality (ADEQ) has operated PM_{10} monitors near the Douglas Lime Plant, formerly the Chemical Lime Plant, at Paul Spur (''Paul Spur monitor'') and within the City of Douglas (''Douglas monitor'') for 20 years or more. Both sites are part of the ADEQ's SLAMS network.

The Paul Spur monitor is located near the intersection of Paul Spur Road and State Route 80. This monitor was sited

[1] An exceedance is defined as a daily value that is above the level of the 24-hour standard, 150 μg/m³, after rounding to the nearest 10 μg/m³ (i.e., values ending in five or greater are to be rounded up). Thus, a recorded value of 154 μg/m³ would not be an exceedance since it would be rounded to 150 μg/m³; whereas, a recorded value of 155 μg/m³ would be an exceedance since it would b rounded to 160 μg/m³. See 40 CFR part 50, appendix K, section 1.0.

[2] The Paul Spur/Douglas NA covers approximately 220 square miles along the border with Mexico within Cochise County. Cities and towns within this area include Douglas, 2010 population 17,378, (U.S. Census) and Pirtleville, 2010 population 1,744, (U.S. Census). The 2010 population of Agua Prieta, Mexico, just across the border from Douglas, is 78,138 (Instituto Nacional de Estadistica y Geografia).

[3] For PM_{10}, a ''complete'' set of data includes a minimum of 75 percent of the scheduled PM_{10} samples per quarter. See 40 CFR part 50, appendix K, section 2.3(a).

[4] EPA promulgated amendments to the ambient air monitoring regulations in 40 CFR parts 53 and 58 on October 17, 2006. (See 71 FR 61236.) The requirements for Special Purpose Monitors were revised and moved from 40 CFR 58.14 to 40 CFR 58.20.

[5] Because the annual PM_{10} standard was revoked effective December 18, 2006, this document discusses only attainment of the 24-hour PM_{10} standard. See 71 FR 61144; (October 17, 2006).

to provide PM_{10} concentration data at a middle scale[6] for the purpose of determining source impacts from the chemical lime plant. At the Paul Spur monitoring site, ADEQ replaced the dichot sampler with a partisol sampler, and added a second collocated partisol sampler for precision measurement purposes. Both monitors run on a one-day-in-six monitoring schedule. In January 2012, ADEQ replaced one of the partisol samplers with a continuous tapering element oscillating microbalance (TEOM) sampler. The TEOM sampler provides daily 24-hour average observations of PM_{10} ambient concentrations.

Prior to 1998, the Douglas monitor was located at 15th Street Park, approximately one mile north of the border with Mexico. In 1998, ADEQ re-located the Douglas monitor to its current location, the Red Cross building just across from the park on 15th Street. The Douglas monitor was sited to provide PM_{10} concentration data at a neighborhood scale for the purpose of determining population exposure. At the Douglas monitoring site, ADEQ replaced the dichot sampler with a partisol sampler. The Douglas monitor operates on a one-day-in six monitoring schedule.

B. Do the Paul Spur/Douglas NA monitors meet minimum Federal ambient air quality monitoring requirements?

ADEQ is responsible for monitoring ambient air quality outside the metropolitan areas in Arizona. Annually, ADEQ submits monitoring network plan reports to EPA. These reports discuss the status of the air monitoring network, as required under 40 CFR part 58. EPA reviews these annual network plans for compliance with the applicable reporting requirements in 40 CFR 58.10. With respect to PM_{10}, we have found that ADEQ's annual network plans meet the applicable requirements under 40 CFR part 58.[7] Furthermore, we concluded in our *Technical System Audit Report* concerning ADEQ's ambient air quality monitoring program that ADEQ's ambient air monitoring network currently meets or exceeds the requirements for the minimum number of monitoring sites designated as SLAMS for all of the criteria pollutants, and that all of the monitoring sites are properly located with respect to monitoring objectives, spatial scales and other siting criteria.[8] As noted above, in January 2012, ADEQ installed a continuous TEOM sampler at the Paul Spur monitoring site. ADEQ's placement of the TEOM monitor ensures that the Paul Spur/Douglas NA monitoring network continues to meet the requirements of 40 CFR 58.12(e) for monitoring frequency. Also, ADEQ annually certifies that the data it submits to AQS are quality-assured.[9]

C. What does the air quality data show for the Paul/Douglas NA?

As noted above, we determined that the Paul Spur/Douglas NA attained the PM_{10} NAAQS by its applicable attainment date based on our review of data collected during the 1992–1994 period. See 76 FR 1532; (January 11, 2011). Since 1994, the data from AQS indicate that only two exceedances of the PM_{10} standard have been measured in the Paul Spur/Douglas NA; both exceedances were measured at the Paul Spur monitoring site. The first exceedance, 206 μg/m^3, was observed in 2003 and the other, 159 μg/m^3, was observed in 2008.[10] No exceedances have been recorded at the Douglas monitoring site since 1991.

For the purposes of this proposed action, we have reviewed the data for the most recent three-year period (2009–2011). Table 1 summarizes the PM_{10} concentration data collected at the Paul Spur and Douglas monitors over the past three years. As shown in Table 1, no exceedances were recorded within the Paul Spur/Douglas NA over the 2009–2011 period.

TABLE 1—SUMMARY OF 2009–2011 PM_{10} MONITORING DATA FOR PAUL SPUR/DOUGLAS NONATTAINMENT AREA[a]

Monitoring site	Highest 24-hour PM_{10} concentration (μg/m^3)			Expected exceedances per year
	2009	2010	2011	2009–2011
Douglas Lime Plant at Paul Spur	49	46	85	0.0
Douglas (15th Street Park)	97	83	138	0.0

PM_{10} NAAQS = 150 μg/m^3.

[a] Source: AQS QuickLook report dated March 19, 2012.

During the 2009–2011 time period, the data collected by ADEQ meets the completeness criterion for all quarters at the Paul Spur monitor and for ten of twelve quarters at the Douglas monitor. The two incomplete quarters at the Douglas monitor were the first quarter of 2010 and the fourth quarter of 2011. During the first quarter of 2010, the Douglas monitor was three samples short of the 75 percent criterion, for a 60 percent (9 of 15 samples) reporting rate, and during the fourth quarter of 2011, the Douglas monitor was one sample short of the 75 percent criterion, for a 73 percent (11 of 15 samples) reporting rate.

To be considered ''complete,'' valid measurements must be made for 75 percent of all the scheduled sampling dates in each quarter of the year, and generally, three years of representative monitoring data that meet the 75 percent criterion should be utilized, where available. As noted above, however, EPA may find that data not

[6] In this context, ''middle scale'' refers to conditions characteristic of areas from 100 meters to several kilometers. See 40 CFR part 58, appendix D, section 4.6.

[7] See EPA letters to ADEQ concerning ADEQ's annual network plan reports for years 2009, 2010, and 2011. These letters are in the docket for this rulemaking.

[8] See Technical System Audit Report transmitted via correspondence dated September 23, 2010, from Deborah Jordan, Director, Air Division, EPA Region IX, to Eric Massey, Air Division, ADEQ.

[9] See, *e.g.,* the letter from Eric C. Massey, Director, Air Quality Division, ADEQ to Jared Blumenfeld, Regional Administrator, EPA Region IX, dated February 28, 2012 certifying the ambient air quality data collected at the Paul Spur and Douglas sites for year 2011.

[10] ADEQ flagged the 2003 and 2008 exceedances as exceptional events. EPA has not taken action to evaluate whether these exceedances qualify as exceptional events.

meeting the completeness criterion suffice to show attainment of a given NAAQS. See 40 CFR part 50, appendix K, section 2.3(b). Relevant considerations that we take into account when evaluating whether data not meeting the completeness criterion would suffice include, but are not limited to, monitoring site closures/moves, monitoring diligence, consistency and levels of the valid concentration measurements that are available, and nearby observed ambient concentrations.

After reviewing the Paul Spur/Douglas NA data for the 2009–2011 period, for the three reasons discussed below, we find that the available data are sufficient to determine whether the Paul Spur/Douglas NA attained the PM_{10} standard by December 31, 2011; notwithstanding that the Douglas' monitor data did not meet the 75 percent completeness criterion for two of twelve quarters. First, we note the extent to which the maximum monitored levels during the 2009–2011 period, 85 μg/m³ at the Paul Spur monitor and 138 μg/m³ at the Douglas monitor, clearly fall below the applicable standard of 150 μg/m³. Second, we note that twelve of twelve quarters were complete at the Paul Spur monitor and ten of twelve quarters were complete at the Douglas monitor. Lastly, we note that the Douglas monitor has been in operation for over 20 years and has not recorded an exceedance of the PM_{10} standard since 1991. The only two exceedances recorded in the Paul Spur/Douglas NA since 1991 have been at the Paul Spur monitoring site; the site for which we have a complete data set for 2009–2011.

Therefore, based on our review of the certified, quality-assured data for 2009–2011, we find that the expected number of exceedances per year for the Paul Spur/Douglas NA for the most recent three-year period (i.e., 2009 to 2011) was 0.0 days per year. With an annual expected exceedance rate for the 24-hour PM_{10} NAAQS of less than 1.0, these data represent attainment of the PM_{10} standard. Consequently, EPA proposes to determine that the Paul Spur/Douglas NA is attaining the PM_{10} NAAQS. Prior to taking final action on this proposal, we will review any preliminary data for 2012 submitted by ADEQ to AQS for the Paul Spur/Douglas NA to ensure that such preliminary data shows continued attainment of the standard.

III. EPA's Clean Data Policy and the Applicability of Clean Air Act Planning Requirements to the Paul Spur/Douglas NA

The air quality planning requirements for moderate PM_{10} nonattainment areas, such as the Paul Spur/Douglas NA, are set out in part D, subparts 1 and 4 of title I of the Act. EPA has issued guidance in a General Preamble describing how we will review state implementation plans (SIPs) and SIP revisions submitted under title I of the Act, including those containing moderate PM_{10} nonattainment area SIP provisions.[11]

The subpart 1 requirements include, among other things, provisions for reasonably available control measures or ''RACM'', reasonable further progress or ''RFP'', emissions inventories, a permit program for construction and operation of new or modified major stationary sources in the nonattainment area or ''NSR'', contingency measures, conformity, and additional SIP revisions providing for attainment where EPA determines that the area has failed to attain the standard by the applicable attainment date.

Subpart 4 requirements in CAA section 189 apply specifically to PM_{10} nonattainment areas. The requirements for moderate PM_{10} nonattainment areas include: (1) An attainment demonstration; (2) provisions for RACM; (3) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date; and, (4) provisions ensuring that the control requirements applicable to an area's major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors, except where the Administrator has determined that such sources do not contribute significantly to PM_{10} levels exceeding the NAAQS.

For nonattainment areas where EPA determines that monitored data show that the NAAQS have already been achieved, EPA's interpretation, upheld by the Courts, is that the obligation to submit certain requirements of part D, subparts 1, 2 and 4 of the Act are suspended for so long as the area continues to attain. These include requirements for attainment demonstrations, RFP, RACM, and contingency measures, because these provisions have the purpose of helping achieve attainment of the NAAQS. Certain other obligations for PM_{10} nonattainment areas, however, are not suspended, such as the NSR requirements.

This interpretation of the CAA is known as the Clean Data Policy. It is the subject of several EPA memoranda and regulations, and numerous rulemakings that have been published in the **Federal Register** over more than fifteen years. EPA finalized the statutory interpretation set forth in the Clean Data Policy in its final 8-hour ozone implementation rule, 40 CFR 51.918, as part of its ''Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2'' (Phase 2 Final Rule); see discussion in the preamble to the rule at 70 FR 71612, 71645–71646; (November 29, 2005). The D.C. Circuit Court upheld this Clean Data regulation as a valid interpretation of the CAA; see *NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009). EPA also finalized its interpretation in an implementation rule for the NAAQS for particulate matter of 2.5 microns or less ($PM_{2.5}$); see 40 CFR 51.1004(c). Thus, EPA has codified the Clean Data Policy when it established final rules governing implementation of new or revised NAAQS for the pollutants. See 70 FR 71612, 71644–46 (November 29, 2005); 72 FR 20586, 20665 (April 25, 2007) ($PM_{2.5}$ Implementation Rule). Otherwise, EPA applies the Clean Data Policy in individual rulemakings related to specific nonattainment areas. See, *e.g.,* 75 FR 27944 (May 19, 2010), the determination of attainment of the PM_{10} standard in Coso Junction, California; and, 75 FR 6571 (February 10, 2010) the determination of attainment of the 1-hour ozone standard in Baton Rouge, Louisiana.

In its many applications of the Clean Data Policy interpretation to PM_{10}, EPA has explained that the legal bases set forth in detail in our Phase 2 Final rule, our May 10, 1995 memorandum from John S. Seitz, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' our $PM_{2.5}$ Implementation Rule, and our December 14, 2004 memorandum from Stephen D. Page entitled ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards,'' are equally pertinent to the interpretation of provisions of subparts 1 and 4 applicable to PM_{10}. See, *e.g.,* 71 FR 6352 (February 8, 2006) (Ajo, Arizona area); 71 FR 13021 (March 14, 2006) (Yuma, Arizona area); 71 FR 40023 (July 14, 2006) (Weirton, West Virginia area); 71 FR 44920 (August 8, 2006) (Rillito, Arizona area); 71 FR 63642 (October 30, 2006) (San Joaquin Valley, California

[11] ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' (57 FR 13498; April 16, 1992, and supplemented at 57 FR 18070; April 28, 1992); hereafter referred to as the General Preamble.

area); 72 FR 14422 (March 28, 2007) (Miami, Arizona area); 75 FR 27944 (May 19, 2010) (Coso Junction, California area); and 76 FR 21807 (April 19, 2011) (Truckee Meadows, Nevada area). EPA's interpretation that the obligation to submit an attainment demonstration, RACM, RFP contingency measures, and other measures related to attainment under part D of title I of the CAA, pertains whether the standard is PM_{10}, ozone or $PM_{2.5}$.

In our proposed and final rulemakings determining that the San Joaquin Valley nonattainment area attained the PM_{10} standard, EPA set forth at length our rationale for applying the Clean Data Policy to PM_{10}. The Ninth Circuit Court subsequently upheld this rulemaking, and specifically EPA's Clean Data Policy in the context of the PM_{10} standard. See *Latino Issues Forum* v. *EPA,* Nos. 06–75831 and 08–71238 (9th Cir.), Memorandum Opinion, March 2, 2009. In rejecting petitioner's challenge to the Clean Data Policy for PM_{10}, the Court stated:

> As the EPA rationally explained, if an area is in compliance with PM_{10} standards, then further progress for the purpose of ensuring attainment is not necessary.

EPA noted in its prior PM_{10} rulemakings that the reasons for relieving an area that has attained the relevant standard of certain obligations under part D, subparts 1 and 2, apply equally to part D, subpart 4, which contains specific attainment demonstration and RFP provisions for PM_{10} nonattainment areas. In EPA's Phase 2 Final Rule and ozone (Seitz) and $PM_{2.5}$ Clean Data (Page) memoranda, EPA established that it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with related requirements, so as not to require SIP submissions if an area subject to those requirements is already attaining the NAAQS (i.e., attainment of the NAAQS is demonstrated with three consecutive years of complete, quality-assured, and certified air quality monitoring data). Every U.S. Circuit Court of Appeals that has considered the Clean Data Policy has upheld EPA rulemakings applying its interpretation, for both ozone and PM_{10}. See *Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004); *Our Children's Earth Foundation* v. *EPA,* No. 04–73032 (9th Cir. June 28, 2005) (memorandum opinion), *Latino Issues Forum, supra.*

It has been EPA's longstanding interpretation that the general provisions of part D, subpart 1 of the Act (sections 171 and 172) do not require the submission of SIP revisions concerning RFP for areas already attaining the ozone NAAQS. In the General Preamble, we stated:

> [R]equirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.

57 FR 13564; (April 16, 1992). EPA's prior determinations of attainment for PM_{10}, *e.g.,* for the San Joaquin Valley and Coso Junction areas in California, make clear that the same reasoning applies to the PM_{10} provision of part D, subpart 4. See 71 FR 40952 and 71 FR 63642 (proposed and final determination of attainment for San Joaquin Valley); and, 75 FR 13710 and 75 FR 27944 (proposed and final determination of attainment for Coso Junction).

With respect to RFP, section 171(1) states that, for purposes of part D of title I, RFP ''means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.'' Thus, whether dealing with the general RFP requirement of section 172(c)(2), the ozone-specific RFP requirements of sections 182(b) and (c), or the specific RFP requirements for PM_{10} areas of part D, subpart 4, section 189(c)(1), the stated purpose of RFP is to ensure attainment by the applicable attainment date. Section 189(c)(1) states that:

> Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 7501(1) of this title, toward attainment by the applicable date.

Although this section states that revisions shall contain milestones which are to be achieved until the area is redesignated to attainment, such milestones are designed to show reasonable further progress ''toward attainment by the applicable attainment date,'' as defined by section 171. Thus, it is clear that once the area has attained the standard, no further milestones are necessary or meaningful. This interpretation is supported by language in section 189(c)(3), which mandates that a State that fails to achieve a milestone must submit a plan that assures that the State will achieve the next milestone or attain the NAAQS if there is no next milestone. Section 189(c)(3) assumes that the requirement to submit and achieve milestones does not continue after attainment of the NAAQS.

In the General Preamble, we noted with respect to section 189(c) that the purpose of the milestone requirement ''is 'to provide for emission reductions adequate to achieve the standards by the applicable attainment date' (H.R. Rep. No. 490, 101st Cong., 2d Sess. 267 (1990)).'' 57 FR 13539; (April 16, 1992). If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled.[12] EPA took this position with respect to the general RFP requirement of section 172(c)(2) in the General Preamble and also in the Seitz memorandum with respect to the requirements of sections 182(b) and (c). In our prior applications of the Clean Data Policy to PM_{10}, we have extended that interpretation to the specific provisions of part D, subpart 4. See, *e.g.,* 71 FR 40952 and 71 FR 63642, the proposed and final determination of attainment for San Joaquin Valley; and, 75 FR 13710 and 75 FR 27944, the proposed and final determination of attainment for Coso Junction.

In the General Preamble, we stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the ''requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.'' 57 FR 13564; (April 16, 1992). See also our September 4, 1992 memorandum from John Calcagni, entitled ''Procedures for Processing Requests to Redesignate Areas to

[12] Thus, we believe that it is a distinction without a difference that section 189(c)(1) speaks of the RFP requirement as one to be achieved until an area is ''redesignated attainment,'' as opposed to section 172(c)(2), which is silent on the period to which the requirement pertains, or the ozone nonattainment area RFP requirements in sections 182(b)(1) or 182(c)(2), which refer to the RFP requirements as applying until the ''attainment date,'' since section 189(c)(1) defines RFP by reference to section 171(1) of the Act. Reference to section 171(1) clarifies that, as with the general RFP requirements in section 172(c)(2) and the ozone-specific requirements of section 182(b)(1) and 182(c)(2), the PM-specific requirements may only be required ''for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' 42 U.S.C. section 7501(1). As discussed in the text of this rulemaking, EPA interprets the RFP requirements, in light of the definition of RFP in section 171(1), and incorporated in section 189(c)(1), to be a requirement that no longer applies once the standard has been attained.

Attainment'' (Calcagni memorandum), at page 6.

Similarly, the requirements of section 189(c)(2) with respect to milestones no longer apply so long as an area has attained the standard. Section 189(c)(2) provides in relevant part that:

> Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of such area is located shall submit to the Administrator a demonstration * * * that the milestone has been met.

Where the area has attained the standard and there are no further milestones, there is no further requirement to make a submission showing that such milestones have been met. As noted above, this is consistent with the position that EPA took with respect to the general RFP requirement of section 172(c)(2) in the General Preamble and also in the Seitz memorandum with respect to the requirements of section 182(b) and (c). In the Seitz memorandum, EPA also noted that section 182(g), the milestone requirement of subpart 2, which is analogous to provisions in section 189(c), is suspended upon a determination that an area has attained. The Seitz memorandum, also citing additional provisions related to attainment demonstration and RFP requirements, stated:

> Inasmuch as each of these requirements is linked with the attainment demonstration or RFP requirements of section 182(b)(1) or 182(c)(2), if an area is not subject to the requirement to submit the underlying attainment demonstration or RFP plan, it need not submit the related SIP submission either.

See Seitz memorandum at page 5.

With respect to the attainment demonstration requirements of section 189(a)(1)(B), an analogous rationale leads to the same result. Section 189(a)(1)(B) requires that the plan provide for ''a demonstration (including air quality modeling) that the [SIP] will provide for attainment by the applicable attainment date * * *.'' As with the RFP requirements, if an area is already monitoring attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of the section 172(c) requirements provided by EPA in the General Preamble, the Page memorandum, and the section 182(b) and (c) requirements set forth in the Seitz memorandum. As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached.'' 57 FR at 13564; (April 16, 1992).

Other SIP submission requirements are linked with these attainment demonstration and RFP requirements, and similar reasoning applies to them. These requirements include the contingency measure requirements of sections 172(c)(9) and 182(c)(9). We have interpreted the contingency measure requirements of sections 172(c)(9) and 182(c)(9) as no longer applying when an area has attained the standard because those ''contingency measures are directed at ensuring RFP and attainment by the applicable date.'' See 57 FR 13564; (April 16, 1992), and Seitz memorandum, pages 5–6.

Both sections 172(c)(1) and 189(a)(1)(C) require ''provisions to assure that reasonably available control measures'' (i.e., RACM) are implemented in a nonattainment area. The General Preamble states that EPA interprets section 172(c)(1) so that RACM requirements are a ''component'' of an area's attainment demonstration; see 57 FR 13560; (April 16, 1992). Thus, for the same reason the attainment demonstration no longer applies by its own terms, the requirement for RACM no longer applies. EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could contribute to reasonable further progress or to attainment. See the General Preamble at 57 FR 13498; (April 16, 1992). Thus, where an area is already attaining the standard, no additional RACM measures are required.[13] EPA is interpreting section 189(a)(1)(C) consistent with its interpretation of section 172(c)(1).

We emphasize that the suspension of the obligation to submit SIP revisions concerning these RFP, attainment demonstration, RACM, and other related requirements exists only for as long as the Paul Spur/Douglas NA continues to monitor attainment of the PM_{10} standard. If EPA determines, after notice-and-comment rulemaking, that the area has monitored a violation of the PM_{10} NAAQS, the basis for suspending the requirements would no longer exist. As a result, the Paul Spur/Douglas NA would again be subject to a requirement to submit the pertinent SIP revision or revisions and would need to address those requirements. Thus, a final determination that the area need not submit one of the pertinent SIP submittals amounts to no more than a suspension of the requirements for so long as the area continues to attain the standard. Only after EPA redesignates the area to attainment would the area be relieved of these attainment-related submission obligations. Attainment determinations under the Clean Data Policy do not suspend an area's obligations unrelated to attainment in the area, such as provisions to address pollution transport.

Based on our proposed determination that the Paul Spur/Douglas NA is currently attaining the PM_{10} NAAQS (see section II.C above) and as set forth above, we propose to find that Arizona's obligations to submit planning provisions to meet the requirements for an attainment demonstration, reasonable further progress plans, reasonably available control measures, and contingency measures, no longer apply for so long as the Paul Spur/Douglas NA continues to monitor attainment of the PM_{10} NAAQS.[14] In the future, after notice-and-comment rulemaking, if EPA determines that the area again violates the PM_{10} NAAQS, then the basis for suspending the attainment demonstration, RFP, RACM, and contingency measure requirements would no longer exist. In that event, we would notify Arizona that we have determined that the Paul Spur/Douglas NA is no longer attaining the PM_{10} standard and provide notice to the public in the **Federal Register**.

Lastly, suspension of Arizona's obligation to make submissions of certain attainment-related requirements for as long as the Paul Spur/Douglas NA continues to attain the standard would also serve to suspend any EPA obligation to promulgate a Federal Implementation Plan (FIP) to address the same attainment-related requirements because the deficiency that had led to the FIP obligation would no longer exist, i.e., for so long as the related State obligation continues to be suspended. In this instance, in 1991, EPA made a finding of failure to submit a moderate area PM_{10} plan for the

[13] The EPA's interpretation that the statute only requires implementation of RACM measures that would advance attainment was upheld by the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *EPA, 314 F.3d 735, 743–745 (5th Cir. 2002)*), and by the United States Court of Appeals for the D.C. Circuit (*Sierra Club* v. *EPA, 294 F.3d 155, 162–163 (D.C. Cir. 2002)*).

[14] We note that our application of the Clean Data Policy to the Paul Spur/Douglas NA is consistent with actions we have taken for other PM_{10} nonattainment areas that we also determined were attaining the standard. See, *e.g.,* 71 FR 6352 (February 8, 2006), for the Ajo, Arizona area; 71 FR 13021 (March 14, 2006) for the Yuma, Arizona area; 71 FR 40023 (July 14, 2006) for the Weirton, West Virginia area; 71 FR 44920 (August 8, 2006) for the Rillito, Arizona area; 71 FR 63642 (October 30, 2006) for the San Joaquin Valley, California area; 72 FR 14422 (March 28, 2007) for the Miami, Arizona area; 75 FR 27944 (May 19, 2010) for the Coso Junction, California area; and 76 FR 21807 (April 19, 2011) for the Truckee Meadows, Nevada area.

Douglas portion of the Paul Spur/Douglas NA, thereby triggering a FIP clock during which EPA had two years under section 110(c) of the CAA to promulgate a moderate area PM_{10} FIP for the Douglas portion of the Paul Spur/Douglas NA.[15] See 57 FR 19906; (May 8, 1992). If finalized as proposed, today's proposed action would suspend this FIP obligation for so long as the State obligation is suspended, or until the area is redesignated to attainment, at which time the FIP obligation triggered in 1992 would end permanently.

IV. EPA's Proposed Action and Request for Public Comment

Based on the most recent three-year period of certified, quality-assured data meeting the requirements of 40 CFR part 50, appendix K and for the reasons discussed above, we propose to find that the Paul Spur/Douglas NA is currently attaining the 24-hour PM_{10} NAAQS.

In conjunction with and based upon our proposed determination that the Paul Spur/Douglas PM_{10} NA is currently attaining the standard, EPA proposes to determine that Arizona's obligation to submit the following CAA requirements is not applicable for so long as the Paul Spur/Douglas NA continues to attain the PM_{10} standard: the part D, subpart 4 obligation to provide an attainment demonstration pursuant to section 189(a)(1)(B); the RACM provisions of section 189(a)(1)(C); the RFP provisions of section 189(c); and, the attainment demonstration, RACM, RFP and contingency measure provisions of part D, subpart 1 contained in section 172 of the Act. Furthermore, the obligation on EPA to promulgate a FIP to address the same attainment-related requirements would also be suspended.

Any final action resulting from this proposal would not constitute a redesignation to attainment under CAA section 107(d)(3) because we have not yet approved a maintenance plan for the Paul Spur/Douglas NA as meeting the requirements of section 175A of the CAA or determined that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 would remain moderate nonattainment for the Paul Spur/Douglas NA until such time as EPA determines that Arizona has met the CAA requirements for redesignating the Paul Spur/Douglas NA to attainment.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. We will accept comments from the public on this proposal for the next 30 days. We will consider these comments before taking final action.

V. Statutory and Executive Order Reviews

With this action, we propose to make a determination regarding attainment of the PM_{10} NAAQS based on air quality data and, if finalized, this proposed action would result in suspension of certain Federal requirements, and would not impose additional requirements beyond those imposed by State law or by the CAA. 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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249; November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes and thus will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: May 14, 2012.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

[FR Doc. 2012–12781 Filed 5–24–12; 8:45 am]

BILLING CODE 6560–50–P

[15] EPA has been sued to promulgate a FIP for the Douglas portion of the Paul Spur/Douglas PM_{10} nonattainment area. *Center for Biological Diversity* v. *Jackson,* No. 10–cv–1846–MMC (N.D. Cal.). In settling this case, EPA agreed to promulgate a FIP by July 27, 2012 unless certain other actions (*e.g.,* SIP approval or redesignation) are taken prior to that date. See 75 FR 82009; (December 29, 2010). The settlement agreement also acknowledges the potential for EPA to make a clean data determination for the area in lieu of promulgating a FIP and states that such a determination will not constitute a violation of the settlement agreement.

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 175, 176 and 178

[Docket No. PHMSA–2009–0126 (HM–215K)]

RIN 2137–AE83

Hazardous Materials: Harmonization With the United Nations Recommendations on the Transport of Dangerous Goods: Model Regulations, International Maritime Dangerous Goods Code, and the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document responds to administrative appeals and solicits public comment on proposals generated as a result of certain amendments adopted in an international harmonization final rule published in the **Federal Register**. The final rule amended the Hazardous Materials Regulations (HMR) by revising, removing or adding proper shipping names, the hazard class of a material, packing group assignments, special provisions, packaging authorizations, packaging sections, air transport quantity limitations, and vessel stowage requirements. The amendments were

necessary to align the HMR with recent revisions to international standards for the transport of hazardous materials by all modes. In this notice, PHMSA proposes to amend the HMR as a result of administrative appeals submitted in response to various amendments adopted in the January 19, 2011 final rule. This document also addresses recent actions taken by the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) regarding certain lithium ion battery-powered mobility aids (e.g., wheelchairs, travel scooters) offered by passengers for air transport. Further, this notice proposes amendments to the HMR as a result of two administrative appeals submitted by an appellant in response to a final rule published in the **Federal Register**, that revised shipper responsibilities related to packaging design variation, manufacturer notification, and recordkeeping requirements for certain packaging types.

DATES: Comments must be received by July 24, 2012.

ADDRESSES: You may submit comments by any of the following methods:

Federal Rulemaking Portal: http://www.regulations.gov. Follow the on-line instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management System; U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery: To U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Instructions: Include the agency name and docket number PHMSA–2009–0126 (HM–215K) or RIN 2137–AE83 for this rulemaking at the beginning of your comment. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. If sent by mail, comments must be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard.

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://www.regulations.gov.*

Docket: You may view the public docket through the Internet at *http://www.regulations.gov* or in person at the Docket Operations office at the above address (See **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Michael Stevens, telephone (202) 366–8553, or Shane Kelley, telephone (202) 366–0656, Standards and Rulemaking Division, telephone (202) 366–0656, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., 2nd Floor, Washington, DC. 20590–0001.

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I. Background

On January 19, 2011, PHMSA published a final rule under Docket PHMSA–2009–0126 (HM–215K; 76 FR 3308) that revised the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to align with various international standards. The final rule adopted amendments to the HMR regarding hazard communication, hazard classification including packing group assignment, packaging authorization, air transport quantity limitations, and various other international harmonization-related topics. The amendments were necessary to align the HMR with the latest revisions to the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), the International Maritime Organization's Dangerous Goods Code (IMDG Code), Transport Canada's Transportation of Dangerous Goods Regulations (TDG Regulations), and the United Nations Recommendations on the Transport of Dangerous Goods: Model Regulations (UN Model Regulations) to facilitate to the seamless transportation of hazardous materials internationally, to, from, and within the United States. In this notice of proposed rulemaking (NPRM), PHMSA is proposing a number of amendments in response to administrative appeals filed in accordance with 49 CFR 106.110–130 regarding revisions to the HMR adopted in the January 19, 2011 final rule. This document also addresses recent actions taken by the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) regarding certain lithium ion battery-powered mobility aids (e.g., wheelchairs, travel scooters) offered by passengers for air transport. Additionally, PHMSA is proposing amendments to the HMR as a result of two administrative appeals submitted by an appellant in response to a final rule published February 2, 2010 (HM–231; 75 FR 5376), that revised shipper responsibilities related to packaging design variation and manufacturer notification recordkeeping requirements for certain packaging types.

II. Administrative Appeals Submitted in Response to the HM–215K Final Rule

This notice addresses administrative appeals submitted in response to the January 19, 2011 final rule from the following companies and organizations:

American Coatings Association (ACA).
Association of Hazmat Shippers, Inc. (AHS)
Dangerous Goods Advisory Council, Inc. (DGAC).
Fuel Cell and Hydrogen Energy Association (FCHEA).
Healthcare Distribution Management Association (HDMA).
Patton Boggs, LLP, on behalf of Lilliputian Systems, Inc. (LSI)
PPG Industries (PPG).

The administrative appeals are discussed in detail as follows:

A. Transportation of ORM–D Material

A number of administrative appeals concern issues related to our adoption of the international system for transportation of limited quantity

material. Specifically, some appellants are concerned with the eventual phase-out of our domestic system for the transportation of limited quantity material otherwise known as other regulated material (ORM–D) (i.e., the ORM–D system). Under certain conditions, the HMR and international standards allow lesser quantities of relatively low risk hazardous materials (i.e., limited quantity material) to be afforded relief from some of the requirements generally applicable to hazardous materials transported by all modes. For example, a limited quantity material is not generally required to be packaged in a DOT or UN standard packaging. Most regulatory amendments resulting from adoption of the international system and the eventual phase-out of the ORM–D system involve revisions to hazard communication requirements, material quantity limitations and the types of material authorized. In this notice, we note that the AHS petition (P–1542) and PHMSA initiative to adopt limited quantity requirements for Types B through F self-reactive liquids and solids (non-temperature controlled) will be addressed in a separate NPRM under Docket No. PHMSA–2011–0142 (HM–219).

1. Phase-Out of the ORM–D System

PHMSA revised the HMR to phase out its system of reclassing and transporting limited quantity material as ORM–D. Under this system, a limited quantity of hazardous material that also meets the definition of a ''consumer commodity'' may be reclassed as ORM–D and is eligible for additional exceptions from regulation. See § 171.8 for the definition of ''consumer commodity.'' The January 19 final rule amended the HMR by phasing out the ORM–D system beginning January 1, 2013, for material transported by aircraft and, January 1, 2014, for material transported by all other modes of transportation (e.g., motor vehicle). ACA and HDMA appealed our decision to phase out the ORM–D system arguing that we did so ''without any debate or consideration of [1] the type of materials that use this exception; [2] the costs incurred by the regulated community; and [3] the safety benefits.'' ACA claimed that many companies and organizations, including themselves, asked for a separate rulemaking to address these issues. ACA is also concerned that although we provided a summary of comments against the phase-out in the preamble to the final rule, PHMSA did not discuss arguments raised in the comments. They stated we arbitrarily concluded that because there would be no immediate phase-out of the current ORM–D system, there would not be a sizeable impact to companies on the basis they would have sufficient time to adjust to the eventual phase-out. ACA asked us to reconsider the decision to not move forward in a separate rulemaking and to fully consider the effects of phasing out the ORM–D system. Additionally, HDMA requested that PHMSA allow for up to a 10-year phase-out based on the longevity of its packaging systems (i.e., totes) currently in use. According to HDMA, such totes are permanently marked with the ''Consumer commodity, ORM–D'' marking on them.

PHMSA response.

The HMR have long-recognized the relatively low risk posed by the transportation of certain hazardous materials such as limited quantities or consumer commodities. Considerable efforts have been made internationally to harmonize multi-modal standards with regard to the transport of limited quantities, including consumer commodities. We held public meetings on this issue in February 2006 and March 2008 to discuss potential impacts on domestic stakeholders. Additionally, this issue was discussed during our pre-UN public meetings held in 2006 and 2007. There was considerable domestic interest in pursuing further harmonization internationally due to the potential for substantial savings in transportation costs and improved transportation efficiency. In the advance notice of proposed rulemaking (ANPRM) (October 21, 2009; 74 FR 53982) and NPRM we invited comments on this issue with regard to aligning the HMR with the UN Model Regulations for the domestic and international transport of limited quantities and consumer commodities. Of particular concern were any negative impacts on the domestic transportation of consumer commodities reclassed as ORM–D materials. While some changes adopted in the UN Model Regulations were similar to those currently in the HMR regarding limited quantities and consumer commodities (e.g., inner packaging limits and non-specification outer packagings allowed), some changes were not (e.g., marking, labeling, package gross mass). We stated that depending on the comments received and our own evaluation, we may determine that the significance of any amendments on the issue may warrant a separate rulemaking action. In the January 19, 2011 final rule, we concluded a separate rulemaking was not in the best interest of the hazardous material transportation community particularly when it involves international transportation. Further, creating a single global system for packaging, hazard communication, and transportation of limited quantity material would facilitate the domestic and international flow of hazardous material trade and any further delay in the phase-out would not be useful. Little or no quantification of any negative impact, including costs to domestic shippers and carriers alike, was provided in response to the ANPRM or NPRM. However, the Healthcare Distribution Management Association (HDMA) did provide some cost data related to its unique practice of reusing totes permanently embossed with the ORM–D marking. Some commenters also argued against any phase-out based on the historically safe transportation of limited quantity material under the ORM–D system. Commenters further stated that PHMSA should not adopt the international system simply based on the opportunity to align the HMR with international standards.

Allowing dual systems for communicating packages of limited quantity material would likely cause confusion and place unreasonable burdens on carriers and some shippers to train their hazmat employees to recognize and comply with both systems. We believe adopting a single global system for the transportation of limited quantity material will greatly improve safety and efficiency by decreasing the aforementioned potential for delays and confusion during transportation and by removing the burden of providing training in dual systems used to communicate the transportation of limited quantity material. However, we recognize the need to provide sufficient time for domestic shippers and carriers to adjust to the revised system and are sympathetic to the concerns expressed by ACA, HDMA and others regarding this need. Therefore, in this notice we are proposing only to authorize the continued use of packagings marked ''Consumer commodity, ORM–D'' until December 31, 2015 for domestic highway, rail and vessel transportation.

2. Overpacks Containing Limited Quantity or ORM–D Material

In the January 19, 2011 final rule, PHMSA revised the regulation for overpacks (as defined in § 171.8) by requiring the ''OVERPACK'' marking on an overpack containing limited quantity packaging if all markings are not visible. DGAC expressed concern over the manner in which the language in the requirement is phrased, and that it implies all markings on each packaging in the overpack must be visible. DGAC noted that this is not consistent with the

UN Model Regulations which states the overpack ''shall be marked with the word ''OVERPACK'' and the marking required by this Chapter unless the markings representative of all dangerous goods in the overpack are visible.'' *See* 3.4.11 of the 16th Revised Edition of the UN Model Regulations. It is their understanding this refers to the limited quantity marking and not to all markings that may be required by the UN Model Regulations. Their understanding is that use of the term ''representative'' communicates a requirement that only one limited quantity package marking needs to be visible to represent all limited quantity packaging. DGAC requested that PHMSA revise the overpack requirements in § 173.25(a)(6) to be consistent with the UN Model Regulations.

PHMSA response.

The HMR do not currently require that every individual mark (or label) on each package contained in an overpack be visible. For example, as stated in § 173.25(a)(2), an overpack must be marked with the proper shipping name and identification number (when applicable) for each hazardous material contained in the overpack, unless marking and labels representative of each hazardous material in the overpack are visible. We recommend where packages are stacked and/or banded on a pallet as part of an overpack, the packages should be positioned, when possible, so that the markings and labels are visible on the outside of the overpack. However, this does not mean that every package marking (or label) must be visible or the overpack must be marked accordingly. With regard to the ''OVERPACK'' marking requirement for overpacks containing limited quantity and ORM packages, in this NPRM we are accepting DGAC's appeal and are proposing to revise § 173.25(a)(6) to clarify that not all limited quantity and ORM markings must be visible and that the marking requirement is only applicable to the limited quantity and ORM mark itself. Additionally, a new § 173.25(a)(7) is proposed to be added for clarity to separate limited quantity and ORM overpack marking requirements from excepted quantity overpack marking requirements.

B. Use of the Square-On-Point and ID Number Limited Quantity Marking

Formerly, § 172.315 excepted for other than transportation by aircraft, a package containing a limited quantity substance or article from being marked with the proper shipping name if it was marked with a square-on-point containing the UN identification (ID) number of the limited quantity substance or article. In the January 19, 2011 final rule, we provided a one-year transition period to authorize continued use of this marking before the revisions to the limited quantity markings become effective. ACA, DGAC, and PPG all stated the one-year transition period does not allow sufficient time to deplete stock(s) of packagings pre-printed with the square-on-point mark containing the ID number and requested an extension of three- to five-years. Specifically, ACA requested a three- to five-year timeframe while DGAC and PPG ask for a three-year timeframe. ACA, DGAC, and PPG maintained that without a longer transition period, shippers will be forced to remark packaging at their cost and there is no impact to safety by allowing continued use of the existing marking. Appellants also pointed out this alternative limited quantity marking communicates more information than the newly adopted markings or the original ORM–D markings. They stated that PHMSA already provides for a two- to three-year transition period for the phase-out of the ORM–D marking, depending on the mode of transportation. They also requested, for clarification, that any transition periods be included in § 171.14 (transitional provisions) and § 172.300 (marking applicability).

PHMSA response.

We agree that shippers should be provided with the same transition period to continue using the square-on-point mark containing the UN identification (ID) number that was provided for the continued use of the ORM–D marking(s). In the administrative appeal final rule (HM–215K; RIN 2137–AE76), we granted the appeals submitted by ACA, DGAC, and PPG and revised § 172.315 accordingly to extend the transition period to December 31, 2013. The administrative final rule also authorized, for domestic air transportation, use of the square-on-point mark containing the ID number to continue until December 31, 2012.

In response to administrative appeals filed by ACA, HDMA and DGAC, in this NPRM we are proposing that for other than air transportation, continued use of the square-on-point mark containing the ID number would be authorized until December 31, 2015. PHMSA is also soliciting public comment on whether for other than air transportation, a previously authorized limited quantity package marking (i.e., proper shipping name only) should be reauthorized for a similar transition period.

C. Fuel Cell Cartridges Transported in Passenger Checked Baggage

In the January 19, 2011 final rule, we revised the 49 CFR 175.10 passenger exceptions to allow passengers and crew members to place certain spare fuel cell cartridges containing a flammable liquid (Class 3) or corrosive material (Class 8) in checked baggage. We limited the scope of fuel cell cartridge chemistries allowed in checked baggage by excluding fuel cell cartridges containing Divisions 2.1 (flammable gas) and 4.3 (dangerous when wet) material. Although this is inconsistent with the ICAO Technical Instructions, in that ICAO only restricts spare fuel cell cartridges containing Division 4.3 material from checked baggage, we believed that the prohibition should include spare cartridges containing Division 2.1 materials. Flammable gases are generally prohibited from transportation on passenger-carrying aircraft as cargo. When combined with the uncertainty of the effect of baggage handling on the durability of these products when stowed in a passenger's checked baggage, the risks posed are of concern. In their administrative appeals, FCHEA and LSI requested that PHMSA revise § 175.10 to align with the ICAO Technical Instructions and allow spare fuel cell cartridges containing Division 2.1 flammable gas to be carried in checked baggage.

PHMSA response.

We are granting the appeal for reconsideration of the issue by providing additional opportunity for comment. We are soliciting public comment until July 24, 2012 for the limited purpose of gathering information to help us determine whether or not to allow fuel cell cartridges containing Division 2.1 flammable gas to be carried aboard a passenger-carrying aircraft in checked baggage.

D. Consumer Commodity By Air

In the January 19, 2011 final rule, PHMSA adopted requirements for certain consumer commodities intended for transportation by aircraft in new § 173.167. The new description and identification number (ID8000) are consistent with the consumer commodity entry in the ICAO Technical Instructions in Packing Instruction Y963. In its appeal submitted in response to the final rule, DGAC expressed concerns that the alignment between the two standards was not consistent. For example, DGAC pointed out that absorbent material requirements and stack test criteria were not included in the § 173.167 packaging section.

PHMSA response.

DGAC is correct in its assessment of the inconsistencies that exist between the consumer commodity provisions adopted in the HMR and the ICAO Technical Instructions. Thus, we are granting DGAC's administrative appeal and propose to revise § 173.167 accordingly.

E. Incident Reporting for Limited Quantity Material

The detailed hazardous materials incident reporting requirements of the HMR allow for exceptions from these requirements, specifically, § 171.16(d)(2) excepts, under certain conditions, the unintentional release of a hazardous material properly classed as ORM–D and a PG III material in Class or Division 3, 4, 5, 6.1, 8, or 9, from the written reporting requirements. ACA indicated in its appeal that the reporting requirements as they apply to limited quantity material should be reviewed based on the eventual phase-out of the ORM–D hazard class and suggested the exception for ORM–D material should be extended to limited quantity packagings.

PHMSA response.

We agree with ACA that relief from incident reporting previously provided to ORM–D material should continue to be provided for such materials now transported as limited quantities. We are not, however, proposing to extend the exception from incident reporting to limited quantity Class 7 (radioactive) material, instruments, and articles due to the unique nature of the hazard and because this type of material was never authorized to be reclassed and transported as ORM–D. Additionally, this exception is not applicable to air transportation.

F. Materials of Trade

The materials of trade (MOTS) exceptions of the HMR allow certain hazardous material articles and substances, including ORM–D, to be transported by motor vehicle as part of a business operation under less regulation.

PHMSA response.

Similar to the applicability of written incident reporting exceptions to limited quantity material, our review of the HMR revealed that we did not amend the materials of trade exceptions under the January 19, 2011 final rule to reflect the eventual phase-out of the ORM–D system. Similar to the revisions to the written incident reporting requirements, we believe there is no impact to safety by extending the exception for ORM–D to limited quantity material. Most materials reclassed as ORM–D are limited quantity material themselves; an ORM–D is a limited quantity material that also meets the definition of a ''consumer commodity.'' See § 171.8 for the definition of consumer commodity.

In this notice, we are proposing to extend the MOTS exceptions to limited quantity packages consistent with the exception provided to ORM–D material. We are not, however, proposing to extend the exception to limited quantities of Division 4.3 (dangerous when wet) liquid material or Class 7 (radioactive) material, instruments or articles due to the unique nature of these hazards and because these materials were never authorized to be reclassed and transported as ORM–D. Additionally, we propose to clarify that exceptions for limited quantity material also include limited quantity material authorized under § 173.63 for certain Division 1.4S explosives and § 173.306 for compressed gases.

III. Recent Changes to Part 8 of the ICAO Technical Instructions

At the 23rd Meeting of the ICAO Dangerous Goods Panel (DGP), held October 11–21, 2011, the DGP recommended amending Part 8 of the ICAO Technical Instructions applicable to passengers and crew members and the hazardous materials (dangerous goods) they may introduce aboard an aircraft either in checked or carry-on baggage or on one's person. Such provisions form the basis of similar provisions provided in § 175.10 of the HMR. One recommendation adopted by the DGP addressed concerns over wheelchairs and other mobility aids found activated after flight. Additionally, the DGP addressed the absence of any reference to mobility aids powered by nickel metal hydride batteries, and wheelchairs and other mobility aids specifically designed to allow its battery or batteries to be removed from the device and carried aboard the aircraft by a passenger within a protective bag or pouch. In this NPRM, PHMSA is proposing to amend the HMR by addressing the potential for unintended activation of all stowed devices on an aircraft and providing for the intentional removal of a lithium ion battery from a device and its stowage in the passenger cabin. PHMSA intends to address remaining Part 8 and § 175.10 revisions, including wheelchairs and other mobility aids powered by nickel metal hydride batteries, in a separate rulemaking under Docket PHMSA–2012–0027 (HM–215L).

The ICAO Technical Instructions and the HMR limit lithium ion batteries used to power portable electronic devices and medical devices to 160 watt-hours and 25 grams aggregate equivalent lithium content, respectively. Additionally, the ICAO Technical Instructions and the HMR limit any spare lithium ion batteries used to power portable electronic devices and medical devices to carry-on baggage only. At its 23rd Meeting, the DGP was informed of lithium ion batteries developed for wheelchairs and other mobility aids which did not exceed 160 watt-hours (13.5 grams aggregate equivalent lithium content). Therefore, the DGP adopted a proposal introduced by the International Air Transport Association (IATA) to include spare lithium ion batteries for battery-powered wheelchairs and other mobility aids in Part 8 consistent with the provisions for spare lithium ion batteries used to power portable electronic devices and medical devices. In this NPRM, PHMSA is proposing similar provisions by revising § 175.10(a)(17) of the HMR.

The DGP was also informed of new mobility aid designs which require the lithium ion battery to be removed from the device to permit efficient and effective stowage and transport of the mobility aid in the cargo compartment of the aircraft. The DGP agreed it would be safer to require that the removed lithium ion battery be carried in the passenger cabin rather than being stowed as checked baggage with the mobility aid. Subsequently, at the same meeting, the DGP was informed of mobility aid designs equipped with lithium ion batteries, which required removal for stowage (e.g., collapsible), that exceed the 160 watt-hour limit (13.5 grams aggregate equivalent lithium content). The DGP Panel therefore adopted an upper limit of 300 watt-hours (25 grams aggregate equivalent lithium content) for batteries which must be removed and carried aboard in the passenger cabin. The DGP Panel agreed, that when applicable, the battery must be removed by the user. Because the HMR currently places an upper limit on such batteries to 25 grams aggregate equivalent lithium content (300 watt-hours), no corresponding revision to § 175.10(a)(17) of the HMR is necessary.

Therefore, in this NPRM, PHMSA proposes to amend the HMR for consistency with the ICAO DGP/23 Panel recommendations. This NPRM also proposes to clarify and correct some related amendments adopted in the original January 19, 2011 final rule. See the Section-by-Section discussion of specific amendments being proposed in § 175.10 in Section V. of this preamble.

IV. Administrative Appeal Submitted in Response to the HM–231 Final Rule

In this notice, PHMSA responds to an administrative appeal submitted in response to a final rule published February 2, 2010 (HM–231; 75 FR 5376) that adopted miscellaneous amendments to packaging provisions in the HMR. The final rule revised recordkeeping requirements in § 173.22 for shipper retention of manufacturer notification (including closure instructions) and required shippers to maintain a packaging's manufacturer notification (including closure instructions) for 365 days subsequent to offering the package for transportation. The final rule also revised § 178.2(c) to strengthen manufacturer notification requirements and to allow them greater flexibility in how they provide the notification. The final rule was effective on October 1, 2010.

On March 3, 2010, we received an administrative appeal from DGAC requesting that PHMSA delay the effective date of the final rule for two years to provide sufficient time for packaging manufacturers to review their current packaging design manufacturer notification (including closure instructions) for compliance with the new requirement to ensure closure instructions provide a repeatable method of closing the packaging consistent with the way it was closed prior to performing qualification testing on the packaging design.

We did not grant the DGAC administrative appeal in our September 30, 2010 final rule (75 FR 60333) that responded to a petition for rulemaking and several other administrative appeals. Specifically, we did not grant DGAC's request for a two-year extension of the effective date; however, we did agree that aligning the review and preparation of a packaging's manufacturer notification with its periodic retest merited consideration because it would facilitate the packaging manufacturer's and distributor's compliance with new packaging manufacturer notification requirements adopted in the rule. Thus, in the September 30, 2010 final rule, we revised the recordkeeping requirement from 365 days to a two-year period for combination packagings and a one-year period for single packagings consistent with a typical packaging design's periodic retest frequency.

DGAC submitted a follow-up administrative appeal objecting to our revision in the September 30, 2010 final rule to the recordkeeping requirement for manufacturer notification and requested that PHMSA return the recordkeeping duration to the 365 days adopted under the February 2, 2010 final rule. DGAC stated that while the preamble discussion in the September 30, 2010 final rule recognized its concerns in the initial appeal, the regulatory response did not grant its request for the extension of the effective date and, instead, created a recordkeeping requirement of two years that is more difficult to comply with than the original one-year (365-day) requirement in the February 2, 2010 final rule. DGAC claimed there is no need for a shipper to retain a copy of a packaging's manufacturer notification (including closure instructions) for longer than 365 days. DGAC also asked whether the words ''supporting documentation'' were intentionally omitted from the September 30, 2011 final rule revision to 49 CFR 178.601(g)(1). Further, DGAC requested that PHMSA amend 49 CFR 171.14 to extend the effective date of the February 2, 2010 final rule to October 1, 2011.

PHMSA response.

Although not stated clearly in both final rules, it was our intent that the new manufacturer notification requirements apply to all applicable hazardous materials packagings manufactured on or after October 1, 2010. Packagings manufactured before this date should already conform to HMR performance standards for their design type in effect at the time of manufacture. As we stated in the February 2, 2010 final rule, we revised this regulation to address an increase in hazardous materials releases as a result of improperly closed packagings. In our opinion, review of existing manufacturer notifications for packaging designs that should already be in compliance with the HMR would involve much less effort than DGAC described in its administrative appeal. We also believe sufficient time has elapsed since the February 2, 2010 final rule was published to complete this task and any additional time is not warranted.

Therefore, in this notice, we are denying DGAC's appeal to extend the effective date of the rule. However, we are proposing to amend § 178.2(c)(1)(ii) of the HMR based on DGAC's request to revert back to the original recordkeeping retention duration for manufacturer notification to the 365-day period adopted in the February 2, 2010 final rule. Additionally, PHMSA is proposing to amend § 173.22(a)(4)(ii) by requiring a shipper to retain manufacturer notification (including closure instructions) for a period of 90 days once a package is offered to the initial carrier for transportation in commerce.

In this NPRM, PHMSA is proposing to clarify that only bulk packagings and cylinders manufactured in accordance with Part 178 of the HMR are excepted from the manufacturer notification (including closure instructions) retention requirements specified in § 173.22(a)(4) if such information is permanently embossed or printed on the packaging. This exception was only provided with such packagings in mind and was originally adopted as a result of public comment.

For clarification, we did not revise § 178.601(g)(1) in the September 30, 2010 final rule as DGAC asserts; we did correct punctuation in §§ 178.601(g)(8)(xiii)(C) and (g)(8)(xiii)(D), which do not include references to supporting documentation. Moreover, we note that the requirement for supporting documentation adopted in the February 2, 2010 final rule remains in § 178.601(g)(1) with the statement that the method used to determine whether the inner packaging, including closure, of a Variation 1 packaging maintains an equivalent level of performance to the originally tested packaging design must be ''documented in writing by the person certifying compliance and retained in accordance with paragraph (l)'' of § 178.601. Therefore, no further revision of this paragraph is needed or is proposed in this notice.

V. Section-by-Section Review of Changes

Part 171

Section 171.16

This section prescribes written hazardous material incident report requirements. In this notice, we are proposing to revise the paragraph (d) exceptions to reflect the eventual phase-out of the ORM–D system on December 31, 2015 and to extend the exception provided for material classed as ORM–D to hazardous materials authorized for transportation as limited quantity material under Subparts C through E and Subpart G of Part 173 of the HMR. *This exception is not applicable to air transportation.* See section II.E for a comprehensive discussion of the proposed changes.

Part 172

Section 172.200

Section 172.200 prescribes the applicability of shipping paper requirements for the transportation of hazardous materials. In the January 19 final rule, paragraph (b)(3) was revised to remove the exceptions for ORM–D material in conformance with revisions

made to the limited quantity requirements. In this notice, we are proposing to revise the effective date for expiration of the authorization to reclassify to the ORM–D hazard class from December 31, 2013 to December 31, 2015 in response to the appeal submitted by HDMA. Additionally, we propose to revise paragraph (b)(3) to correct the shipping paper applicability for a vessel shipment of ORM–D material that was inadvertently adopted in the January 19, 2011 final rule. Additionally, we want to emphasize that limited quantity shipments offered for transportation by air or vessel are required to be accompanied by shipping papers as adopted in the January 19, 2011 final rule.

Section 172.315

Section 173.315 prescribes the requirements for marking packages containing limited quantity material. Based on administrative appeals submitted and requests to make the requirements for limited quantity marking clearer, we propose to revise § 172.315 to allow the continued use of alternative limited quantity markings (i.e., square-on-point with Identification Number) marking for the same duration offered for continued use of the ORM–D marking, that is, until December 31, 2015. The expiration date for the square-on-point with Identification Number marking remains December 31, 2012 for air transportation.

Section 172.316

Section 172.316 prescribes marking requirements for packages containing materials classed as ORM–D and ORM–D–AIR. As adopted in the January 19 final rule, the marking prescribed in this section will no longer be authorized for limited quantities effective January 1, 2014. In this document, we are proposing to revise the effective date for expiration of the authorization to reclassify to the ORM–D hazard class from December 31, 2013 to December 31, 2015 in response to the appeal submitted by HDMA. The expiration date for the ORM–D–AIR hazard class marking remains December 31, 2012 for air transportation.

Part 173

Section 173.6

This section prescribes exceptions from certain requirements of the HMR for the transportation of hazardous materials defined as material of trade when transported by motor vehicle. See § 171.8. In this notice, we are proposing to revise the paragraph (d) exceptions to reflect the phase-out of the ORM–D system on December 31, 2015 and extend the exception provided ORM–D material to hazardous materials authorized for transportation as limited quantity material under Subparts C through E and Subpart G of Part 173 of the HMR. See section II.F for a comprehensive discussion of these proposed changes.

Section 173.22

Section 173.22 prescribes shipper responsibilities. In this document, PHMSA responds to an administrative appeal submitted in response to a final rule published February 2, 2010 (HM–231; 75 FR 5376) that adopted miscellaneous amendments to packaging provisions in the HMR. The final rule revised recordkeeping requirements in § 173.22 for shipper retention of manufacturer notification (including closure instructions). The amendments adopted required shippers to maintain a packaging's manufacturer notification (including closure instructions) for 365 days subsequent to offering the package for transportation.

In this notice, PHMSA is proposing to revise § 173.22(a)(4) to clarify that only bulk packagings and cylinders manufactured in accordance with Part 178 of the HMR are excepted from the manufacturer notification (including closure instructions) retention requirements specified in § 173.22(a)(4) (shipper responsibilities) if such information is permanently embossed or printed on the packaging. Additionally, we are proposing to revise the same paragraph to require that, if applicable, a shipper only be required to retain the packaging design's manufacturer notification (including closure instructions) for 90 days once offered to the initial carrier for transportation. See Section III of this preamble for a more comprehensive discussion.

Section 173.25

This section prescribes requirements for the transportation of authorized packages in overpacks used for protection or convenience of handling or to consolidate packages. In this document, we are proposing to revise § 173.25(a)(6) to clarify that all markings on each package containing a limited quantity or ORM–D material in an overpack are not required to be visible, but rather, that markings representative of each hazardous material in the overpack are visible as specified in § 173.25(a)(2) and (a)(3). Additionally, we are proposing to correct an error made in the January 19, 2011 final rule by revising paragraphs (a)(6) and the new (a)(7) applicable to overpacked packages of limited quantities, ORM–D, and excepted quantity materials to reaffirm that an overpack is only required to be marked with the word ''OVERPACK'' if specification markings, when required, are not visible.

Because these amendments were not proposed in the original NPRM, nor were they adopted in the January 19, 2011 final rule, we believe notice and comment are appropriate. We are therefore granting the administrative appeals and soliciting public comment until July 24, 2012 for the purpose of gathering information to help determine if § 173.25(a)(6) and (a)(7) should be revised to clarify that all markings on each package containing a limited quantity, ORM–D, or excepted quantity material in an overpack, are not required to be visible; rather, all markings representative of each hazardous material in the overpack are to be visible and whether the required use of the ''OVERPACK'' mark should be expanded in accordance with the various international standards.

Section 173.63

Section 173.63 specifies packaging exceptions for certain Division 1.4S explosive articles authorized for reclassification and transport as ORM–D material. Such articles in Division 1.4S may continue to be reclassed as ORM–D and offered for transportation until December 31, 2013. Thus, in this notice we are proposing to revise the effective date for expiration of the authorization to reclassify to the ORM–D hazard class from December 31, 2013 to December 31, 2015 in response to the appeal submitted by HDMA.

Section 173.144

Section 173.144 defines ''Other Regulated Materials, ORM–D.'' In this notice, we are proposing to revise the effective date for expiration of the ORM–D hazard class from December 31, 2013 to December 31, 2015 in response to the appeal submitted by HDMA.

Sections 173.150, 173.151, 173.152, 173.153, 173.154, 173.155 and 173.306

Sections 173.150 through 173.155 prescribe the exceptions for certain Class 3, 8 and 9 and Division 2.1, 2.2, 4.1, 4.2, 5.1, 5.2, 6.1 hazardous materials under the HMR. In response to HDMA's administrative appeal, in this notice, we are proposing to revise the effective date for expiration of the authorization to reclassify to the ORM–D hazard class from December 31, 2013 to December 31, 2015 in each of these sections' consumer commodity paragraphs, where applicable.

Section 173.156

Section 173.156 prescribes exceptions for the Other Regulated Materials, ORM–D hazard class. In this notice, we are proposing to revise the effective date for expiration of the authorization to reclassify to the ORM–D hazard class from December 31, 2013 to December 31, 2015 in response to HDMA's administrative appeal.

Section 173.161

Section 173.161 prescribes packaging requirements for chemical kits and first aid kits containing small amounts of hazardous materials. In this notice, we are proposing to revise the effective date for expiration of the authorization to reclassify to the ORM–D hazard class from December 31, 2013 to December 31, 2015 in response to HDMA's administrative appeal.

Section 173.165

In the January 19 final rule, a new section 173.165 was added to prescribe packaging and other requirements for ''Polyester resin kits, UN3269'' formerly contained in § 172.102, special provision 40 and § 173.152(b)(4) of the HMR. In this notice, we are proposing to revise the effective date for expiration of the authorization to reclassify to the ORM–D hazard class from December 31, 2013 to December 31, 2015 in response to HDMA's administrative appeal.

Section 173.167

In the January 19 final rule, a new section 173.167 was added to indicate authorized materials and quantity limits for articles and substances that may be described as ''ID8000, Consumer commodity,'' eligible for transport by aircraft and authorized transportation by all modes. This notice addresses inconsistencies with the ICAO Technical Instructions brought to our attention in appeals submitted in response to the final rule. Appellants are correct in their assessment of the inconsistencies that exist between the consumer commodity provisions adopted in the HMR and the ICAO Technical Instructions. We are granting their administrative appeals and soliciting public comment for the limited purpose of gathering any information to help determine if we should revise the § 173.167 amendments adopted in the final rule consistent with Packing Instruction Y963 of the ICAO Technical Instructions.

Section 173.230

Section 173.230 prescribes the requirements for fuel cells offered for transportation by all modes. In paragraph (g) of the final rule, PHMSA adopted limited quantity provisions for such articles by aircraft consistent with the ICAO Technical Instructions. In paragraph (h), PHMSA also adopted a prohibition of reclassification to ''Consumer commodity, ORM–D–AIR'' for transportation by aircraft. In this notice, we are proposing to revise the effective date for expiration of the authorization to reclassify to the ORM–D hazard class for other than air transportation from December 31, 2013 to December 31, 2015 in response to HDMA's administrative appeal.

Section 173.306

Section 173.306 prescribes requirements for limited quantity of compressed gases. In paragraph (i)(2), we are proposing to revise the effective date for expiration of the authorization to reclassify to the ORM–D hazard class from December 31, 2013 to December 31, 2015 in response to HDMA's administrative appeal.

Section 173.309

Section 173.309 prescribes requirements for fire extinguishers. In this NPRM, we are proposing to revise the entire section for clarity. First, we are proposing to move the limited quantity requirements and exceptions from paragraph (a) to paragraph (b) as we typically indicate regulation first in most sections followed by any exceptions to that regulation. Second, we are proposing to add regulatory text from § 172.102(c)(1) Special provision 18 to revised paragraph (a) that prescribes the conditions when specification cylinders may be described, offered and transported in commerce as fire extinguishers. Further, we solicit public comment on whether we should consider allowing UN specification cylinders as fire extinguishers in § 173.309. Lastly, we are proposing to revise paragraph (b) by excepting a limited quantity package of fire extinguishers from shipping papers when transported by highway or rail if marked in accordance with § 172.315. This exception is provided in addition to the existing HMR exceptions from labeling (unless offered for transportation by aircraft), placarding, Part 174 and Part 177 for limited quantity packages of fire extinguishers.

Part 175

Section 175.10

In the January 19, 2011 final rule, we amended the HMR to align with international standards by designating paragraphs (a)(17) and (a)(18) as paragraphs (a)(18) and (a)(19) and by adding a new paragraph (a)(17) that authorized a mobility aid such as a wheelchair, powered by a lithium ion battery, to be transported aboard a passenger-carrying aircraft.

For consistency with the wheelchair or other battery-powered mobility aid provisions in § 175.10(a)(15) and (a)(16), and the provisions provided for the carriage of portable electronic devices powered by lithium ion batteries in § 175.10(a)(17) (now § 175.10(a)(18)), the final rule merged applicable provisions for the transportation of lithium ion battery-powered mobility aids into a new § 175.10(a)(17). We stated that removal of the battery may be necessary based on results of the required visual inspection or if the mobility aid was to be offered to the operator as checked baggage. It was not our intent to require an operator or passenger to remove a properly secured lithium ion battery from a mobility aid that was not specifically designed to allow its batteries to be removed. Further, it is the responsibility of the operator to determine if the wheelchair or other mobility aid is designed to have its battery removed by the user. Information provided by the user or visual inspection may be used in this process. Therefore, a revision of certain amendments adopted in § 175.10(a)(17) of the final rule is required and are as follows:

- A mobility aid such as a wheelchair, powered by a lithium ion battery, must be transported as checked baggage aboard an aircraft. This requirement is consistent with the 14 CFR Part 382 provisions under the Air Carrier Access Act (ACAA);
- Provided the wheelchair or other mobility aid is not specifically designed to allow its lithium ion battery to be removed, battery removal is not required;
- If the battery is to remain installed, a wheelchair or other mobility aid may be loaded and stowed in any orientation determined by the operator necessary to prevent unintentional activation of the mobility aid or short circuiting of the battery and is equally protected as the upright orientation would provide;
- The wheelchair or other mobility aid must be protected from damage by the movement of baggage, mail, service items, or other cargo; and
- As adopted in the January 19, 2011 final rule, a lithium ion battery specifically designed to be removed from a mobility aid (e.g., collapsible) by the user and any spare batteries must be transported in carry-on baggage in accordance with paragraph (vii). The carry-on battery must not exceed 25 grams aggregate equivalent lithium content and a maximum of one spare

battery not exceeding 25 grams aggregate equivalent lithium content or two spares not exceeding 13.5 grams aggregate equivalent lithium content each may be carried on.

Part 176

Section 176.905

Section 176.905 prescribes specific requirements for motor vehicles or mechanical equipment powered by internal combustion engines that are offered for transportation and transported by vessel. In the January 19, 2011 final rule, PHMSA should have revised the paragraph (i) introductory text to clarify that if any of the exceptions criteria were met, the articles were excepted from the requirements of the HMR. Additionally, PHMSA is proposing in this notice to remove the heading for each exception criterion in paragraph (i) for clarity. They are not necessary and have resulted in confusion among our stakeholders as some of the headings were perceived to be inconsistent with the IMDG Code.

Part 178

Section 178.2

Section 178.2 prescribes HMR applicability and responsibility required of packaging manufacturers. In this notice, PHMSA responds to an administrative appeal submitted in response to a final rule published February 2, 2010 (HM–231; 75 FR 5376) that adopted miscellaneous amendments to packaging provisions in the HMR. The final rule revised recordkeeping requirements in § 173.22 for shipper retention of manufacturer notification (including closure instructions). The amendments adopted required shippers to maintain a packaging manufacturer's notification (including closure instructions) for 365 days subsequent to offering the package for transportation. The final rule also revised § 178.2(c) to strengthen manufacturer notification requirements and to allow manufacturers greater flexibility in how they provide the notification. The final rule was effective on October 1, 2010.

In response to a misunderstanding of an administrative appeal, PHMSA revised the recordkeeping requirement from 365 days to a two-year period for combination packagings and a one-year period for single packagings consistent with a typical packaging design's periodic retest frequency. Subsequently, DGAC submitted another administrative appeal requesting PHMSA revise the notification retention requirements in § 178.2(c)(1)(ii) back to the original one year from date of issuance. Thus, in this notice we are proposing to amend the HMR based on DGAC's request to revert back to the original recordkeeping retention duration for manufacturer notification to one year.

VI. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This NPRM is published under the following statutory authorities:

1. 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This NPRM responds to administrative appeals of certain amendments adopted in final rule PHMSA–2009–0126 (HM–215K) published on January 19, 2011 (76 FR 3308). Additionally, it responds to administrative appeals of certain amendments adopted in a final rule PHMSA–2006–25736 (HM–231) published on February 2, 2010 (75 FR 5376).

2. 49 U.S.C. 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities.

B. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This notice is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This notice is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Additionally, E.O. 13563 supplements and reaffirms E.O. 12866, stressing that, to the extent permitted by law, an agency rulemaking action must be based on benefits that justify its costs, impose the least burden, consider cumulative burdens, maximize benefits, use performance objectives, and assess available alternatives.

This notice applies to offerors and carriers of hazardous materials, such as chemical manufacturers, chemical users and suppliers, packaging manufacturers, distributors, radiopharmaceutical companies, and training companies. Benefits resulting from the adoption of the amendments in this notice include enhanced transportation safety resulting from the consistency of domestic and international hazard communications and continued access to foreign markets by U.S. manufacturers of hazardous materials. A regulatory evaluation is available for review in the public docket for this rulemaking.

In most instances, the amendments in this rulemaking reduce compliance costs of the regulated population, and it is likely that these changes are possible without reducing public safety. Although we were not able to quantify all of the costs and benefits for most of the amendments, the net benefits of those we were able to quantify are approximately $3.5 million per year. The following table summarizes the costs and benefits for the different amendments being proposed:

SUMMARY OF COSTS AND BENEFITS

Issue addressed by amendments to HMR	Costs	Benefits	Net benefit
Domestic transportation of ORM–D material.	Extending the effective date of eliminating the ORM–D system will result in minor short-term costs on shippers and carriers who will have to recognize and comply with two marking systems over a longer transition period.	Extending the effective date of eliminating the ORM–D system will allow companies to deplete stocks of hazard communication materials and pre-printed packaging with the ORM–D markings on them. Clarifications will reduce compliance costs that result from confusion and misinterpretation of the regulatory requirements.	$7.3 million over 2 years.

SUMMARY OF COSTS AND BENEFITS—Continued

Issue addressed by amendments to HMR	Costs	Benefits	Net benefit
Use of the Square-on-Point and ID Number Limited Quantity Marking.	Extending the effective date of eliminating the revised limited quantity marking system will result in minor short-term costs on shippers and carriers who will have to recognize and comply with two marking systems over a longer transition period.	Extending the effective date of eliminating the revised limited quantity marking system will allow companies to deplete stocks of hazard communication materials and pre-printed packaging with the ORM–D markings on them. Clarifications will reduce compliance costs that result from confusion and misinterpretation of the regulatory requirements.	Positive.
Fuel Cell Cartridges Transported in Passenger Checked Baggage.	Costs are expected to be negligible	The proposal is expected to reduce security costs for locating and removing fuel cells from passenger checked baggage, as well as reduce passenger confusion and the cost to consumers of replacing confiscated fuel cell cartridges.	$155,766 per year.
Consumer Commodity Transport by Aircraft.	No costs are anticipated as the proposal provides clarification and guidance for existing requirements adopted in the January 19, 2011 Final Rule.	Clarifications will reduce compliance costs that result from confusion and misinterpretation of the regulatory requirements.	Positive.
Incident Reporting for Limited Quantity Material.	No costs are anticipated	Increased exceptions for written reporting requirements will reduce the regulatory burden on shippers/carriers of limited quantity materials.	Positive.
Materials of Trade Exceptions.	No costs are anticipated	Increased materials of trade exceptions will reduce the regulatory burden on shippers/carriers of limited quantity materials.	Positive.
Recordkeeping Requirements for Manufacturer Notification*.	Costs are expected to be negligible	Reduced costs that shippers will incur as a result of having to retain records for only 90 days as opposed to 730 days.	$3.3 million per year.

* Administrative appeals submitted in response to the HM–231 Final Rule.

C. Executive Order 13132

This notice has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''), and the President's memorandum on ''Preemption'' published in the **Federal Register** on May 22, 2009 (74 FR 24693). If adopted in a final rule, it would preempt State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements for certain subjects. The subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This notice addresses all the covered subject items above and preempts State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This notice is necessary to incorporate revisions to the HMR based on administrative appeals submitted in response to the January 19, 2011 final rule, effective January 1, 2011. Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption is [DATE 90 DAYS FROM PUBLICATION DATE OF FINAL RULE IN THE **Federal Register**].

D. Executive Order 13175

This notice was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this notice does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. We have completed an assessment and placed it in the docket for this rulemaking. Commenters are invited to address the costs and benefits of the amendments proposed in this notice and the potential impacts, positive or negative, on small businesses.

This notice has been developed in accordance with Executive Order 13272

(''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of proposed rules on small entities are properly considered.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This notice identifies a revised information collection request that PHMSA will submit to OMB for approval based on the requirements proposed in this notice. PHMSA has developed burden estimates to reflect proposed changes in this notice, and estimates the information collection and recordkeeping burden as proposed in this notice to be as follows:

- This notice reduces the OMB Control Number 2137–0572 information collection burden by $1,654,384 annually.

PHMSA will submit the revised information collection and recordkeeping requirements to OMB for approval.

G. Regulatory Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This notice does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. In the January 19, 2011 final rule, we developed an assessment to determine the effects of these revisions on the environment and whether a more comprehensive environmental impact statement may be required. Our findings concluded that there are no significant environmental impacts associated with the final rule. Consistency in the regulations for the transportation of hazardous materials aids in shippers' understanding of what is required and permits shippers to more easily comply with safety regulations and avoid the potential for environmental damage or contamination. For interested parties, an environmental assessment was included with the January 19, 2011 final rule available in the public docket. Additionally, we do not see any significant environmental impacts associated with the amendments proposed in this notice regarding the administrative appeals submitted in response to the January 19 final rule. We welcome comment on this initial determination.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.dot.gov/privacy.html.*

K. International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of this notice to ensure that it does not exclude imports that meet this objective. Accordingly, this rulemaking is consistent with PHMSA's obligations under the Trade Agreement Act, as amended.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Incorporation by reference, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Incorporation by reference, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA is proposing to amend Title 49, Subtitle B, Chapter I as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

2. In § 171.16, paragraph (d)(2)(i) is revised to read as follows:

§ 171.16 Detailed hazardous materials incident reports.

* * * * *

(d) * * *

(2) An unintentional release of a hazardous material when:

(i) The material is—

(A) A limited quantity material packaged under authorized exceptions in the § 172.101 Hazardous Materials Table of this subchapter excluding Class 7 (radioactive) material; or

(B) A Packing Group III material in Class or Division 3, 4, 5, 6.1, 8, or 9;

(ii) The material is released from a package having a capacity of less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids;

(iii) The total amount of material released is less than 20 liters (5.2 gallons) for liquids or less than 30 kg (66 pounds) for solids; and

(iv) The material is not—

(A) Offered for transportation or transported by aircraft;

(B) A hazardous waste; or

(C) An undeclared hazardous material;

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS, AND SECURITY PLANS

3. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.53.

4. In § 172.200, paragraph (b)(3) is revised to read as follows:

§ 172.200 Applicability.

* * * * *

(b) * * *

(3) A limited quantity package unless the material is offered for transportation by aircraft or vessel and, until December 31, 2015, a package of ORM–D material authorized by this subchapter on October 1, 2010, when offered for transportation by highway, rail or vessel.

* * * * *

5. In § 172.315, paragraph (d) is revised to read as follows:

§ 172.315 Limited quantities.

* * * * *

(d) *Transitional exceptions.* (1) *Alternative markings.* Except for transportation by aircraft and until December 31, 2015, a package containing a limited quantity may continue to be marked in accordance with the requirements of this section in effect on October 1, 2010 (i.e., square-on-point with identification number only) as an alternative to the marking required by paragraph (a) of this section.

(2) *ORM–D marked packaging.* Except for transportation by aircraft and until December 31, 2015, a packaging marked in accordance with § 172.316 of this part is not required to be marked with the limited quantity marking required by paragraph (a) of this section. For transportation by aircraft and until December 31, 2012, a packaging marked in accordance with § 172.316 is not required to be marked with the limited quantity ''Y'' marking required by paragraph (b) of this section.

6. In § 172.316, paragraph (a)(2) is revised to read as follows:

§ 172.316 Packagings containing materials classed as ORM–D.

(a) * * *

(1) * * *

(2) Until December 31, 2015, ORM–D for an ORM–D material that is packaged in accordance with §§ 173.63, 173.150 through 173.156 and 173.306.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

7. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

8. In § 173.6, paragraph (a)(6) is added to read as follows:

§ 173.6 Materials of trade exceptions.

* * * * *

(a) * * *

(6) A limited quantity package prepared in accordance with §§ 173.27, 173.63, 173.150, 173.151(b) and (c), 173.152, 173.153, 173.154, 173.155, 173.161, 173.165, 173.167 and 173.306(i) of this subchapter. Division 4.3 substances must be prepared in accordance with paragraph (a)(3) of this section. Class 7 (radioactive) substances, instruments and articles are not authorized under the provisions of this section.

* * * * *

9. In § 173.22, paragraph (a)(4) is revised to read as follows:

§ 173.22 Shipper's responsibility.

(a) * * *

(4)(i) For a DOT Specification or UN standard packaging subject to the requirements of part 178 of this subchapter, a person must perform all functions necessary to bring the package into compliance with parts 173 and 178 of this subchapter, as identified by the packaging manufacturer or subsequent distributor (for example, applying closures consistent with the manufacturer's closure instructions) in accordance with § 178.2 of this subchapter.

(ii) For other than a bulk packaging or a cylinder, a person must retain a copy of the manufacturer's notification, including closure instructions (*see* § 178.2(c) of this subchapter). For a bulk packaging or a cylinder, a person must retain a copy of the manufacturer's notification, including closure instructions (*see* § 178.2(c) of this subchapter), unless permanently embossed or printed on the packaging. A copy of the manufacturer's notification, including closure instructions (*see* § 178.2(c) of this subchapter), unless permanently embossed or printed on the packaging when applicable, must be made available for inspection by a representative of the Department upon request for at least 90 days once the package is offered to the initial carrier.

(iii) When applicable, a person must retain a copy of any supporting documentation used to determine an equivalent level of performance under the selective testing variation in § 178.601(g)(1) of this subchapter. Such documentation is to be retained by the person certifying compliance with § 178.601(g)(1) as specified in § 178.601(l).

10. In § 173.25, paragraph (a)(6) is revised and new paragraph (a)(7) is added to read as follows:

§ 173.25 Authorized packagings and overpacks.

(a) * * *

(6) *Limited quantities and ORM material.* The overpack is marked with a limited quantity marking prescribed in § 172.315 of this subchapter or, the ORM marking prescribed in § 172.316 of this subchapter, unless a limited quantity or ORM marking representative of the hazardous material in the overpack is visible.

(7) *Excepted quantities.* The overpack is marked with all required marking of § 173.4a of this part unless visible.

* * * * *

11. In § 173.63, paragraph (b)(1)(ii) is revised to read as follows:

§ 173.63 Packaging exceptions.

* * * * *

(b) * * *

(1) * * *

(ii) Until December 31, 2012, a package containing such articles may be marked with the proper shipping name ''Cartridges, small arms'' or ''Cartridges, power device (*used to project fastening devices*)'' and reclassed as ''ORM–D–AIR'' material if it contains properly packaged articles as authorized by this subchapter on October 1, 2010.

Additionally, for transportation by aircraft, Cartridge, power devices must be successfully tested under the UN Test Series 6(d) criteria for reclassification as ORM–D–AIR material effective July 1, 2011. Until December 31, 2015, a package containing such articles may be marked with the proper shipping name ''Cartridges, small arms'' or ''Cartridges, power device (*used to project fastening devices*)'' and reclassed as ''ORM–D'' material if it contains properly packaged articles as authorized by this subchapter on October 1, 2010.

* * * * *

12. Section 173.144 is revised to read as follows:

§ 173.144 Other Regulated Material (ORM)—Definitions.

Until December 31, 2015 and for the purposes of this subchapter, ''ORM–D material'' means a material such as a consumer commodity, cartridges, small arms or cartridges, power devices which, although otherwise subject to the regulations of this subchapter, presents a limited hazard during transportation due to its form, quantity and packaging. The article or substance must be a material for which exceptions are provided in Column (8A) of the § 172.101 Hazardous Materials Table.

13. In § 173.150, paragraph (c) is revised to read as follows:

§ 173.150 Exceptions for Class 3 (flammable and combustible liquids).

* * * * *

(c) *Consumer commodities.* Until December 31, 2015, a limited quantity package containing a ''consumer commodity'' as defined in § 171.8 of this subchapter, may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

* * * * *

14. In § 173.151, paragraphs (b) and (c) are revised to read as follows:

§ 173.151 Exceptions for Class 4.

* * * * *

(b) *Limited quantities of Division 4.1.* Limited quantities of flammable solids (Division 4.1) in Packing Groups II and III and, where authorized by this section, charcoal briquettes (Division 4.2) in Packing Group III, are excepted from labeling requirements unless the material is offered for transportation or transported by aircraft, and are excepted from the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. If authorized for transportation by aircraft, the package must also conform to applicable requirements of § 173.27 of this part (*e.g.,* authorized materials, inner packaging quantity limits and closure securement) and only hazardous material authorized aboard passenger-carrying aircraft may be transported as a limited quantity. A limited quantity package that conforms to the provisions of this section is not subject to the shipping paper requirements of subpart C of part 172 of this subchapter, unless the material meets the definition of a hazardous substance, hazardous waste, marine pollutant, or is offered for transportation and transported by aircraft or vessel, and is eligible for the exceptions provided in § 173.156 of this part. In addition, shipments of limited quantities are not subject to subpart F (Placarding) of part 172 of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. Except for transportation by aircraft, the following combination packagings are authorized:

(1) For flammable solids in Packing Group II, inner packagings not over 1.0 kg (2.2 pounds) net capacity each, packed in a strong outer packaging.

(2) For flammable solids in Packing Group III, inner packagings not over 5.0 kg (11 pounds) net capacity each, packed in a strong outer packaging.

(c) *Consumer commodities.* Until December 31, 2015, a limited quantity package (including Charcoal briquettes (NA1361)) containing a ''consumer commodity'' as defined in § 171.8 of this subchapter, may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010. For transportation by aircraft, the maximum net mass for Charcoal briquettes (NA1361) is 25 kg per package.

* * * * *

15. In § 173.152, paragraph (c) is revised to read as follows:

§ 173.152 Exceptions for Division 5.1 (oxidizers) and Division 5.2 (organic peroxides).

* * * * *

(c) *Consumer commodities.* Until December 31, 2015, a limited quantity package containing a ''consumer commodity'' as defined in § 171.8 of this subchapter, may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

16. In § 173.153, paragraph (c) is revised to read as follows:

§ 173.153 Exceptions for Division 6.1 (poisonous material).

* * * * *

(c) *Consumer commodities.* Until December 31, 2015, a limited quantity package of poisonous material in Packing Group III or a drug or medicine in Packing Group II or III that is also a ''consumer commodity'' as defined in § 171.8 of this subchapter, may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

17. In § 173.154, paragraph (c) is revised to read as follows:

§ 173.154 Exceptions for Class 8 (corrosive material).

* * * * *

(c) *Consumer commodities.* Until December 31, 2015, a limited quantity package containing a ''consumer commodity'' as defined in § 171.8 of this subchapter, may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

* * * * *

18. In § 173.155, paragraph (c) is revised to read as follows:

§ 173.155 Exceptions for Class 9 (miscellaneous hazardous materials).

* * * * *

(c) *Consumer commodities.* Until December 31, 2015, a limited quantity package containing a ''consumer commodity'' as defined in § 171.8 of this subchapter, may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

19. Section 173.156 is revised to read as follows:

§ 173.156 Exceptions for limited quantity and ORM.

(a) Exceptions for hazardous materials shipments in the following paragraphs

are permitted only if this section is referenced for the specific hazardous material in the § 172.101 Table or in a packaging section in this part.

(b) Packagings for limited quantity and ORM–D are specified according to hazard class in §§ 173.150 through 173.155 and in 173.306 and 173.309(b). In addition to exceptions provided for limited quantity and ORM–D materials elsewhere in this part, the following are provided:

(1) Strong outer packagings as specified in this part, marking requirements specified in subpart D of part 172 of this subchapter, and the 30 kg (66 pounds) gross weight limitation are not required for packages of limited quantity materials marked in accordance with § 172.315 of this subchapter, or, until December 31, 2015, materials classed and marked as ORM–D and described as a Consumer commodity, as defined in § 171.8 of this subchapter, when—

(i) Unitized in cages, carts, boxes or similar overpacks;

(ii) Offered for transportation or transported by:

(A) Rail;

(B) Private or contract motor carrier; or

(C) Common carrier in a vehicle under exclusive use for such service; and

(iii) Transported to or from a manufacturer, a distribution center, or a retail outlet, or transported to a disposal facility from one offeror.

(2) The 30 kg (66 pounds) gross weight limitation does not apply to packages of limited quantity materials marked in accordance with § 172.315 of this subchapter, or, until December 31, 2015, materials classed and marked as ORM–D and described as a Consumer commodity, as defined in § 171.8 of this subchapter, when offered for transportation or transported by highway or rail between a manufacturer, a distribution center, and a retail outlet provided—

(i) Inner packagings conform to the quantity limits for inner packagings specified in §§ 173.150(b), 173.152(b), 173.154(b), 173.155(b), 173.306(a) and (b), and 173.309(b), as appropriate;

(ii) The inner packagings are packed into corrugated fiberboard trays to prevent them from moving freely;

(iii) The trays are placed in a fiberboard box which is banded and secured to a wooden pallet by metal, fabric, or plastic straps, to form a single palletized unit;

(iv) The package conforms to the general packaging requirements of subpart B of this part;

(v) The maximum net quantity of hazardous material permitted on one palletized unit is 250 kg (550 pounds); and

(vi) The package is properly marked in accordance with § 172.315 or, until December 31, 2015, § 172.316 of this subchapter.

20. In section 173.161, paragraph (d)(2) is revised to read as follows:

§ 173.161 Chemical kits and first aid kits.

* * * * *

(d) * * *

(2) Consumer commodities. Until December 31, 2015, a limited quantity package containing a ''consumer commodity'' as defined in § 171.8 of this subchapter may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

* * * * *

21. In section 173.165, paragraph (c) is revised to read as follows:

§ 173.165 Polyester resin kits.

* * * * *

(c) Consumer commodities. Until December 31, 2015, a limited quantity package containing a ''consumer commodity'' as defined in § 171.8 of this subchapter may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

22. Section 173.167 is revised to read as follows:

§ 173.167 Consumer commodities.

(a) Effective January 1, 2013, a ''consumer commodity'' (see § 171.8 of this subchapter) when authorized transportation by aircraft may only include articles or substances of Class 2 (non-toxic aerosols only), Class 3 (Packing Group II and III only), Division 6.1 (Packing Group III only), UN3077, UN3082, UN3175, UN3334, and UN3335, provided such materials do not have a subsidiary risk and are authorized aboard a passenger-carrying aircraft. Consumer commodities are excepted from the specification outer packaging requirements of this subchapter. Packages prepared under the requirements of this section may be offered for transportation and transported by all modes. Additionally, the following apply:

(1) *Inner and outer packaging quantity limits.* (i) Non-toxic aerosols, as defined in § 171.8 of this subchapter and constructed in accordance with § 173.306 of this part, in non-refillable, non-metal containers not exceeding 120 mL (4 fluid ounces) each, or in non-refillable metal containers not exceeding 820 mL (28 ounces) each, except that flammable aerosols may not exceed 500 mL (16.9 ounces) each;

(ii) Liquids, in inner packagings not exceeding 500 mL (16.9 ounces) each;

(iii) Solids, in inner packagings not exceeding 500 g (1.0 pounds) each; or

(iv) Any combination thereof not to exceed 30 kg (66 pounds) gross weight as prepared for shipment.

(2) *Closures.* Friction-type closures must be secured by secondary means. Examples of such methods include: adhesive tape, friction sleeves, welding or soldering, positive locking wires, locking rings, induction heats seals, and child-resistant closures. The body and closure of any packaging must be constructed so as to be able to adequately resist the effects of temperature and vibration occurring in conditions normally incident to air transportation. The closure device must be so designed that it is unlikely that it can be incorrectly or incompletely closed.

(3) *Absorbent material.* Inner packagings must be tightly packaged in strong outer packagings. Absorbent and cushioning material must not react dangerously with the contents of inner packagings. Fragile receptacles containing liquids of Class 3 or Division 6.1, sufficient absorbent material must be provided to absorb the entire contents of the largest inner packaging contained in the outer packaging. Absorbent material is not required if such fragile inner packagings are sufficiently protected as packaged for transport that it is unlikely a failure would occur and, if a failure did occur, that it would be unlikely that the contents would leak from the outer packaging.

(4) Pressure differential capability. Except for UN3082, inner packagings intended to contain liquids must be capable of meeting the pressure differential requirements (75 kPa) prescribed in § 173.27(c) of this part. The capability of a packaging to withstand an internal pressure without leakage that produces the specified pressure differential should be determined by successfully testing design samples or prototypes.

(5) *Drop test capability.* Fragile inner packagings must be packaged to prevent failure under conditions normally incident to transport. Packages of consumer commodities must be capable of withstanding a 1.2 m drop on solid

concrete in the position most likely to cause damage.

(6) *Stack test capability.* Packages of consumer commodities must be capable of withstanding, without failure or leakage of any inner packaging and without any significant reduction in effectiveness, a force applied to the top surface for a duration of 24 hours equivalent to the total weight of identical packages if stacked to a height of 3.0 m (including the test sample).

(b) When offered for transportation by aircraft, packages prepared under the requirements of this section are to be marked as a limited quantity in accordance with § 172.315(b)(1) and labeled as a Class 9 article or substance, as appropriate, in accordance with subpart E of part 172 of this subchapter.

23. In § 173.230, paragraph (h) is revised to read as follows:

§ 173.230 Fuel cell cartridges containing hazardous material.

* * * * *

(h) *Consumer commodities.* Until December 31, 2015, for other than transportation by aircraft, a limited quantity that conforms to the provisions of paragraph (g) of this section and is also a ''consumer commodity'' as defined in § 171.8 of this subchapter, may be renamed ''Consumer commodity'' and reclassed as ORM–D. In addition to the exceptions provided by paragraph (g), shipments of ORM–D materials are not subject to the shipping paper requirements of subpart C of part 172 of this subchapter, unless the materials meet the definition of a hazardous substance, hazardous waste, marine pollutant, or are offered for transportation aircraft, and are eligible for the exceptions provided in § 173.156 of this part.

24. In § 173.306, paragraph (i)(2) is revised to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(i) * * *

(2) Consumer commodities. Until December 31, 2015, a limited quantity package containing a ''consumer commodity'' as defined in § 171.8 of this subchapter may be renamed ''Consumer commodity'' and reclassed as ORM–D or, until December 31, 2012, as ORM–D–AIR material and offered for transportation and transported in accordance with the applicable provisions of this subchapter in effect on October 1, 2010.

* * * * *

25. Section 173.309 is revised to read as follows:

§ 173.309 Fire extinguishers.

(a) Specification 3A, 3AA, 3E, 3AL, 4B, 4BA, 4B240ET or 4BW (§§ 178.36, 178.37, 178.42, 178.46, 178.50, 178.51, 178.55 and 178.61 of this subchapter) cylinders are authorized for manufacture and use as fire extinguishers under the following conditions:

(1) Extinguishing agents must be nonflammable, non-poisonous, non-corrosive, and commercially free from corroding components.

(2) Each fire extinguisher must be charged with a nonflammable, non-poisonous, dry gas that has a dew-point at or below minus 46.7 °C (minus 52 °F) at 101 kPa (1 atmosphere) and is free of corroding components, to not more than the service pressure of the cylinder.

(3) A fire extinguisher may not contain more than 30% carbon dioxide by volume or any other corrosive extinguishing agent.

(4) Each fire extinguisher must be protected externally by suitable corrosion-resisting coating.

(5) Specification 3E and 4BA cylinders must be packed in strong non-bulk outer packagings. The outside of the combination packaging must be marked with an indication that the inner packagings conform to the prescribed specifications.

(b) *Limited quantities.* Fire extinguishers charged with a limited quantity of compressed gas to not more than 1660 kPa (241 psig) at 21 °C (70 °F) are excepted from shipping papers (except when offered for transportation by aircraft or vessel), labeling (except when offered for transportation by aircraft), placarding, the specification packaging requirements of this subchapter, and are eligible for the exceptions provided in § 173.156 when offered for transportation in accordance with this paragraph (b). Packages must be marked as specified for limited quantities in § 172.315 of this subchapter. Limited quantity shipments conforming to this paragraph are not subject to parts 174 and 177 of this subchapter when transported by highway or rail. In addition, limited quantity packages of fire extinguishers are subject to the following conditions, as applicable:

(1) Each fire extinguisher must have contents which are nonflammable, non-poisonous, and noncorrosive as defined in this subchapter;

(2) Each non-specification fire extinguisher must be packaged as an inner packaging within a combination outer packaging. Examples of acceptable outer packagings for non-specification fire extinguishers include large cartons, racks, cages or other suitable enclosures;

(3) Non-specification cylinders are authorized as fire extinguishers subject to the following conditions:

(i) The internal volume of each cylinder may not exceed 18 L (1,100 cubic inches). For fire extinguishers not exceeding 900 mL (55 cubic inches) capacity, the liquid portion of the gas plus any additional liquid or solid must not completely fill the container at 55 °C (130 °F). Fire extinguishers exceeding 900 mL (55 cubic inches) capacity may not contain any liquefied compressed gas;

(ii) Each fire extinguisher manufactured on and after January 1, 1976, must be designed and fabricated with a burst pressure of not less than six times its charged pressure at 21 °C (70 °F) when shipped;

(iii) Each fire extinguisher must be tested, without evidence of failure or damage, to at least three times its charged pressure at 21 °C (70 °F) but not less than 825 kPa (120 psig) before initial shipment, and must be marked to indicate the year of the test (within 90 days of the actual date of the original test) and with the words ''MEETS DOT REQUIREMENTS.'' This marking is considered a certification that the fire extinguisher is manufactured in accordance with the requirements of this section. The words ''This extinguisher meets all requirements of 49 CFR 173.306'' may be displayed on fire extinguishers manufactured prior to January 1, 1976; and

(iv) For any subsequent shipment, each fire extinguisher must be in compliance with the retest requirements of the Occupational Safety and Health Administration Regulations of the Department of Labor, 29 CFR 1910.157;

(4) Specification 2P or 2Q (§§ 178.33 and 178.33a of this subchapter) inner non-refillable metal packagings are authorized as fire extinguishers subject to the following conditions:

(i) The liquid portion of the gas plus any additional liquid or solid may not completely fill the packaging at 55 °C (130 °F);

(ii) Pressure in the packaging must not exceed 1250 kPa (181 psig) at 55 °C (130 °F). If the pressure exceeds 920 kPa (141 psig) at 55 °C (130 °F), but does not exceed 1100 kPa (160 psig) at 55 °C (130 °F), a specification DOT 2P inner metal packaging must be used; if the pressure exceeds 1100 kPa (160 psig) at 55 °C (130 °F), a specification DOT 2Q inner metal packaging must be used. The metal packaging must be capable of withstanding, without bursting, a pressure of one and one-half times the equilibrium pressure of the contents at 55 °C (130 °F); and

(iii) Each completed inner packaging filled for shipment must have been heated until the pressure in the container is equivalent to the equilibrium pressure of the contents at 55 °C (130 °F) without evidence of leakage, distortion, or other defect.

(iv) Specification 2P and 2Q cylinders must be packed in strong non-bulk outer packagings. The outside of the combination packaging must be marked with an indication that the inner packagings conform to the prescribed specifications.

PART 175—CARRIAGE BY AIRCRAFT

26. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.45 and 1.53.

27. In § 175.10, paragraph (a)(17) is revised to read as follows:

§ 175.10 Exceptions for passengers, crewmembers, and air operators.

(a) * * *

(17) A wheelchair or other mobility aid equipped with a lithium ion battery, when carried as checked baggage, provided—

(i) The lithium ion battery must be of a type that successfully passed each test in the UN Manual of Tests and Criteria (IBR; see § 171.7 of this subchapter), as specified in § 173.185 of this subchapter, unless approved by the Associate Administrator;

(ii) The operator must verify that:

(A) Visual inspection of the wheelchair or other mobility aid reveals no obvious defects;

(B) Battery terminals are protected from short circuits (e.g., enclosed within a battery housing);

(C) The battery must be securely attached to the mobility aid; and

(D) Electrical circuits are isolated;

(iii) The wheelchair or other mobility aid must be loaded and stowed in such a manner to prevent its unintentional activation and its battery must be protected from short circuiting;

(iv) The wheelchair or other mobility aid must be protected from damage by the movement of baggage, mail, service items, or other cargo;

(v) Where a lithium ion battery-powered wheelchair or other mobility aid is specifically designed to allow its battery to be removed by the user (e.g., collapsible):

(A) The battery must be removed from the wheelchair or other mobility aid according to instructions provided by the wheelchair or other mobility aid owner or its manufacturer;

(B) The battery must be carried in carry-on baggage only;

(C) Battery terminals must be protected from short circuits (by placement in original retail packaging or otherwise insulating the terminal e.g. by taping over exposed terminals or placing each battery in a separate plastic bag or protective pouch);

(D) The battery must not exceed 25 grams aggregate equivalent lithium content; and

(E) A maximum of one spare battery not exceeding 25 grams aggregate equivalent lithium content or two spares not exceeding 13.5 grams aggregate equivalent lithium content each may be carried;

(vi) The pilot-in-command is advised either orally or in writing, prior to departure, as to the location of the lithium ion battery or batteries aboard the aircraft.

* * * * *

PART 176—CARRIAGE BY VESSEL

28. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

29. In § 176.905, paragraph (i) is revised to read as follows:

§ 176.905 Stowage of motor vehicles or mechanical equipment.

* * * * *

(i) Exceptions—A vehicle or mechanical equipment is excepted from the requirements of this subchapter if any of the following are met:

(1) The vehicle or mechanical equipment has an internal combustion engine using liquid fuel that has a flashpoint less than 38°C (100°F), the fuel tank is empty, and the engine is run until it stalls for lack of fuel;

(2) The vehicle or mechanical equipment has an internal combustion engine using liquid fuel that has a flashpoint of 38°C (100°F) or higher, the fuel tank contains 418 L (110 gallons) of fuel or less, and there are no fuel leaks in any portion of the fuel system;

(3) The vehicle or mechanical equipment is stowed in a hold or compartment designated by the administration of the country in which the vessel is registered as specially designed and approved for vehicles and mechanical equipment and there are no signs of leakage from the battery, engine, fuel cell, compressed gas cylinder or accumulator, or fuel tank, as appropriate. For vehicles with batteries connected and fuel tanks containing gasoline transported by U.S. vessels, *see* 46 CFR 70.10–1 and 90.10–38;

(4) The vehicle or mechanical equipment is electrically powered solely by wet electric storage batteries (including nonspillable batteries) or sodium batteries; or

(5) The vehicle or mechanical equipment is equipped with liquefied petroleum gas or other compressed gas fuel tanks, the tanks are completely emptied of liquefied or compressed gas and the positive pressure in the tank does not exceed 2 bar (29 psig), the line from the fuel tank to the regulator and the regulator itself is drained of all traces of liquefied or compressed gas, and the fuel shut-off valve is closed.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

30. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

31. In § 178.2, paragraph (c)(1)(ii) is revised to read as follows:

§ 178.2 Applicability and responsibility.

* * * * *

(c) * * *

(1) * * *

(ii) Retain copies of each written notification for at least one year from date of issuance; and

* * * * *

Issued in Washington, DC, on May 18, 2012 under authority delegated in 49 CFR part 106.

William Schoonover,

Deputy Associate Administrator, Field Operations, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2012–12523 Filed 5–24–12; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 77, No. 102
Friday, May 25, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Public Meeting of the Assembly of the Administrative Conference of the United States

AGENCY: Administrative Conference of the United States.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Assembly of the Administrative Conference of the United States to consider proposed recommendations which deal with: (1) Regulatory analysis requirements, (2) midnight rules, (3) immigration removal adjudication, (4) the Paperwork Reduction Act, and (5) improving coordination of related agency responsibilities. To facilitate public participation, the Conference is inviting public comment on the recommendations that will be considered at the meeting.

DATES: Meeting dates are Thursday, June 14, 2012, 1:00 p.m. to 6:00 p.m.; and Friday, June 15, 2012, 9:00 a.m. to 12:30 p.m. Comments on the recommendations must be received by noon, Friday, June 8, 2012.

ADDRESSES: The Public Meeting will be held at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 (Main Conference Room).

Submit comments to either of the following: Email *comments@acus.gov,* with ''June 2012 Plenary Session Comments'' in the subject line; or mail to June 2012 Plenary Session Comments, Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Shawne McGibbon, General Counsel (the Designated Federal Officer), Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW., Washington, DC 20036; Telephone 202–480–2088.

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States makes recommendations to administrative agencies, the President, Congress, and the Judicial Conference of the United States regarding the improvement of Federal administrative procedures (5 U.S.C. 594). The objectives of these recommendations are to ensure that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest, to promote more effective public participation and efficiency in the rulemaking process, reduce unnecessary litigation in the regulatory process, improve the use of science in the regulatory process, and improve the effectiveness of laws applicable to the regulatory process (5 U.S.C. 591).

The membership of the Conference meeting in plenary session constitutes the Assembly of the Conference (5 U.S.C. 595). The Assembly will meet in plenary session to consider five proposed recommendations:

(1) The recommendation ''Regulatory Analysis Requirements'' addresses the issue of agencies having to comply with numerous regulatory analysis requirements created by statute and executive orders. The recommendation is supported by an extensive report which includes an appendix charting all of the regulatory analysis requirements of the 100 significant rules subject to Office of Management and Budget (OMB) review in 2010. The goal of the recommendation is to ensure agencies fulfill the regulatory analysis requirements efficiently, and to enhance the transparency of the process. Agencies, the Congress, the President and the Office of Information and Regulatory Affairs at OMB are all encouraged to play a role in achieving this goal.

(2) The recommendation ''Midnight Rules'' addresses several issues raised by the publication of rules in the final months of a presidential administration and offers proposals for limiting the practice by incumbent administrations and enhancing the powers of incoming administrations to review midnight rules.

(3) The recommendation ''Immigration Removal Adjudication'' addresses the problem of case backlogs in immigration removals, and offers nearly 40 suggestions on ways to enhance efficiency and fairness in these cases.

(4) The recommendation ''Paperwork Reduction Act'' (PRA or the Act) addresses a variety of issues that have arisen since the Act was last revised in 1995. For instance, despite OMB guidance on the application of the PRA to social media, the Act does not yet account for new technologies. The proposal offers suggestions for improving public engagement in the review of information collection requests and for making the process more efficient for the agencies and OMB.

(5) The recommendation ''Improving Coordination of Related Agency Responsibilities'' addresses the problem of overlapping and fragmented procedures associated with assigning multiple agencies similar or related functions, or dividing authority among agencies. The underlying report was based on a 2012 *Harvard Law Review* article titled, ''Agency Coordination in Shared Regulatory Space'' (125 Harv. L. Rev. 1131). The recommendation proposes some reforms aimed at improving coordination of agency policymaking, including joint rulemaking, interagency agreements, and agency consultation provisions.

This meeting will be open to the public and may end prior to the designated end time if business is concluded earlier. Members of the public are invited to attend the meeting in person, subject to space limitations. The Conference will provide live, remote public access to the meeting via webcast at *www.acus.gov.* The webcast will also be viewable via the agency's Web site subsequent to the meeting. Anyone who wishes to attend the meeting in person is asked to RSVP to *comments@acus.gov,* no later than June 12, 2012, in order to facilitate entry. Members of the public who attend the meetings of the full Assembly may be permitted to speak only with the consent of the Chairman and the unanimous approval of the members. The Conference welcomes the attendance of the public and will make every effort to accommodate persons with physical disabilities or special needs. If you need special accommodations due to disability,

please inform the contact person noted above no later than 7 days in advance of the meeting.

Members of the public may submit written comments on any or all of the recommendations to either of the addresses listed above no later than noon, June 8, 2012. Copies of the proposed recommendations, accompanying research reports and information on remote access will be available at *www.acus.gov.* Comments relating to the individual proposed recommendations will be delivered to the Designated Federal Officer listed on this notice and will be posted on the Conference's Web site. Comments received at this stage will be available to the full Assembly prior to their consideration of the final recommendations.

Dated: May 22, 2012.

David Pritzker,

Deputy General Counsel.

[FR Doc. 2012–12787 Filed 5–24–12; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 22, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: 7 CFR Part 215—Special Milk Program for Children.

OMB Control Number: 0584–0005.

Summary of Collection: Section 3 of the Child Nutrition Act (CNA) of 1966 (Pub. L. 89–642, as amended; 42 U.S.C. 1772) authorizes the Special Milk Program (SMP) for Children. It provides for appropriation of such sums as may be necessary to enable the Secretary of Agriculture under such rules and regulations as the Secretary may deem in the public interest, to encourage consumption of fluid milk by children in the United States in (1) nonprofit schools of high school grades and under, and (2) nonprofit nursery schools, child care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children, which do not participate in a food service program authorized under the CNA or the National School Lunch Act.

Need and Use of the Information: The Food and Nutrition Service (FNS) will collect information to compute the amount of Federal SMP funds due the SA under the performance-funding formula; analyze and evaluate the results of program operation within each state and nationwide; respond to data requests from the Congress, OMB, and advocacy groups and the general public; develop budget projections of the amount of Federal funds needed to pay SMP program benefits; and regulate the flow of Federal funds to SA. Without this information FNS would not be able to evaluate program operations.

Description of Respondents: State, Local, and Tribal Government; Business or other for-profit; Not-for-profit institutions;

Number of Respondents: 5,569.

Frequency of Responses: Recordkeeping; Reporting: Monthly.

Total Burden Hours: 21,246.

Food and Nutrition Service

Title: National School Lunch Program.

OMB Control Number: 0584–0006.

Summary of Collection: The Richard B. Russell School Lunch Act (NSLA), as amended, authorizes the National School Lunch Program (NSLP) to safeguard the health and well-being of the nation's children and provide low cost or free school lunch meals to qualified students through subsidies to schools. The United States Department of Agriculture (USDA) provides States with general and special cash assistance and donations of foods to assist schools in serving nutritious lunches to children each school day. Participating schools must serve lunches that are nutritionally adequate, and maintain menu and production records to demonstrate compliance with the meal requirements. Section 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1779) requires the Secretary of Agriculture to prescribe such regulations as deemed necessary to carry out this Act and the NSLA (42 U.S.C. et seq.).

Need and Use of the Information: The information collection is required to administer and operate the program in accordance with the NSLA. The Program is administered at the Sate and school food authority levels and the operations include the submission and approval of applications, execution of agreements, submission of claims, payment of claims, providing monitoring and technical assistance.

If the data is not collected, FNS would not be able to properly monitor program funding and program trends.

Description of Respondents: State, Local, or Tribal Government, Individuals or household, Business or other for-profit, Not-for-profit institutions, Federal Government.

Number of Respondents: 122,661.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Monthly; Annually.

Total Burden Hours: 12,205,890.

Food and Nutrition Service

Title: 7 CFR Part 220, School Breakfast Program.

OMB Control Number: 0584–0012.

Summary of Collection: Section 4 of the Child Nutrition Act (CNA) of 1966, as amended, authorizes the School Breakfast Program (SBP). It provides for the appropriation of ''such sums as are necessary to enable the Secretary to carry out a program to assist the States and the Department of Defense through grants-in-aid and other means to initiate, maintain, or expand nonprofit breakfast programs in all schools which make application for assistance and agree to carry out a nonprofit breakfast program in accordance with the Act.'' The Food and Nutrition Service (FNS)

administers the School Breakfast Program on behalf of the Secretary of Agriculture so that needy children may receive their breakfasts free or at a reduced price.

Need and Use of the Information: School food authorities provide information to State agencies. The State agencies report to FNS. FNS uses the information submitted to determine the amount of funds to be reimbursed, evaluate and adjust program operations, and to develop projections for future program operations.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 109,522.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Monthly; Semi-annually; Annually.

Total Burden Hours: 3,924,902.

Food and Nutrition Service

Title: Civil Rights Title VI—Collection Reports—FNS–191 and FNS–101.

OMB Control Number: 0584–0025.

Summary of Collection: Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs receiving federal financial assistance. The Department of Justice regulations, cited at Title 28 of the Code of Federal Regulations (CFR), Section 42.106(b), require all Federal Departments to provide for the collection of racial/ethnic data and information from applicants for and recipients of Federal assistance sufficient to permit effective enforcement of Title VI. In order to comply with the Civil Rights Act, Department of Justice regulations and the Department's nondiscrimination policy and regulations (7 CFR part 15), the Department's Food and Nutrition Service (FNS) requires State agencies to submit data on the racial/ethnic categories of person receiving benefits from FNS food assistance programs. FNS will collect information using forms FNS 191 and FNS 101.

Need and Use of the Information: FNS will collect the names, address, telephone number, to compile a local agency directory which serves as the primary source of data on number and location for local agencies and number of sites operating Commodity Supplemental Food Program (CSFP). FNS will also collect information on the number of CFSP individuals (women, infant, children, and elderly) in each racial/ethnic category for one month of the year. The information will be used in the Department's annual USDA Equal Opportunity Report. If the information is not collected FNS could not track racial/ethnic data for program evaluation.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 2,927.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 5,854.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–12814 Filed 5–24–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0021]

Notice of Request for Extension of Approval of an Information Collection; National Poultry Improvement Plan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the National Poultry Improvement Plan.

DATES: We will consider all comments that we receive on or before July 24, 2012.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0021-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0021, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0021* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on regulations for the National Poultry Improvement Plan, contact Dr. Charles Roney, NPIP Coordinator, Veterinary Services, APHIS, 1506 Klondike Road, Suite 300, Conyers, GA 30094; (770) 922–3496. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: National Poultry Improvement Plan.

OMB Number: 0579–0007.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized to, among other things, administer the National Poultry Improvement Plan (NPIP or the Plan), the primary purpose of which is to protect the health of the U.S. poultry population. NPIP is a voluntary Federal-State-industry cooperative program for the improvement of poultry flocks and products through disease control techniques. Participation in all Plan programs is voluntary, but flocks, hatcheries, and dealers of breeding poultry must first qualify as ''U.S. Pullorum-Typhoid Clean'' as a condition for participation in the other Plan programs. The NPIP regulations are contained in 9 CFR parts, 56, 145, 146, and 147.

In administering the Plan, APHIS requires a number of information activities and forms, including VS Forms 1–23/1–23A, Appraisal and Indemnity Claim for Animals Destroyed or Materials Destroyed/Continuation Sheet; VS Form 9–3, Report of Sales of Hatching Eggs, Chicks, and Poults; VS Form 9–4, Summary of Breeding, Flock, Table-Egg Layer Flocks, Meat-Type Chicken and Turkey Slaughter Plants Participation; VS Form 9–5, Report of Hatcheries, Dealers, and Independent Flocks, Table-Egg Producers, Meat-Type Chicken and Turkey Slaughter Plants Participating in the NPIP; VS Form 9–6, Report of Salmonella Isolations to NPIP Official State Agencies; VS Form 9–7, Investigation of Salmonella Isolations in Poultry; VS Form 9–8, Flock Inspection and Check Testing Report; VS Form 9–9, Hatchery Inspection Form; VS Form 10–3, Request for Salmonella Serotyping; banding of sentinel birds for identification prior to flock vaccination; memorandums of understanding;

recordkeeping; and printing and mailing to States, upon request, of computerized printouts of interstate sales by hatchery operators who ship large numbers of small chick orders.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.61926273 hours per response.

Respondents: Flock owners, breeders, hatchery operators, table-egg producers, meat-type chicken and turkey slaughter plant workers, personnel at approved laboratories, and State personnel.

Estimated annual number of respondents: 10.800.

Estimated annual number of responses per respondent: 15.45490741.

Estimated annual number of responses: 166,913.

Estimated total annual burden on respondents: 103,363 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 21st day of May 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–12764 Filed 5–24–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0016]

Notice of Request for Extension of Approval of an Information Collection; Importation of Live Poultry, Poultry Meat, and Other Poultry Products From Specified Regions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval of an extension to an information collection associated with regulations for the importation of live poultry, poultry meat, and other poultry products from specified regions.

DATES: We will consider all comments that we receive on or before July 24, 2012.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0016-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0016, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0016* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the importation of live poultry, poultry meat, and other poultry products from specified regions into the United States, contact Dr. Magde Elshafie, Senior Staff Veterinarian, Technical Trade Services—Animal Products, NCIE, VS, APHIS, 4700 River Road, Unit 40, Riverdale, MD 20737; (301) 851–3332. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION: *Title:* Importation of Live Poultry, Poultry Meat, and Other Poultry Products from Specified Regions.

OMB Number: 0579–0228.

Type of Request: Extension of approval of an information collection.

Abstract: Under the authority of the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out the mission, APHIS regulates the importation of animals and animal products into the United States. The regulations are contained in title 9, parts 92 through 98, of the Code of Federal Regulations.

In part 94, § 94.26 allows the importation, subject to certain conditions, of live poultry, poultry meat, and other poultry products from certain regions, including Argentina and the Mexican States of Campeche, Quintana Roo, and Yucatan, that are free of exotic Newcastle disease (END). The conditions for importation require, among other things, certification from a full-time salaried veterinary officer of the national government of the exporting region that poultry and poultry products exported from one of these regions originated in that region (or in another region recognized by APHIS as free of END) and that before the export to the United States, the poultry and poultry products were not commingled with poultry and poultry products from regions where END exists.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Federal animal health authorities of certain regions that export live poultry, poultry meat, and other poultry products; importers.

Estimated annual number of respondents: 11.

Estimated annual number of responses per respondent: 19.272727.

Estimated annual number of responses: 212.

Estimated total annual burden on respondents: 212 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 21st day of May 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–12768 Filed 5–24–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0018]

Notice of Request for Extension of Approval of an Information Collection; Importation of Papaya From Colombia and Ecuador

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of commercial shipments of fresh papaya from Colombia and Ecuador into the continental United States.

DATES: We will consider all comments that we receive on or before July 24, 2012.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0018-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0018, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0018* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of commercial shipments of fresh papaya from Colombia and Ecuador, contact Ms. Dorothy Wayson, Regulatory Coordination Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 851–2036. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Papaya from Colombia and Ecuador.

OMB Number: 0579–0358.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. Regulations authorized by the PPA concerning the importation of fruits and vegetables into the United States from certain parts of the world are contained in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–56).

Under these regulations, commercial shipments of fresh papaya from Colombia and Ecuador are subject to certain conditions before entering the continental United States to prevent the introduction of plant pests into the United States. The regulations include requirements for approved production locations; field sanitation; hot water treatment; procedures for packing and shipping the papayas; and fruit fly trapping in papaya production areas. In order to document that these requirements have been met, the regulations require the use of phytosanitary certificates and recordkeeping.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: National plant protection organizations of Colombia and Ecuador and importers of papaya.

Estimated annual number of respondents: 3.

Estimated annual number of responses per respondent: 100.666.

Estimated annual number of responses: 302.

Estimated total annual burden on respondents: 151 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 21st day of May 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–12766 Filed 5–24–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) implementing regulations, this notice announces the Economic Research Service's (ERS) intention to request renewal of approval for an annual information collection on supplemental food security questions in the Current Population Survey (CPS), commencing with the December 2013 survey. These data will be used: to monitor household-level food security and food insecurity in the United States; to assess food security and changes in food security for population subgroups; to assess the need for, and performance of, domestic food assistance programs; to improve the measurement of food security; and to provide information to aid in public policy decision making.

DATES: Comments on this notice must be received by July 24, 2012 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Mark Nord, Food Assistance Branch, Food Economics Division, Economic Research Service, Room 5–232, 1400 Independence Ave. SW., Mail Stop 1800, Washington, DC 20050–1800. Submit electronic comments to *marknord@ers.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mark Nord at the address in the preamble. Tel. 202–694–5433.

SUPPLEMENTARY INFORMATION:

Title: Current Population Survey Food Security Supplement.

OMB Number: 0536–0043.

Expiration Date of Approval: December 31, 2012.

Type of Request: Intent To Seek Approval To Extend an Information Collection for 3 Years.

Abstract: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and OMB regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the ERS intention to request renewal of approval for an annual information collection. The U.S. Census Bureau will supplement the December CPS, beginning in 2013, with questions regarding household food shopping, use of food and nutrition assistance programs, food sufficiency, and difficulties in meeting household food needs. A similar supplement has been appended to the CPS annually since 1995. The last collection was in December 2011.

ERS is responsible for conducting studies and evaluations of the Nation's food and nutrition assistance programs that are administered by the Food and Nutrition Service (FNS), U.S. Department of Agriculture. The Department currently spends about $103 billion each year to ensure access to nutritious, healthful diets for all Americans. The Food and Nutrition Service administers the 15 food assistance programs of the USDA including the Supplemental Nutrition Assistance Program (SNAP), formerly called the Food Stamp Program, the National School Lunch Program, and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). These programs, which serve 1 in 4 Americans, represent our Nation's commitment to the principle that no one in our country should lack the food needed for an active, healthy life. They provide a safety net to people in need. The programs' goals are to provide needy persons with access to a more nutritious diet, to improve the eating habits of the Nation's children, and to help America's farmers by providing an outlet for the distribution of food purchased under farmer assistance authorities.

The data collected by the food security supplement will be used to monitor the prevalence of food security and the prevalence and severity of food insecurity among the Nation's households. The prevalence of these conditions as well as year-to-year trends in their prevalence will be estimated at the national level and for population subgroups. The data will also be used to monitor the amounts that households spend for food and their use of community food pantries and emergency kitchens. These statistics along with research based on the data will be used to identify the causes and consequences of food insecurity, and to assess the need for, and performance of, domestic food assistance programs. The data will also be used to improve the measurement of food security and to develop measures of additional aspects and dimensions of food security. This consistent measurement of the extent and severity of food insecurity will aid in policy decision-making.

The supplemental survey instrument was developed in conjunction with food security experts nationwide as well as survey method experts within the Census Bureau and was reviewed in 2006 by the Committee on National Statistics of the National Research Council. This supplemental information will be collected by both personal visit and telephone interviews in conjunction with the regular monthly CPS interviewing. Interviews will be conducted using Computer Assisted Personal Interview (CAPI) and Computer Assisted Telephone Interview (CATI) methods.

Authority: Legislative authority for the planned data collection are 7 U.S.C. 2204(a) and 7 U.S.C. 2026(a)(1) of the Food and Nutrition Act of 2008. This latter section authorizes the Secretary to enter into contracts with private and public institutions to collect data to undertake research that would improve the administration and effectiveness of the SNAP in delivering nutrition-related benefits.

Estimate of Burden: Public reporting burden for this data collection is estimated to average 7.7 minutes (after rounding) for each household that responds to the labor force portion of the CPS. The estimate is based on the number of households that were asked each question in recent survey years and typical reading and response times for the questions.

Respondents: Individuals or households.

Estimated Total Number of Respondents: 53,935.

Estimated Total Annual Burden on Respondents: 6,927 hours. Copies of this information collection can be obtained from Mark Nord at the address in the preamble.

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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of

information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, May 7, 2012.

Mary Bohman,

Administrator.

[FR Doc. 2012–12770 Filed 5–24–12; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

WTO Agricultural Safeguard Trigger Levels

AGENCY: Foreign Agricultural Service, U.S. Department of Agriculture.

ACTION: Notice of product coverage and trigger levels for safeguard measures provided for in the World Trade Organization (WTO) Agreement on Agriculture.

SUMMARY: This notice lists the updated quantity trigger levels for products which may be subject to additional import duties under the safeguard provisions of the WTO Agreement on Agriculture. This notice also includes the relevant period applicable for the trigger levels on each of the listed products.

DATES: *Effective Date:* May 25, 2012.

FOR FURTHER INFORMATION CONTACT: Safeguard Staff, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1021, 1400 Independence Avenue SW., Washington, DC 20250–1021; or by telephone at (202) 720–0638, or by email at *itspd@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: Article 5 of the WTO Agreement on Agriculture provides that additional import duties may be imposed on imports of products subject to tariffication as a result of the Uruguay Round, if certain conditions are met. The agreement permits additional duties to be charged if the price of an individual shipment of imported products falls below the average price for similar goods imported during the years 1986–88 by a specified percentage. It also permits additional duties to be imposed if the volume of imports of an article exceeds the average of the most recent 3 years for which data are available by 5, 10, or 25 percent, depending on the article. These additional duties may not be imposed on quantities for which minimum or current access commitments were made during the Uruguay Round negotiations, and only one type of safeguard, price or quantity, may be applied at any given time to an article.

Section 405 of the Uruguay Round Agreements Act requires that the President cause to be published in the **Federal Register** information regarding the price and quantity safeguards, including the quantity trigger levels, which must be updated annually based upon import levels during the most recent 3 years. The President delegated this duty to the Secretary of Agriculture in Presidential Proclamation No. 6763, dated December 23, 1994, 60 FR 1005 (Jan. 4, 1995). The Secretary of Agriculture further delegated this duty, which lies with the Administrator of the Foreign Agricultural Service (7 CFR 2.43 (a)(2)). The Annex to this notice contains the updated quantity trigger levels.

Additional information on the products subject to safeguards and the additional duties which may apply can be found in subchapter IV of Chapter 99 of the Harmonized Tariff Schedule of the United States (2012) and in the Secretary of Agriculture's Notice of Uruguay Round Agricultural Safeguard Trigger Levels, published in the **Federal Register** at 60 FR 427 (Jan. 4, 1995).

Notice: As provided in Section 405 of the Uruguay Round Agreements Act, consistent with Article 5 of the Agreement on Agriculture, the safeguard quantity trigger levels previously notified are superceded by the levels indicated in the Annex to this notice. The definitions of these products were provided in the Notice of Safeguard Action published in the **Federal Register**, at 60 FR 427 (Jan. 4, 1995).

Issued at Washington, DC, this 15th day of May 2012.

Suzanne E. Heinen,

Administrator, Foreign Agricultural Service.

ANNEX—QUANTITY-BASED SAFEGUARD TRIGGER

Product	Trigger level	Period
Beef	242,780 mt	January 1, 2011 to December 31, 2011.
Mutton	5,576 mt	January 1, 2011 to December 31, 2011.
Cream	867,562 liters	January 1, 2011 to December 31, 2011.
Evaporated or Condensed Milk	2,262,128 kilograms	January 1, 2011 to December 31, 2011.
Nonfat Dry Milk	327,518 kilograms	January 1, 2011 to December 31, 2011.
Dried Whole Milk	2,135,595 kilograms	January 1, 2011 to December 31, 2011.
Dried Cream	21,166 kilograms	January 1, 2011 to December 31, 2011.
Dried Whey/Buttermilk	18,594 kilograms	January 1, 2011 to December 31, 2011.
Butter	6,188,045 kilograms	January 1, 2011 to December 31, 2011.
Butter Oil and Butter Substitutes	6,441,469 kilograms	January 1, 2011 to December 31, 2011.
Dairy Mixtures	30,574,663 kilograms	January 1, 2011 to December 31, 2011.
Blue Cheese	4,530,512 kilograms	January 1, 2011 to December 31, 2011.

ANNEX—QUANTITY-BASED SAFEGUARD TRIGGER—Continued

Product	Trigger level	Period
Cheddar Cheese	9,824,536 kilograms	January 1, 2011 to December 31, 2011.
American-Type Cheese	4,978,590 kilograms	January 1, 2011 to December 31, 2011.
Edam/Gouda Cheese	6,388,906 kilograms	January 1, 2011 to December 31, 2011.
Italian-Type Cheese	21,718,995 kilograms	January 1, 2011 to December 31, 2011.
Swiss Cheese with Eye Formation	26,060,155 kilograms	January 1, 2011 to December 31, 2011.
Gruyère Process Cheese	3,411,433 kilograms	January 1, 2011 to December 31, 2011.
Lowfat Cheese	448,925 kilograms	January 1, 2011 to December 31, 2011.
NSPF Cheese	41,636,693 kilograms	January 1, 2011 to December 31, 2011.
Peanuts	18,176 mt	April 1, 2010 to March 31, 2011.
	19,279 mt	April 1, 2011 to March 31, 2012.
Peanut Butter/Paste	4,493 mt	January 1, 2011 to December 31, 2011.
Raw Cane Sugar	1,142,815 mt	October 1, 2010 to September 30, 2011.
	1,278,131 mt	October 1, 2011 to September 30, 2012.
Refined Sugar and Syrups	176,800 mt	October 1, 2010 to September 30, 2011.
	203,088 mt	October 1, 2011 to September 30, 2012.
Blended Syrups	134 mt	October 1, 2010 to September 30, 2011.
	192 mt	October 1, 2011 to September 30, 2012.
Articles Over 65% Sugar	277 mt	October 1, 2010 to September 30, 2011.
	247 mt	October 1, 2011 to September 30, 2012.
Articles Over 10% Sugar	15,083 mt	October 1, 2010 to September 30, 2011.
	16,434 mt	October 1, 2011 to September 30, 2012.
Sweetened Cocoa Powder	1,054 mt	October 1, 2010 to September 30, 2011.
	700 mt	October 1, 2011 to September 30, 2012.
Chocolate Crumb	8,051,334 kilograms	January 1, 2011 to December 31, 2011.
Lowfat Chocolate Crumb	211,289 kilograms	January 1, 2011 to December 31, 2011.
Infant Formula Containing Oligosaccharides	582,933 kilograms	January 1, 2011 to December 31, 2011.
Mixes and Doughs	383 mt	October 1, 2010 to September 30, 2011.
	286 mt	October 1, 2011 to September 30, 2012.
Mixed Condiments and Seasonings	280 mt	October 1, 2010 to September 30, 2011.
	432 mt	October 1, 2011 to September 30, 2012.
Ice Cream	2,309,155 liters	January 1, 2011 to December 31, 2011.
Animal Feed Containing Milk	39,223 kilograms	January 1, 2011 to December 31, 2011.
Short Staple Cotton	591,350 kilograms	September 20, 2010 to September 19, 2011.
	30,605 kilograms	September 20, 2011 to September 19, 2012.
Harsh or Rough Cotton	0 kilograms	August 1, 2010 to July 31, 2011.
	60 kilograms	August 1, 2011 to July 31, 2012.
Medium Staple Cotton	149,148 kilograms	August 1, 2010 to July 31, 2011.
	51,298 kilograms	August 1, 2011 to July 31, 2012.
Extra Long Staple Cotton	2,017,042 kilograms	August 1, 2010 to July 31, 2011.
	1,007,631 kilograms	August 1, 2011 to July 31, 2012.

ANNEX—QUANTITY-BASED SAFEGUARD TRIGGER—Continued

Product	Trigger level	Period
Cotton Waste	432,133 kilograms	September 20, 2010 to September 19, 2011.
	595,320 kilograms	September 20, 2011 to September 19, 2012.
Cotton, Processed, Not Spun	31,338 kilograms	September 11, 2010 to September 10, 2011.
	75,787 kilograms	September 11, 2011 to September 10, 2012.

[FR Doc. 2012–12691 Filed 5–24–12; 8:45 am]
BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Special Use Administration

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with revision of a currently approved information collection, Special Use Administration.

DATES: Comments must be received in writing on or before July 24, 2012 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to USDA Forest Service, Attn: Lands, 1400 Independence Ave. SW., Mailstop Code: 1124, Washington, DC 20250–1124.

Comments also may be submitted via facsimile to 202–205–1604 or by email to: *reply_lands@fs.fed.us.*

The public may inspect comments received at the Office of the Director, Lands, 4th Floor South, Sidney R. Yates Federal Building, 201 14th Street SW., Washington, DC, during normal business hours. Visitors are encouraged to call ahead to 205–205–1248 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Milo Booth, Lands, at 202–205–1117. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Special Use Administration.

OMB Number: 0596–0082.

Expiration Date of Approval: October 31, 2012.

Type of Request: Extension with Revision.

Abstract: The information collection requirements are necessary for the Forest Service to issue and administer special use authorizations that allow the public to use and occupy National Forest System (NFS) lands under these authorities. The information collected is used by Forest Service officials (unless otherwise noted) to ensure that uses of NFS lands are authorized, in the public interest, and compatible with the Agency's mission; and/or record authorization of use granted by appropriate Forest Service officials.

In addition, the Department of the Interior (DOI) statutes for the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), National Park Service (NPS), and Bureau of Reclamation (BuRec) along with the statute for the U.S. Army Corp of Engineers (USACE) authorize its collection of information and will utilize form SF–299 ''Application for Transportation and Utility Systems and Facilities on Federal Lands.''

Several statutes authorize the Forest Service to issue and administer authorizations for use and occupancy of NFS lands and collect information from the public for those purposes. The laws authorizing the collection of this information include the Organic Administration Act of 1897 (16 U.S.C. 551); Title V of the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1761–1771); Act of March 4, 1915 (16 U.S.C. 497); Alaska Term Permit Act of March 30, 1948 (48 U.S.C. 341); Act of September 3, 1954 (68 Stat. 1146; 43 U.S.C. 931c, 931d); National Forest Ski Area Permit Act (16 U.S.C. 497b); section 28 of the Mineral Leasing Act (30 U.S.C. 185); National Forest Roads and Trails Act (FRTA, 16 U.S.C. 532–538); section 7 of the Granger-Thye Act (16 U.S.C. 480d); Act of May 26, 2000 (16 U.S.C. 460*l*–6d); Federal Lands Recreation Enhancement Act (16 U.S.C. 6801–6814); Archeological Resource Protection Act of October 31, 1979 (16 U.S.C. 1996); and the Rural Electrification Act of 1936, as amended.

Forest Service regulations implementing these authorities, found at 36 CFR part 251, Subpart B, contain information collection requirements, including submission of applications, execution of forms, and imposition of terms and conditions that entail information collection requirements, such as the requirement to submit annual financial information, to prepare and update an operating plan; to prepare and update a maintenance plan, and to submit compliance reports and information updates.

The information helps the Agency identify the environmental and social impacts of special uses for purposes of compliance with the National Environmental Policy Act and program administration. In addition, the Agency uses the information to ascertain whether the land use fee(s) charged for special use authorizations are based on market value.

Information collection occurs via application forms, as well as terms and conditions in special use authorizations and operating plans. There are six categories of information collected:

(1) Information required from proponents and applicants to evaluate proposals and applications to use or occupy NFS lands,

(2) Information required from applicants to complete special use authorizations,

(3) Annual financial information required from holders to determine land use fees,

(4) Information required from holders to prepare and update operating plans,

(5) Information required from holders to prepare and update maintenance plans, and

(6) Information required from holders to complete compliance reports and informational updates.

The six categories cover all information collection requirements involved in administration of the Special Uses program, including application and reporting forms; authorization forms; supplemental special use authorization clauses in Forest Service Handbook 2709.11,

chapter 50; and information collection requirements not associated with an approved standard form.

These six categories demonstrate the complexity of the special uses program and the importance of standard forms in administration of the program. Special use authorizations encompass a variety of activities ranging from individual private uses to large-scale commercial facilities and public services. Examples of authorized special uses include public and private road rights-of-way, apiaries, domestic water supply conveyance systems, telephone and electric service rights-of-way, oil and gas pipeline rights-of-way, communications facilities, hydroelectric power-generating facilities, ski areas, resorts, marinas, municipal sewage treatment plants, and public parks and playgrounds.

Category 1: The Application Process

1. SF–299, *Application for Transportation and Utility Systems and Facilities on Federal Lands,* is used to evaluate the applicant's technical and financial capability, nature of the proposed operations, and anticipated environmental impacts and proposed mitigation of those impacts. This form is used for most non-recreational NFS lands use requests. This form will also be used by the Department of the Interior's BLM, FWS, NPS, BuRec, and the U.S. Army Corp of Engineers to grant, issue, or renew rights-of-way (ROW) to use a specific piece of public land for a certain project. Some examples of land uses which require a ROW grant include: transmission lines, communication sites, roads, highways, trails, telephone lines, canals, flumes, pipelines, reservoirs, and so forth.

2. IRS form W–9, *Request for Taxpayer Identification Number and Certification,* is used to certify permit holder federal tax classification as part of the permit authorization and administration process.

3. FS–2300–43, *Special Use Application and Permit for Government-Owned Buildings,* is the form used by the Forest Service to collect information and to issue permits for use of government-owned facilities on NFS lands.

4. FS–2700–3a, *Holder-Initiated Revocation of Existing Authorization and Request for a Special Use Permit,* is used to facilitate issuance of a new authorization when there is a change in ownership of authorized improvements or a change in control of the holder of a special use authorization.

5. FS–2700–3b, *Special Use Application and Permit for Noncommercial Group Use,* provides information used to evaluate requests to use NFS lands for noncommercial gatherings involving 75 or more people, such as a wedding or an activity involving the exercise of First Amendment rights, and to authorize such requests.

6. FS–2700–3c, *Special Use Application and Permit for Recreation Events,* is used to collect information needed to evaluate requests to use NFS lands for events involving an entry or participation fee, such as an endurance ride, and to authorize such requests.

7. FS–2700–3f, *Special Use Application and Permit, Temporary Permit for Outfitting and Guiding,* is the form used by the Forest Service to collect information and to issue temporary permits to use NFS lands for Outfitting and Guiding services.

8. FS–2700–10, *Technical Data for Communications Uses,* is the form used by the Forest Service to collect information and to evaluate the compatibility of communications equipment at a communications site to minimize frequency interference and other compatibility problems.

9. FS–2700–11, *Agreement Concerning a Small Business Administration Loan for a Holder of a Special Use Permit,* is the form used by the Forest Service to collect information and to enter into agreement with a holder, a lender, and the U.S. Small Business Administration (SBA) regarding a loan guaranteed by the SBA.

10. FS–2700–12, *Agreement Concerning a Loan for a Holder of a Special Use Permit,* is the form used by the Forest Service to collect information and to enter into an agreement with a holder and a lender regarding a loan not guaranteed by the SBA.

11. FS–2700–30, *Application for Permit for Archaeological Investigations,* is the form used by the Forest Service to collect information and to evaluate the financial capability and qualifications of an applicant to undertake archaeological investigations on NFS lands.

12. FS–2700–33, *Additional Insured Endorsement for a Special Use Authorization,* is the form used by the Forest Service to collect information and to name the United States as an additional insured in an insurance policy issued to the holder of a special use authorization.

13. FS–2700–34, *Prospectus for Campground and Related Granger-Thye Concessions,* is used to select the most qualified applicant to operate a concession campground in a competitive process.

14. FS–2700–36 (new), *Paleontological Resources Preservation,* is the form used to garner information requirements necessary to issue permits, enter into agreements, and identify the repository institutions which house and curate paleontological resources that are collected under permit and which remain Federal property.

15. FS–6500–24, *Financial Statement,* provides information used by the authorized Forest Service officer or financial analyst to evaluate the financial capability of an applicant to undertake the requested use and to comply with the terms and conditions of an authorization. This form is used primarily for requests to operate ski areas, resorts, and government-owned campgrounds on NFS lands.

16. FS–6500–25, *Request for Verification,* is the form used by an authorized Forest Service officer or financial analyst to: (1) obtain a release of information from a financial institution to verify the financial capability of an applicant to undertake the requested use, and (2) to comply with the terms and conditions of an authorization. This form is used primarily for requests to operate ski areas, resorts, and government-owned campgrounds on NFS lands.

17. *Response to a Prospectus* (no designated form). When the Forest Service offers a new business opportunity that requires a Special Use authorization, for which there is competitive interest, it is necessary to issue a prospectus. Information provided by applicants in response to a prospectus is used to select the most qualified applicant.

Category 2: Special Use Authorizations

1. FS–2700–4, *Special Use Permit,* is the form used by the Forest Service to collect information and to authorize a variety of uses on NFS lands not covered by another form.

2. FS–2700–4b, *Forest Road Special Use Permit,* is the form used by the Forest Service to collect information and to authorize, under FLPMA, the construction and use of an NFS road, typically to access private property within a national forest for commercial purposes, such as timber hauling or noncommercial purposes such as residential use.

3. FS–2700–4c, *Private Road Special Use Permit,* is the form used by the Forest Service to collect information and to authorize, under FLPMA, the construction and use of a road that is not part of the forest transportation system to access non-Federal land, a mining claim, a mineral leasing area, or other uses of NFS lands.

4. FS–2700–4d, *Temporary Cost Share Agreement Road Special Use*

Permit, is the form used by the Forest Service to collect information and to authorize, under FLPMA, the construction, maintenance, and use of a temporary road on NFS lands covered by a cost share agreement to access private property within a national forest for commercial purposes, such as timber harvesting.

5. FS–2700–4h, *Special Use Permit for Campground and Related Granger-Thye Concessions,* is the form used by the Forest Service to collect information and to authorize the operation and maintenance of a government-owned recreation site on NFS lands.

6. FS–2700–4h—Appendix B, *Annual Granger-Thye Fee Offset Agreement,* is used by authorized Forest Service official and the holder to specify the government maintenance, reconditioning, renovation, and improvement used to offset the land use fee for a *Campground and Related Granger-Thye Concessions Special Use Permit.*

7. FS–2700–4h—Appendix F, *Special Use Permit for Campground and Related Granger-Thye Concessions,* describes the Forest Service's drinking water program and the requirements that apply to holders authorized to operate a federally owned drinking water system.

8. FS–2700–4h—Appendix G, *Granger-Thye Fee Offset Claim Certification,* is used by a holder to provide a record of said holder's direct and indirect costs attributable to a project enumerated in a *Granger-Thye Fee Offset Agreement.*

9. FS–2700–4i, *Special Use Permit for Outfitting and Guiding,* is the form used by the Forest Service to collect information and authorize the use and occupancy of NFS lands to provide outfitting and guiding services.

10. FS–2700–4j, *Special Use Permit for a Federal Agency's Electric Transmission Facilities,* is the form used by the Forest Service to collect information and authorize the use and occupancy of NFS lands by a Federal agency that owns and operates electric transmission lines and facilities.

11. FS–2700–4–Shawnee, *Special Use Permit for Equestrian Outfitting on the Shawnee National Forest,* is required as part of a litigation settlement for the Shawnee National Forest.

12. FS–2700–5, *Term Special Use Permit,* is the form used by the Forest Service to collect information and authorize long-term use of NFS lands involving privately owned facilities.

13. FS–2700–5a, *Term Special Use Permit for Recreation Residences,* is the form used by the Forest Service to collect information and authorize a privately owned recreation residence on NFS lands.

14. Grand Island–FS–2700–5a (new), *Term Special Use Permit for Recreation Residences,* is the form used by the Forest Service to collect information and authorize a privately owned recreation residence on Grand Island Recreation Area.

15. FS–2700–5b, *Ski Area Term Special Use Permit,* is the form used by the Forest Service to collect information and authorize ski areas on NFS lands.

16. FS–2700–5c, *Resort/Marina Term Special Use Permit,* is the form used by the Forest Service to collect information and authorize a resort/marina on NFS lands.

17. FS–2700–5d, *Resort Supplement for Outfitting and Guiding,* provides information the Forest Service uses to authorize outfitting and guiding occurring at a resort/marina on NFS lands.

18. FS–2700–9a, *Agricultural Irrigation and Livestock Watering System Easement,* is used by the Forest Service to collect information and grant an easement for an agricultural irrigation or a livestock watering system on NFS lands.

19. FS–2700–9b, *Cost Share Easement,* is used by the Forest Service to collect information and authorize, under FRTA, the acquisition, construction, or reconstruction and the maintenance and use of an NFS road that is subject to a cost share agreement. The parties to the cost share agreement grant each other easements within the geographic area covered by the agreement. A cost share easement is for a NFS road and is subject to the cost sharing provisions of the agreement.

20. FS–2700–9c, *Non-Cost Share Easement,* is used by the Forest Service to collect information and authorize, under FRTA, the construction, reconstruction, maintenance, and use of private roads under a cost share agreement. The parties to the cost share agreement grant each other easements within the geographic area covered by the agreement. A non-cost share easement is for a private road (rather than a NFS road) and is not subject to the cost sharing provisions of the agreement.

21. FS–2700–9d, *Public Road Easement,* is used by the Forest Service to collect information and grant easements, under FRTA, to public road authorities, such as States or counties, to construct and maintain public roads that are not part of the Federal Aid Highway System.

22. FS–2700–9e, *Forest Road Easement,* is issued under the National Forest Roads and Trails Act. This form is used by the Forest Service to collect information and to grant an easement, under FRTA, to a party to a cost share agreement, or to another non-Federal landowner who is cooperating in the acquisition, construction, or maintenance of a NFS road. The easement is for acquisition, construction or reconstruction, maintenance, and use of a NFS road that is outside the boundaries of a cost share agreement. At the time the easement is granted, the grantor and the grantee share the costs of acquisition, construction, and reconstruction. After the easement is granted, the grantor and the grantee share only the cost of maintenance.

23. FS–2700–9f, *Private Road Easement,* issued under the National Forest Roads and Trails Act; the Forest Service uses this form to collect information and grant an easement, under FRTA, to a party to a cost share agreement, or to another non-Federal landowner who is cooperating in the acquisition, construction, or maintenance of a NFS road. The easement is for construction or reconstruction, maintenance, and use of a private road that is outside the boundaries of a cost share agreement. Since the easement is for a private rather than a NFS road, the cost of constructing, reconstructing, and maintaining the road are borne by the grantee.

24. FS–2700–9g, *Forest Road Easement,* issued under the Federal Land Policy and Management Act, is used by Forest Service to collect information and grant an easement, under FLPMA, for construction, reconstruction, maintenance, and use of an NFS road, when the grantee is not a party to a cost share agreement for the acquisition, construction, and maintenance of an NFS road, or when the grantee does not meet the requirements for issuance of a forest road easement under FRTA.

25. FS–2700–9h, *Private Road Easement,* issued under the Federal Land Policy and Management Act, is used by the Forest Service to collect information and grant an easement, under FLPMA, for construction, reconstruction, maintenance, and use of a private road, when the grantee is not a party to a cost share agreement for the acquisition, construction, and maintenance of NFS roads, or when the grantee does not meet the requirements for issuance of a private road easement under FRTA.

26. FS–2700–10b, *Communications Site Lease,* is the form used by the Forest Service to collect information and to authorize a communications use

within a designated communications site on NFS lands.

27. FS–2700–10c (new), *Communications use Permit for Federal Agencies,* is the form used by the Forest Service to collect information and to authorize a communications use within a designated communications site on NFS lands is to be used ONLY for Federal Agencies (other than the Forest Service) who have jurisdiction over the facility.

28. FS–2700–23, *Amendment for Special Use Authorization,* is used by the Forest to collect information and amend an existing special use authorization.

29. FS–2700–25, *Temporary Special Use Permit,* is used by the Forest Service to authorize uses of 1 year or less on NFS lands.

30. FS–2700–26, *Major Category Cost Recovery Agreement,* is used to effectuate cost recovery for special use applications or authorizations involving over 50 hours to process or monitor.

31. FS–2700–26b, *Cost Recovery Master Agreement,* is used by Forest Service officials to effectuate cost recovery for special use applications or authorizations involving multiple phases of development or groups of applications or similar applications for a specified geographic area.

32. FS–2700–27, *Notice to Alaska Native Corporations Regarding Prospectus for Visitor Services,* is used by the Forest Service to collect information and provide notice to Alaska Native Corporations of the issuance of a prospectus to conduct visitor services in Conservation System Units in Alaska. Notification provides the Alaska Native Corporations a chance to request designation as a most directly affected Native Corporation for purposes of competing for the opportunity to conduct visitor services.

33. FS–2700–31, *Electric Transmission Line Easement,* the Forest Service uses this form to collect information and to grant a long-term easement, under FLPMA, for an electric transmission line to a non-federal organization.

34. FS–2700–32, *Permit for Archaeological Investigations,* the Forest Service uses this form to collect information and to grant a permit to a qualified applicant to conduct archeological investigations on or within NFS lands.

Category 3: Annual Financial Information

1. FS–2700–6b, *Recreation Residence Self-Inspection Report,* the Forest Service uses this form to review and record any modifications made to a recreation residence.

2. FS–2700–7, *Reconciliation of Sales for Fee Calculation,* this form provides information used by the Forest Service to determine land use fees based on sales revenue.

3. FS–2700–8, *Reconciliation of Gross Fixed Assets to Booked Amounts,* the Forest Service uses the information provided on this form to determine land use fees based on the gross fixed assets of the holder.

4. FS–2700–10a, *Telecommunications Facility Inventory,* the Forest Service uses the information provided on this form to determine the rent for a communications facility based on the number of tenants in the facility.

5. FS–2700–19, *Fee Calculation for Concession Permits,* information collected via this form is used by the Forest to determine the land use fee for concession permits under the Graduated Rate Fee System.

6. FS–2700–19a, *Fee Calculation for Ski Area Permits,* this form collects information used by the Forest Service to determine the land use fee for ski area permits under the Ski Fee Act.

7. Form number to be determined (new), *Financing or eligible for Financing of Telephone Facilities,* this form collects information to determine eligibility of fee waiver by the Rural Utility Service.

8. *Business Practices* (no designated form). The holder provides information regarding various business practices, such as basic accounting or financial records, upon request by the authorized officer or as a term and condition of an authorization. In most circumstances, the form used is one customarily used for the type of business involved.

Category 4: Preparing and Updating Operating Plans (no designated form)

Special use authorizations may contain a clause requiring the holder to prepare and update an operating plan that governs day-to-day operations of the authorized use. This information is useful to the holder and the Forest Service, because it specifies procedures and policies for conducting the authorized use. Typically, operating plans contain daily operating guidelines, fire abatement and control procedures, monitoring guidelines, maintenance standards, safety and emergency plans, and inspection standards. Operating plans are usually necessary for complex operations, commercial uses, and uses conducted in environmentally sensitive areas.

Category 5: Preparing and Updating Maintenance Plans (no designated form)

A permit or easement issued under FLPMA or FRTA may require the holder or grantee to submit and update a road maintenance plan or information necessary for the preparation of a road maintenance plan. A road maintenance plan governs the responsibility of the holder or grantee to perform or pay for maintenance of an NFS road.

Category 6: Compliance Reports and Information Updates

1. FS–2700–1, *Inspection form for Special Uses,* is used to document on-site examination of an authorized activity or facility to assess conditions and inform a compliance review.

2. *Compliance Reports and Information Updates* (no designated form). Special use authorizations may contain a clause requiring the holder to provide the Forest Service with compliance reports, information reports, and other information required by Federal law or to manage NFS lands to ensure adequate protection of national forest resources and public health and safety. Examples of compliance and information updates include dam maintenance inspection reports and logs required by the Reclamation Safety of Dams Act of 1978; the Federal Dam Safety Inspection Act of 1979; and the Dam Safety Act of 1983; documentation that authorized facilities passed safety inspections; documentation showing that the United States is named as an additional insured in an insurance policy issued to a holder; notifications involving a change in ownership of authorized improvements or a change in control of the holder; and documentation of compliance with Title VI of the Civil Rights Act of 1964.

Forest Service

Estimated Annual Burden: 2.9 burden hours per response (This is an average burden per form. This estimated annual burden also includes data from the Department of the Interior and the U.S. Army Corp of Engineers.)

Type of Respondents: Individuals, Businesses, Non-profit Organizations, and Non-Federal Governmental entities.

Estimated Annual Number of Respondents: 168,728 respondents (This is a 3-year user rate average as tracked by the Special Use Data System (SUDS). This estimated annual number of respondents also includes data from the Department of the Interior and the U.S. Army Corp of Engineers.)

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 336,463.5 hours. (This is an estimation based on a three year usage rate as tracked by SUDS multiplied by Burden Hours per Form. This estimated annual burden on respondents also includes data from the Department of the Interior and the U.S. Army Corp of Engineers.)

Department of the Interior-BLM, FWS, NPS and BuRec

Estimated Annual Burden: 25 burden hours per response.

Type of Respondents: Individuals, Businesses, Non-profit Organizations, and State and Local and Federal Government.

Estimated Annual Number of Respondents: 5,254.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 131,051 hours.

U.S. Army Corp of Engineers

Estimated Annual Burden: 25 burden hours per response.

Type of Respondents: Individuals, Businesses, Non-profit Organizations, and State and Local and Federal Government.

Estimated Annual Number of Respondents: 32.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 800 hours.

Comment is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the 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 respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: May 18, 2012.

Faye L. Krueger,

Associate Deputy Chief, National Forest System.

[FR Doc. 2012–12759 Filed 5–24–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Advisory Committee on Agriculture Statistics

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of Renewal of the Charter for the Advisory Committee on Agriculture Statistics.

SUMMARY: The U.S. Department of Agriculture (USDA) is seeking renewal of the 2-year charter for its discretionary committee, the Advisory Committee on Agriculture Statistics.

Authority: The Advisory Committee on Agriculture Statistics was originally established by the Secretary of Commerce on July 16, 1962. The Committee is also established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2.

FOR FURTHER INFORMATION CONTACT: Hubert H. Hamer, Chairperson, Agricultural Statistics Board, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 690–8141, or email *hqdapp@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The purpose of the Committee is to advise the Secretary on the conduct of the periodic censuses and surveys of agriculture, other related surveys, and the types of agricultural information to obtain from respondents. The committee also prepares recommendations regarding the content of agriculture reports, and presents the views and needs for data of major suppliers and users of agriculture statistics. The committee draws on the experience and expertise of its members to form a collective judgment concerning agriculture data collected and the statistics issued by the National Agricultural Statistics Service (NASS). The duties of the Committee are solely advisory in nature.

Committee Membership: The Secretary of Agriculture will appoint the Committee's members for 2-year terms. Furthermore, members will serve for two-year terms, and can serve no more than three consecutive terms. The Committee is composed of 20 individuals with diverse capabilities distinguished by their broad range of knowledge and interest in, though not limited to, agricultural economics, rural sociology, farm policy analysis, and agricultural education. Members will also be drawn from representatives of state and local governments; agriculture-related industry and trade or marketing associations; major national farm organizations; and producer organizations. A representative from the Bureau of the Census, U.S. Department of Commerce, and a representative from the Economic Research Service, USDA, shall serve as ex officio members of the Committee. This Committee will be fairly balanced in its membership in terms of the points of view represented and the functions to be performed. Steps will be taken to encourage fresh points of view, such as establishing staggered membership terms and limiting the number of renewed memberships.

Equal opportunity practices in accordance with USDA policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership will include to the extent possible, individuals with demonstrated ability to represent minorities, women and persons with disabilities.

The USDA prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program.

More information can be found about the Committee's recent activities at: *http://www.nass.usda.gov/About_NASS/Advisory_Committee_on_Agriculture_Statistics/index.asp.*

Signed at Washington, DC, May 8, 2012.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2012–12769 Filed 5–24–12; 8:45 am]

BILLING CODE 3410–20–P

OFFICE OF THE FEDERAL COORDINATOR FOR ALASKA NATURAL GAS TRANSPORTATION PROJECTS

Review of Federal Permit Conditions

AGENCY: Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects.

ACTION: Notice of Adoption of Final Policy.

SUMMARY: The Office of the Federal Coordinator for Alaska Natural Gas

Transportation Projects is adopting a final policy in order to implement its statutory responsibilities under the Alaska Natural Gas Pipeline Act (15 U.S.C. 720) with respect to federal permit conditions imposed on the gas pipeline project. This policy statement will establish the agency's procedures for determining whether certain conditions included in a certificate, right-of-way, permit, lease or other authorization for an Alaska natural gas transportation project by federal agencies are prohibited under the Alaska Natural Gas Pipeline Act.

DATES: *Effective Date:* This policy will be effective immediately upon publication.

FOR FURTHER INFORMATION CONTACT: Debra Dickson, Director of Administration, Office of the Federal Coordinator, Alaska Natural Gas Transportation Projects, *ddickson@arcticgas.gov,* 202–756–4972.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the Alaska Natural Gas Pipeline Act in 2004 (15 U.S.C. 720) to encourage construction of a pipeline to deliver natural gas from Alaska's North Slope to the Lower 48 states. The Alaska Natural Gas Pipeline Act establishes a new process for approval and construction of the pipeline, either a project that completes the Alaska Natural Gas Transportation System that President Carter approved in 1977 pursuant to the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719), or a different pipeline project under the Natural Gas Act. The Alaska Natural Gas Pipeline Act of 2004 created the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects and charged the Federal Coordinator, the agency head, with four primary responsibilities: (1) Coordinate the expeditious discharge of all activities by all federal agencies with respect to an Alaska natural gas pipeline; (2) Ensure that all federal agencies comply with the Alaska Natural Gas Pipeline Act; (3) Prohibit federal agencies from imposing permit conditions that would prevent or impair in any significant respect the expeditious construction and operation of the project unless the conditions are required by law; further, the act directs the Federal Coordinator to determine whether a term or condition would prevent or impair in any significant respect the expeditious construction and operation of the project; and (4) Participate with the state of Alaska in a joint construction surveillance and monitoring agreement.

In addition, Congress transferred to the Federal Coordinator all of the responsibilities and authorities of the Federal Inspector under the Alaska Natural Gas Transportation Act of 1976. These responsibilities will be applicable if the Alaska Natural Gas Transportation System gas line is completed or if the 1980s' prebuilt sections of that project are expanded or modified within the United States to handle Alaska gas.

This policy addresses the third of the four statutory requirements listed above by explaining how the Federal Coordinator will determine whether conditions that federal agencies intend to impose on permits, rights-of-way or other authorizations for an Alaska natural gas transportation project will prevent or impair in any significant respect the expeditious construction and operation of the project.

Several sections of the Alaska Natural Gas Pipeline Act require the Federal Coordinator to consider permit conditions imposed by federal agencies with respect to the pipeline. Section 106(d)(2), Public Law 108–324, 118 Stat. 1255 prohibits agencies from including certain conditions in permits and other approvals, it states:

> (2) PROHIBITION OF CERTAIN TERMS AND CONDITIONS—No Federal agency may include in any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project any term or condition that may be permitted, but is not required, by any applicable law if the Federal Coordinator determines that the term or condition would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the Alaska natural gas transportation project.

Thus, the Alaska Natural Gas Pipeline Act of 2004 prohibits conditions that may be included but are not required by any applicable law if the Federal Coordinator determines that the condition would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the Alaska natural gas transportation project. The Federal Coordinator's function with regard to some conditions is limited. The Alaska Natural Gas Pipeline Act, Division C, Section 106(d)(4), Public Law 108–324 denies the Federal Coordinator any authority to override the Federal Energy Regulatory Commission's implementation of open seasons for the project or the Commission's orders for expansion of the project under Section 105 of the Alaska Natural Gas Pipeline Act, or to add or impose any terms or conditions to the Federal Energy Regulatory Commission certificate or any agency's permit or other authorization for the project. Division C, Section 106(d)(4), Public Law 108–324 states:

> (4) LIMITATION—The Federal Coordinator shall not have authority to—
>
> (A) override—
>
> (i) the implementation or enforcement of regulations issued by the Commission under section 103; or
>
> (ii) an order by the Commission to expand the project under section 105; or
>
> (B) impose any terms, conditions, or requirements in addition to those imposed by the Commission or any agency with respect to construction and operation, or an expansion of, the project.

The Alaska Natural Gas Pipeline Act also prohibits federal agencies from amending any previously issued permit or authorization to add conditions determined by the Federal Coordinator to prevent or impair in any significant respect the expeditious construction and operation of the pipeline.

> (3) PROHIBITION OF CERTAIN ACTIONS—Unless required by law, no Federal agency shall add to, amend, or abrogate any certificate, right-of-way, permit, lease, or other authorization issued to an Alaska natural gas transportation project if the Federal Coordinator determines that the action would prevent or impair in any significant respect the expeditious construction and operation, or an expansion, of the Alaska natural gas transportation project. ANGPA § 106(d)(3).

The prohibition of permit conditions that would prevent or impair expeditious construction and operation does not apply to conditions adopted by state agencies, even those issued pursuant to programs encouraged or funded by the federal government. However, if a state-issued permit includes a condition which is incorporated into a federal permit by a federal agency, the Federal Coordinator may review the condition that the federal agency adopted. Any determination the Federal Coordinator makes would not affect the state condition, just the applicability of the federal permit condition.

II. Discussion of the Final Policy

The Office of the Federal Coordinator is implementing these provisions of the Alaska Natural Gas Pipeline Act of 2004 by policy, establishing the process by which the Federal Coordinator will exercise its responsibility to determine whether permit conditions would prevent or impair expeditious construction of the project. This policy will apply to the agency's review of conditions initially included in an authorization for an Alaska natural gas transportation project, as well as any renewal or reissuance of authorizations.

One commenter suggested that the policy include a statement of the legal authority on which it is based. We have expanded the introduction to the policy to include this information.

A. Intention To Work With Other Agencies

It is the Federal Coordinator's intention to work closely with other federal agencies before, during and after the National Environmental Policy Act process and during the permit application review process of each agency in order to identify the likely need for permit conditions early and to determine as soon as possible whether a particular permit condition would be consistent with the Alaska Natural Gas Pipeline Act's statutory prohibition. The Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects expects that through coordination with other federal agencies and the permit applicant, it should be able to resolve concerns about most terms and conditions early and either avoid a formal review process or conclude it expeditiously.

B. Definitions

(1) *Condition:* The agency proposes to define term or condition of the Alaska Natural Gas Pipeline Act, Section 106(d)(2), Pub. L. 108–324, 118 Stat. 1255—referred to in this policy as condition—to mean any obligation not proposed by the applicant but proposed to be added to the permit or authorization by a federal agency. That includes all terms, stipulations or conditions required by the agency and any other requirement imposed by a federal agency. It excludes any obligation included by the applicant in its application, even if the obligation is suggested by an agency.

One commenter suggested that Federal Coordinator should not exclude from its review terms or conditions suggested by or agreed to by the project applicant, stating that the project applicant may not have the same interest as the United States in expeditious completion of the gas pipeline. The Office of the Federal Coordinator believes it is highly unlikely that an applicant will not want expeditious construction of the project. Besides, if the applicant and an agency mutually agree on a particular term or condition, and that term or condition is part of the application, it could not be considered as imposed by an agency on a project authorization. The Office of the Federal Coordinator's review only relates to permit conditions imposed by federal agencies.

(2) *Authorization:* The Federal Coordinator is defining the term authorization to mean any certificate, right-of-way, permit, lease, approval or other authorization required in order to construct or operate an Alaska natural gas transportation project, but excludes permissions for useful, but not required authorizations. Accordingly, federal loan guarantees, licenses for communications equipment not necessary for the project and other such permissions would not be subject to Federal Coordinator review.

One commenter believed the proposed policy was too narrow because it used the term ''permit'' to include any permit, right-of-way or other authorization. It was the Office of the Federal Coordinator's intention to include any kind of authorization in its review, not only permits. To clarify this, we are changing the policy to define the term ''authorization'' and defining that term to encompass any permit, right-of-way, lease or other authorization required for an Alaska natural gas transportation project.

One commenter suggested that authorizations which would assist but are not essential for an Alaska natural gas transportation project should nonetheless be subject to review. The Federal Coordinator disagrees. Congress granted the Federal Coordinator limited authority to review permit conditions that might prevent or delay expeditious construction and operation of the project. If an authorization is not required for the project, any condition imposed on that authorization is unlikely to prevent or delay expeditious construction or operation of the project.

(3) *Alaska Natural Gas Transportation Project:* The agency does not intend to propose a definition of Alaska natural gas transportation project, as that term is defined in the Alaska Natural Gas Pipeline Act, Section 102 of Pub. L. 108–324, 118 Stat. 1255. It is important to note that the definition includes the entire system, not simply the pipeline. Therefore, this permit review policy will cover conditions addressing support facilities, compressor stations, the gas treatment plant and other parts of the project.

(4) *Prevent or Impair in Any Significant Respect the Expeditious Construction and Operation of the Project:* As discussed in the proposal, the agency did not define ''prevent or impair in any significant respect the expeditious construction and operation of the project'' because the agency believes this should be interpreted based on the circumstances of the project at the time of an agency's action, the agency's intention and justification in crafting the proposed condition, and the condition's effect on the project. Prevent or impair in any significant respect cannot be well defined in the absence of specific circumstances. As an example, a condition that causes a significant delay in the first in-service date contractually agreed to between the pipeline owner and/or operator and a shipper could, if extreme, be deemed to impair expeditious construction and operation of the project. However, such a determination could only be made if the contractual in-service date were reasonable in light of the complexity of the project and other circumstances.

C. Process for Review of Permit Conditions

The Federal Coordinator does not intend to review every condition on every permit. Rather, the agency will generally review permit conditions at the request of the applicant or permittee. In addition, the Office of the Federal Coordinator reserves the right to select conditions for review on its own initiative. When the permitting agency's practice or regulations allow that agency or the Office of the Federal Coordinator to share a draft permit condition with an applicant, the Office of the Federal Coordinator will work with the applicant and the agency as early as possible to identify problematic permit conditions. An applicant may request review of a permit condition by the Office of the Federal Coordinator prior to issuance if the applicant believes it may prevent or impair in any significant respect the expeditious construction and operation of the project. If the practice of the permitting agency does not allow draft permit conditions to be shared with an applicant, the permittee will have to wait to request review of a permit condition until after the permit is issued.

One commenter suggested that the policy include a procedure for federal agencies other than the Federal Coordinator to request a review of proposed conditions before issuing a project authorization. The Federal Coordinator has not adopted this suggestion. The Office of the Federal Coordinator will work with other agencies during the permitting process. If an agency chooses to share possible permit conditions with the Office of the Federal Coordinator in advance of issuing its permit, the office will provide guidance on how to avoid problems. It is not the Federal Coordinator's intention to provide a formal review before issuance. However, if an early formal determination is sought, the Federal Coordinator will make every effort to provide effective guidance to an agency.

Requests from the applicant or the permittee for review of permit conditions should specify what specific condition will prevent or impair expeditious construction and operation of the project and should explain why the condition will have a detrimental impact on the project.

D. Information Required for Review

The Office of the Federal Coordinator will need background information from the agency in order to conduct its review, including:

(1) The language of the specific condition.

(2) A citation to the legal requirement for the condition.

(3) Any analysis the agency has prepared of the cost of implementing the condition.

(4) Any other information that explains the agency's reasons to include the condition, especially the circumstances that require its inclusion. This should include any discussion of the benefits of the conditions, or a cost-benefit analysis if one has been prepared.

(5) If the permit has not been issued, a statement addressing whether it is permissible under the agency's practice to share the draft condition with the applicant.

The Office of the Federal Coordinator expects this information should be readily available from the agency and will not impose a burden on the agency, as the agency should have already documented the need for the condition as part of the administrative record. Accordingly, the Office of the Federal Coordinator anticipates that the agency will be able to provide this information within ten (10) calendar days of Office of the Federal Coordinator's notification of a review and request for additional information.

One commenter suggested that the Federal Coordinator reserve the right to deny an application for review due to a lack of adequate information, if it is frivolous, or for any other cause. If the request for review is incomplete, does not demonstrate merit or otherwise does not provide a basis for relief, the Federal Coordinator does not need supplemental reasons for denying relief.

Based on Office of the Federal Coordinator's review of the proposed condition, the Federal Coordinator will determine whether the condition would prevent or impair in any significant respect the expeditious construction and operation of the project. In most cases, the Office of the Federal Coordinator's review should be completed in less than thirty (30) days after a project applicant requests a review. The Federal Coordinator will provide notice of its decision and reasoning to the applicant and the agency. If the Federal Coordinator determines that the condition or proposed condition would prevent or impair in any significant respect the expeditious construction and operation of the project, the Office of the Federal Coordinator will facilitate a meeting between the permittee or applicant and the issuing agency and, if appropriate, other experts, in order to help resolve the issue.

A commenter suggested including a statement to the effect that the permit condition review policy was intended to reduce litigation and that it did not create any legal rights. The Office of the Federal Coordinator disagrees with such an addition to this policy. If the Federal Coordinator determines that a permit condition will prevent or impair expeditious construction of the project, that determination creates the right for the applicant to seek a judicial ruling that the condition is unenforceable if it is not required by law. Accordingly, the Federal Coordinator will not adopt this suggestion.

III. Final Policy for Review of Federal Permit Conditions for an Alaska Natural Gas Transportation Project

The purpose of this policy is to explain how the Office of the Federal Coordinator will exercise its responsibilities with respect to review of permit conditions under Section 106(d) of the Alaska Natural Gas Pipeline Act (15 U.S.C. 720(d)(d)). Section 106(a) of the Alaska Natural Gas Pipeline Act (15 U.S.C. 720(d)(a)) established the Office of the Federal Coordinator as an independent office in the executive branch. The Federal Coordinator also exercises authorities under the Alaska Natural Gas Transportation Act (15 U.S.C. 719), and this policy is adopted in order to implement those responsibilities as well. This policy applies to the issuance of initial permits, as well as the renewal or reissuance of permits for an Alaska natural gas transportation project.

It is the Federal Coordinator's intention to work closely with other federal agencies before, during and after the National Environmental Policy Act process for an Alaska natural gas pipeline project and also during the permit application review process of each agency in order to identify early the likely need for permit conditions and to determine as soon as possible whether a particular permit condition would be precluded by the Alaska Natural Gas Pipeline Act's statutory prohibition. The Federal Coordinator expects that through coordination with other federal agencies and the permit applicant, it should be able to resolve concerns about most terms and conditions early on and either avoid a formal review process or conclude it expeditiously.

1. Definitions

(a) Term or condition in Section 106(d)(2) of the Alaska Natural Gas Pipeline Act—referred to in this policy as condition—means any obligation not proposed by the applicant but proposed to be added to the permit or authorization by a federal agency. This includes all terms, stipulations, conditions or additions to the application and any other requirement imposed by an agency. It excludes any obligation included by the applicant in its application, even if the obligation is suggested by an agency.

(b) Authorization means certificate, right-of-way, permit, lease or any other authorization required in order to construct or operate an Alaska natural gas transportation project.

2. Review of Proposed Terms or Conditions

(a) Review of Permit Conditions by Request of Applicant

(1) An applicant for any authorization or a permittee for any authorization for an Alaska natural gas transportation project may request the Federal Coordinator to review any condition included in or proposed for inclusion in the authorization.

(2) Such requests must be made to the Federal Coordinator no later than 30 days after issuance.

(3) The request shall include a specific identification of each condition which the applicant or permittee believes is inconsistent with the Alaska Natural Gas Pipeline Act and an explanation of the basis of that belief, including information that supports the contention that the permit condition would prevent or impair in any significant respect the expeditious construction and operation of the project.

(4) The Federal Coordinator may review a permit condition even if the permittee has not requested review.

(b) Materials Necessary for Review

If the Federal Coordinator receives a request for review of any condition, the Federal Coordinator will notify the issuing agency of the request. The Federal Coordinator will need the following information from the agency:

(1) The language of the specific condition.

(2) A citation to the legal requirement for the condition.

(3) Any analysis the agency has prepared of the cost of implementing the condition.

(4) Any other information that explains the agency's reasons to include the condition, especially the circumstances that require its inclusion. This should include any discussion of the benefits of the conditions, or a cost-benefit analysis if one has been prepared.

(5) If the permit has not yet been issued, a statement addressing whether agency practice or regulations would allow the Office of the Federal Coordinator to discuss the proposed condition with the applicant.

(c) Permit Condition Review

In determining whether a proposed permit condition would prevent or impair expeditious construction and operation of the project, the Federal Coordinator will consider:

(1) Any delays in project construction and operation caused by the condition.

(2) All other available information, including, if available, the project's cost of meeting the condition.

(3) The statutory and regulatory basis for the condition, as provided by the issuing agency.

(4) The views of the applicant.

(d) The Federal Coordinator Will Endeavor To Complete Its Review Within 30 Days After a Request From an Applicant or Permittee

(e) The Federal Coordinator's Decision

(1) The Federal Coordinator will determine whether the proposed condition would prevent or impair in any significant respect the expeditious construction and operation of an Alaska natural gas transportation project or expansion of that project. The Federal Coordinator's decision will be sent to the agency and the applicant or permittee.

(2) If the Federal Coordinator determines that the condition or proposed condition would prevent or impair in any significant respect the expeditious construction and operation of the project, the Federal Coordinator will facilitate a meeting between the permittee or applicant and the issuing agency and, if appropriate, other experts, in order to help resolve the issue.

Dated: May 18, 2012.

Larry Persily,

Federal Coordinator.

[FR Doc. 2012–12737 Filed 5–24–12; 8:45 am]

BILLING CODE 6820–TP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Census Field Staff Exit Questionnaires.

OMB Control Number: 0607–0404.

Form Number(s): BC–1294, BC–1294D.

Type of Request: Revision of a currently approved collection.

Burden Hours: 84.

Number of Respondents: 650.

Average Hours per Response: BC–1294 = 7 minutes, BC–1294D = 10 minutes.

Needs and Uses: Retention of trained field interviewing staff is a major concern for the Census Bureau because of both the monetary costs associated with employee turnover, as well as the potential impact on data quality. Therefore, in a continuous effort to devise policies and practices aimed at reducing turnover among interviewers, the Census Bureau collects data on the reasons interviewers leave their Census Bureau jobs.

The exit questionnaires are the instruments we use to collect turnover data from a sample of former current survey interviewers (field representatives) and decennial census interviewers (enumerators and listers). The goal or purpose of the exit questionnaires is to determine the reasons for interviewer turnover and what the Census Bureau might have done, or can do, to influence interviewers not to leave. Thus the exit questionnaires seek reasons interviewers quit, inquire about motivational factors that would have kept interviewers from leaving, attempt to identify training program strengths and weaknesses and their impacts on turnover, and explore the impact of pay, working conditions and supervisory styles on employees' reasons for quitting.

As the environment in which surveys take place, the demographics of our labor force and the way surveys are conducted continues to change, it is important that we continue to examine the interviewers' concerns about their job. Information provided by respondents to the exit questionnaire provides insight on the measures the Census Bureau might take to decrease turnover, and is useful in helping us determine if the reasons for interviewer turnover appear to be systemic or localized. The exit questionnaires have shown to be useful and, therefore, we believe it is important to continue to use them to affect program planning and management.

Forms BC–1294 and the BC–1294(D) are the instruments we currently use to collect turnover data from a sample of former current survey interviewers, and decennial census listers/enumerators, respectively.

This submission includes changes to the BC–1294, which reflect Census Bureau policy and procedural changes to current surveys since the last request for clearance. This submission does not include changes to the BC–1294(D). We are dropping the BC–1294(CM), Coverage Measurement Exit Questionnaire, from this clearance.

Affected Public: Individuals.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 5 U.S.C., Sections 301, 2301 and 3101.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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 Brian Harris-Kojetin,

OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: May 21, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–12697 Filed 5–24–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Service Annual Survey.

OMB Control Number: 0607–0422.

Form Number(s): 154 Unique forms (too many to list here).

Type of Request: Revision of a currently approved collection.

Burden Hours: 286,186.

Number of Respondents: 83,648.

Average Hours per Response: 3 hours and 25 minutes.

Needs and Uses: The U.S. Census Bureau requests an extension with revision of the current OMB approval of the Service Annual Survey (SAS). The Annual Services Report is the instrument to collect data for the SAS. Today, over 50 percent of all economic activity is accounted for by services that are narrowly defined to exclude retail and wholesale trade. The U.S. Census Bureau currently measures the total output of most of these service industries annually in its Service Annual Survey. This survey currently covers all or some of: Utilities; Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing; Professional, Scientific, and Technical Services; Administration and Support and Waste Management and Remediation Services; Educational Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; and Other Services as defined by the North American Industry Classification System (NAICS).

Estimates from the SAS are essential to a better understanding and higher quality estimates of economic growth, real output, prices, and productivity for our nation's economy. A broad spectrum of government and private stakeholders use these estimates in analyzing business and economic sectors; developing statistics on services; forecasting economic growth; and compiling data on productivity, prices and gross domestic product (GDP). In addition, trade and professional organizations use these estimates to analyze industry trends, benchmark their own statistical programs and develop forecasts. Private businesses use these estimates to measure market share, analyze business potential and plan investments. Comprehensive, comparative annual data on the services sector are not available from any other source.

Annually, the key variables for the SAS are total revenue, total expenses, and general expense detail items. Some sectors also collect revenue detail items that are specific to a particular industry. The availability of these data greatly improves the quality of the intermediate-inputs and value-added estimates in BEA's annual input-output and GDP by industry accounts.

In 2011 we selected a new sample for this survey. During the first year of the new sample, we will ask for two years of data (2010 and 2011). Current- and previous-year data are requested only for the first year in which a new sample is introduced in order to provide a link point with the existing data series. In subsequent years, only current year data will be requested. Additionally, as a result of feedback given by respondents, we have created separate forms for alpha multi-unit companies. The new alpha forms exclude Question #2 (EIN verification) which is only necessary for EIN respondents.

The estimates produced in the SAS are critical to the accurate measurement of total economic activity.

- The Bureau of Economic Analysis (BEA), the primary Federal user, use the estimates to develop the national income and product accounts, compile benchmark and annual input-output tables, and compute GDP by industry.
- The Bureau of Labor Statistics (BLS) use the estimates as inputs to its Producer Price Indexes and in developing productivity measurements.
- The Centers for Medicare and Medicaid Services (CMS) use the estimates for program planning and development of the National Health Expenditure Accounts.
- The Federal Communications Commission (FCC) use the estimates to assess the impact of regulatory policies.
- International agencies use the estimates to compare total domestic output to changing international activity.
- Private industry also use the estimates as a tool for marketing analysis.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 182, 224 and 225.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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 Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: May 21, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–12698 Filed 5–24–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–40–2012]

Foreign-Trade Zone 41—Milwaukee, WI; Application for Reorganization (Expansion of Service Area) Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Port of Milwaukee, grantee of Foreign-Trade Zone 41, requesting authority to reorganize the zone to expand its service area under the alternative site framework (ASF) adopted by the Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u) and the regulations of the Board (15 CFR part 400). It was formally filed on May 21, 2012.

FTZ 41 was approved by the Board on September 29, 1978 (Board Order 136, 43 FR 46887, 10/11/1978) and expanded on August 4, 1981 (Board Order 178, 46 FR 40718, 8/11/1981), October 18, 1985 (Board Order 315, 50 FR 43749, 10/29/1985), May 27, 1993 (Board Order 641, 58 FR 32512, 6/10/1993), September 4, 1994 (Board Order 694, 59 FR 47115, 9/14/1994) and April 29, 1996 (Board Order 818, 61 FR 21157, 5/9/1996). On August 31, 2011, an application was approved by the FTZ Board to reorganize the zone under the alternative site framework (ASF) (Board Order 1780). FTZ 41's service area includes Kenosha, Milwaukee and Racine Counties, Wisconsin.

The applicant is now requesting authority to expand the service area of the zone to include Dodge, Fond du Lac, Jefferson, Ozaukee, Rock, Sheboygan, Walworth, Washington and Waukesha Counties, as described in the application. If approved, the grantee would be able to serve sites throughout the expanded service area based on

companies' needs for FTZ designation. The proposed expanded service area is adjacent to the Milwaukee, Wisconsin Customs and Border Protection Ports of Entry.

The applicant is also requesting approval of the following temporary sites as ''usage-driven'' sites: Site 12 (113.4 acres)—Sigma-Aldrich Corporation, 5485 County Road ''V'', Sheboygan Falls, Sheboygan County; and, Site 13 (15.1 acres)—Sigma-Aldrich Corporation, 215 S. Park Street, Port Washington, Ozaukee County.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 24, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 8, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz*. For further information, contact Elizabeth Whiteman at *Elizabeth Whiteman@trade.gov* or (202) 482–0473.

Dated: May 21, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–12818 Filed 5–24–12; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–41–2012]

Foreign-Trade Zone 36—Galveston, TX; Application for Reorganization/Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Board of Trustees of the Galveston Wharves, grantee of FTZ 36, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 22, 2012.

FTZ 36 was approved by the Board on May 4, 1978 (Board Order 129, 43 FR 20525, 5/12/78), and expanded on August 27, 2004 (Board Order 1348, 69 FR 53887, 9/3/04). On February 22, 2000, the grant of authority was reissued to the Board of Trustees of the Galveston Wharves (Board Order 1080, 65 FR 11548–11549, 3/3/00).

The current zone project includes the following sites: *Site 1* (162 acres)—within Galveston Harbor, west end of port complex on Galveston Island; *Site 2* (896 acres, 6 parcels)—within Galveston Harbor on Pelican Island; *Site 3* (38 acres)—within Scholes International Airport, 4 miles from Site 1 on Galveston Island; *Site 4* (25 acres, expires 12/31/2012)—within the League City Industrial Park, 651 FM 646, Dickinson; *Site 5* (21 acres, expires 12/31/2012)—4200 Old Port Industrial Road, Galveston; and, *Site 6* (55 acres, expires 12/31/2012)—Hitchcock Blimp Base, 7526 Blimp Base Road, Hitchcock.

The grantee's proposed service area under the ASF would be Galveston County, Texas, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Houston Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize and expand its existing zone project as follows: restore 76 acres at Site 2 (new acreage—972 acres); Sites 1, 2 (as modified) and 3 would become ''magnet'' sites; and, Sites 4, 5 and 6 would become ''usage-driven'' sites. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. The application would have no impact on FTZ 36's previously authorized subzones.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 24, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 8, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: May 22, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–12796 Filed 5–24–12; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 7–2012]

Foreign-Trade Zone 45—Portland, OR; Expansion of Manufacturing Authority; Epson Portland, Inc.; Extension of Rebuttal Period

The rebuttal period for the application to expand the scope of manufacturing authority approved within Subzone 45F on behalf of Epson Portland, Inc., in Hillsboro, Oregon, submitted by the Port of Portland (77 FR 4006–4007, 1/26/2012, 77 FR 21082, 4/9/2012 and 77 FR 26252, 5/3/2012), is being extended based on a request from the applicant to July 23, 2012, to allow additional time for the submission of rebuttal comments. Rebuttal comments (original and one electronic copy) shall be addressed to the Board's Executive Secretary at: Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW., Washington, DC 20230 and *ftz@trade.gov.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: May 22, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–12805 Filed 5–24–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 25, 2012.

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that crystalline silicon photovoltaic cells, whether or not assembled into modules (''solar cells''), from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Howard Smith, Jeffrey Pedersen, Krisha Hill, or Drew Jackson, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5193, (202) 482–2769, (202) 482–4037, or (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 19, 2011, the Department received a petition concerning imports of solar cells from the PRC filed in proper form by SolarWorld Industries America Inc. (''Petitioner'').[1] In October and November, 2011, the Department issued requests for information regarding, and clarification of, certain areas of the petition. Petitioner timely filed responses to these requests. In November 2011, the Department received comments from interested parties both supporting and opposing the petition.[2] The Department initiated an antidumping (''AD'') duty investigation of solar cells from the PRC on November 8, 2011.[3]

In the *Initiation Notice,* the Department stated that it intended to issue quantity and value (''Q&V'') questionnaires to exporters/producers named in the petition and select respondents based on Q&V questionnaire responses.[4] On November 9, 2011, the Department requested Q&V information from 75 companies identified in the petition as potential producers and/or exporters of solar cells from the PRC.[5] The Department received timely responses to its Q&V questionnaire from 76 companies. After examining the responses to the Q&V questionnaire, in accordance with section 777A(c)(2) of the Act, the Department selected as mandatory respondents the two companies reporting the largest quantity of solar cell sales to the United States during the period of investigation (''POI''), namely Wuxi Suntech Power Co., Ltd. (''Wuxi Suntech'') and Changzhou Trina Solar Energy Co., Ltd. (''Trina Solar'').[6] On December 9, 2011, the Department issued the AD questionnaire to both companies. In January and February 2012, Wuxi Suntech and Trina Solar submitted timely responses to the Department's AD questionnaire. Petitioner submitted comments regarding those responses in January and February 2012. The Department issued supplemental questionnaires to Wuxi Suntech and Trina Solar from January to May 2012. Wuxi Suntech and Trina Solar submitted timely responses to the Department's supplemental questionnaires, and Petitioner submitted comments thereon, from February through May 2012.

In the *Initiation Notice,* the Department notified parties that they had an opportunity to comment on the scope of the investigation as well as the appropriate physical characteristics of solar cells to be reported in response to the Department's AD questionnaire.[7] In November and December, 2011 parties submitted comments to the Department regarding the scope and the physical characteristics of merchandise under consideration to be used for reporting purposes. On March 19, 2012, the Department clarified the scope language of both the AD and countervailing duty (''CVD'') investigations of solar cells stating that modules, laminates, and panels produced in a third-country from solar cells produced in the PRC are covered by the investigations; however, modules, laminates, and panels produced in the PRC from solar cells produced in a third-country are not covered by the investigations.[8]

In November 2011, CNPV Dongying Solar Power Company Limited (''CNPV''), Yingli Green Energy Holding Company Limited and Yingli Green Energy Americas, Inc. (''Yingli''), Jiangsu Green Power PV Co., Ltd. (''Jiangsu''), and Trina Solar requested to be treated as voluntary respondents in this investigation.[9] In its Respondent

[1] *See* Petition for the Imposition of Antidumping and Countervailing Duties: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China, dated October 19, 2011 (''Petition'').

[2] *See* Letter from the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union to the Department, regarding ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China,'' dated November 7, 2011; *see also* Letter to the Department, regarding ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China, DOC Inv. No. A–570–979 and C–570–980, USITC Investigation Nos: 701–TA–481 and 731–TA–1190: Standing Challenge,'' dated November 7, 2011.

[3] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, From the People's Republic of China: Initiation of Antidumping Duty Investigation,* 76 FR 70960 (November 16, 2011) (*''Initiation Notice''*).

[4] *See Initiation Notice,* 76 FR at 70964.

[5] *See* Memorandum to the File from Rebecca Pandolph, International Trade Analyst, AD/CVD Operations, Office 4, regarding, ''Issuance of Quantity and Value Questionnaires'' (December 8, 2011).

[6] *See* Memorandum from Drew Jackson to Abdelali Elouaradia regarding, ''Respondent Selection in the Antidumping Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China,'' dated December 8, 2011 (''Respondent Selection Memorandum'').

[7] *See Initiation Notice,* 76 FR at 70960—70961.

[8] *See* Memorandum from Jeff Pedersen to Christian Marsh, regarding ''Scope Clarification: Antidumping and Countervailing Duty Investigations of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China,'' dated March 19, 2012 (''Scope Clarification Memorandum'').

[9] *See* Letter from CNPV to the Department, regarding ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Peoples Republic of China: Request for Treatment of CNPV as a Voluntary Respondent,'' dated November 17, 2011; *see also* Letter from Yingli to the Department, regarding ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Peoples Republic of China; Entry of Appearance; Application for Administrative Protective Order; and Request for Voluntary Respondent Treatment,'' dated November 17, 2011; *see also* Letter from Jiangsu to the Department, regarding ''Scope Comments in the Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China,'' dated November 28, 2011; *see also* Letter from Trina Solar to the Department, regarding ''Crystalline Silicon Photovoltaic Cells Whether or Not Assembled Into Modules (''Solar Cells'') from the People's Republic of China (''PRC''),'' dated November 29, 2011.

Selection Memorandum,[10] the Department explained that given the large number of exporters involved in this investigation, it was not practicable to individually examine each company. Therefore, the Department selected for individual examination the two respondents accounting for the largest volume of merchandise under consideration that reasonably could be examined, Wuxi Suntech and Trina Solar. Further, the Department explained that the number of companies that requested to be voluntary respondents is large enough that individual examination of the companies requesting to be treated as voluntary respondents would be unduly burdensome and would inhibit timely completion of the investigation.[11] Therefore, the Department determined that it would not individually examine non-selected companies that place responses on the record as long as the mandatory respondents continue to cooperate in this investigation.

On March 8, 2012, the Department again addressed the matter of voluntary respondents. Specifically, the Department determined that CNPV and Jiangsu did not submit responses to the Department's AD questionnaire and thus they did not qualify as voluntary respondents. Furthermore, the Department continued to find that, given its existing resources and the complexity of the case, examining Yingli as a voluntary respondent would be unduly burdensome and inhibit the timely completion of the investigation. Therefore, the Department stated that it did not intend to calculate an individual weighted average dumping margin for Yingli.[12]

On December 5, 2011, the U.S. International Trade Commission (''ITC'') preliminary determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the PRC of solar cells.[13]

In the *Initiation Notice,* the Department notified parties that in order to obtain separate rate status in this investigation, exporters and producers must timely file a separate rate application and a timely response to the Q&V questionnaire. During December 2011 and January 2012, the Department received separate rate applications from 68 companies that it accepted. The Department issued supplemental questionnaires to certain companies applying for a separate rate, and received responses thereto, from February through May 2012. From March through May 2012, Petitioner commented on the issue of whether certain applicants should be granted a separate rate, including comments regarding the National People's Congress and the Chinese People's Political Consultative Conference. On April 10, 2012, SUMEC Hardware & Tools Co. Ltd, Ningbo ETDZ Holding Ltd., Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd., LDK Solar Hi-Tech (Nanchang) Co., Ltd., LDK Solar Hi-Tech (Suzhou) Co., Ltd., ERA Solar Co., Ltd., and ET Solar Industry Limited, exporters of solar cells from the PRC, responded to Petitioner's comments regarding separate rates. In May 2012, Yingli and its affiliates responded to Petitioner's comments regarding certain separate-rate applicants.

On January 24, 2012, the Department identified potential surrogate countries for use in the investigation and invited interested parties to comment on surrogate country and surrogate value selection.[14] From February through May 2012 interested parties submitted comments on the appropriate surrogate country and surrogate values.

On February 13, 2012, Petitioner alleged that Wuxi Suntech and Trina Solar engaged in targeted dumping. In the Petition, Petitioner alleged, based on trade statistics since August 2010 and prior knowledge of an impending trade case, that there is a reasonable basis to believe or suspect that critical circumstances exist with regard to imports of solar cells from the PRC. Based on this allegation, the Department requested, and Trina Solar and Wuxi Suntech supplied, shipment information regarding the merchandise under consideration for the periods May 2009 through March 2012 and May 2009 through April 2012, respectively. From November 2011 through April 2012, interested parties submitted comments regarding Petitioner's allegation of critical circumstances.

On March 2, 2012, Petitioner made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) for a 30-day postponement of the preliminary determination.[15] On March 13, 2012, the Department published a postponement fully extending the due date of the preliminary AD determination on solar cells from the PRC.[16]

In April and May 2012, Petitioner, Yingli, Canadian Solar, Inc., and Trina Solar filed comments for the Department to consider in its preliminary determination. Interested parties also submitted factors of production (''FOP'') data from February to May 2012.

Period of Investigation

The POI is April 1, 2011, through September 30, 2011. This period corresponds to the two most recent fiscal quarters prior to the month in which the petition was filed, October 2011.[17]

Scope of the Investigation[18]

The merchandise covered by this investigation is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.

This investigation covers crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Merchandise under consideration may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited

[10] *See* Memorandum from Abdelali Elouaradia to Christian Marsh, regarding ''Respondent Selection in the Antidumping Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Peoples Republic of China,'' dated December 8, 2011.

[11] *See id.,* at 6.

[12] *See* Memorandum from Abdelali Elouaradia to Christian Marsh, regarding ''Antidumping Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from People's Republic of China; Voluntary Respondents,'' dated March 8, 2012.

[13] *See Crystalline Silicon Photovoltaic Cells and Modules From China,* 76 FR 78313 (December 16, 2011).

[14] *See* Letter to All Interested Parties, Antidumping Duty Investigation of Crystalline Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information (''Surrogate Country Memorandum''), dated January 24, 2012.

[15] *See* Letter from Petitioner to the Department, regarding ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Request to Extend Preliminary Determination in Antidumping Duty Investigation,'' dated March 2, 2012.

[16] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation,* 77 FR 14732 (March 13, 2012).

[17] *See* 19 CFR 351.204(b)(1).

[18] *See* Scope Clarification Memorandum.

to, modules, laminates, panels, building-integrated modules, building-integrated panels, or other finished goods kits. Such parts that otherwise meet the definition of merchandise under consideration are included in the scope of this investigation.

Excluded from the scope of this investigation are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

Also excluded from the scope of this investigation are crystalline silicon photovoltaic cells, not exceeding 10,000mm^2 in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Modules, laminates, and panels produced in a third-country from cells produced in the PRC are covered by this investigation; however, modules, laminates, and panels produced in the PRC from cells produced in a third-country are not covered by this investigation.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff System of the United States (''HTSUS'') under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000.[19] These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Scope Comments

In November and December 2011, parties submitted comments to the Department regarding the scope of the AD and CVD investigations of solar cells. One party requested that the scope exclude monocrystalline solar panels for the recreational vehicle industry. Petitioner opposed this request. Another party requested that the scope exclude off-grid modules. Several respondents jointly requested that the Department modify certain language in the scope which identifies the products that are subject to the investigations as well as language which explains that merchandise under consideration described as parts at the time of importation is also covered by the scope. After examining the comments, the Department has preliminarily determined not to make the requested exclusions or modify the scope language as requested. For a detailed discussion of these issues, *see* the memorandum from Rebecca Pandolph to Christian Marsh regarding ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Scope'' dated concurrently with this notice.

Additionally, as noted above, on March 19, 2012, the Department clarified the scope language of both the AD and CVD investigations of solar cells stating that modules, laminates, and panels produced in a third-country from solar cells produced in the PRC are covered by the investigations; however, modules, laminates, and panels produced in the PRC from solar cells produced in a third-country are not covered by the investigations.

Critical Circumstances

In the petition filed on October 19, 2011, Petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to the AD investigation of solar cells from the PRC.[20] Section 733(e)(1) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provide that, in determining whether imports of the subject merchandise have been ''massive,'' the Department will normally examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the ''relatively short period'' of time may be considered ''massive.'' Section 351.206(i) of the Department's regulations defines ''relatively short period'' as normally being the period beginning on the date the proceeding begins (*i.e.,* the date the petition is filed) and ending at least three months later (*i.e.,* the comparison period). However, if the Secretary finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Secretary may consider a period of not less than three months from that earlier time. The comparison period is normally compared to a corresponding period prior to the filing of the petition (*i.e.,* the base period).

In order to determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, the Department generally considers current or previous AD duty orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of subject merchandise.[21] No parties have made any claims regarding AD proceedings for solar cells, and the Department is not aware of the existence of any active AD orders on solar cells from the PRC in other countries. As a result, the Department does not find that there is a history of injurious dumping of solar cells from the PRC pursuant to section 733(e)(1)(A)(i) of the Act.

Nevertheless, the Department has determined that importers knew, or should have known that the exporters were selling the merchandise under consideration at LTFV and that there was likely to be material injury by reason of such sales. The Department generally bases its decision with respect to knowledge on the margins calculated in the preliminary AD determination and the ITC's preliminary injury determination.[22] The Department

[19] U.S. Customs and Border Protection (''CBP'') provided notification that HTSUS number 8501.31.8000 should be added to the scope of the investigation, as certain articles under this number may fall within the scope. *See* Memorandum from Gene H. Calvert through Mark Hoadley to the File, ''ACE Case Reference File Update,'' dated May 16, 2012.

[20] *See* Petition at Volume IV, ''Information Relating to the People's Republic of China—Critical Circumstances,'' dated October 19, 2011.

[21] *See Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination,* 74 FR 59117, 59120 (November 17, 2009) unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping,* 75 FR 20335 (April 19, 2010).

[22] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount*

Continued

normally considers margins of 25 percent or more for export price (''EP'') sales and 15 percent or more for constructed export price (''CEP'') sales sufficient to impute importer knowledge of sales at LTFV.[23] Wuxi Suntech and Trina Solar had both EP and CEP sales, a majority of which are CEP sales. The dumping margins calculated for Wuxi Suntech and Trina Solar exceed the threshold sufficient to impute knowledge of dumping (*i.e.,* 15 percent for CEP sales). Therefore, we determine that there is sufficient basis to find that importers should have known that the exporters were selling the merchandise under consideration at less than its fair value.[24] Consistent with Department practice, we based the margin for the separate rate respondents on the average of the margins calculated for the individually examined respondents, excluding any rates that are zero, *de minimis,* or based entirely on adverse-facts-available (''AFA'').[25] Accordingly, we have preliminarily applied to the separate rate companies a margin of 31.18 percent. Because we calculated preliminary margins for Wuxi Suntech's and Trina Solar's sales in excess of 15 percent, and the experience of the mandatory respondents has been applied to the separate-rate respondents, the record supports imputing importer knowledge of sales at LTFV with respect to these companies. Moreover, for the reasons discussed below, the Department has preliminarily determined a rate for the PRC-wide entity of 249.96 percent. This PRC-wide rate exceeds both the 25 percent threshold for EP sales and the 15 percent threshold for CEP sales. Therefore, the Department is preliminary imputing importer knowledge of sales at LTFV with respect to the PRC-wide entity. Furthermore, since the ITC preliminarily found a reasonable indication that an industry in the United States is materially injured by imports from the PRC of solar cells, the Department has determined that there is a reasonable basis to believe or suspect that the importers knew or should have known that there was likely to be material injury by reason of sales at LTFV of solar cells from Wuxi Suntech, Trina Solar, the separate rate companies, and the PRC-wide entity.

In determining whether there have been massive imports of merchandise under consideration over a relatively short period, pursuant to 19 CFR 351.206(i), the Department may consider a period of not less than three months from the date on which this proceeding began if importers, exporters or producers had reason to believe, at some time prior to the filing of the petition, that a proceeding was likely. The Department has concluded that record information indicates that exporters, producers, and importers of solar cells from the PRC had reason to believe that AD and CVD proceedings were likely during September 2011. The petition included factual information from August 24, 2009, through October 11, 2011. The factual information included commentary about the closing and/or bankruptcy of U.S. solar cell companies, articles discussing subsidies given to Chinese solar cell producers in the PRC, and articles concerning actions being taken by the U.S. Trade Representative. However, it is not until September 2011 that the information submitted explicitly refers to AD and CVD remedies.[26] Given the factual information in the petition, we find that knowledge was imputed to importers, exporters, and producers during September 2011.

The Department typically determines whether to include the month in which a party had reason to believe that a proceeding was likely in the base, or comparison, period depending on whether the event that gave rise to the reason for belief occurred in the first or second half of the month. However, in this case, regardless of whether knowledge was imputed to importers, exporters or producers in the first or second half of September 2011, it does not change our findings with respect to whether imports have been massive over a relatively short period of time.

For Wuxi Suntech and Trina Solar, we first compared imports during a base period of February 2011 through August 2011 to imports from September 2011 through March 2012 (assuming knowledge was imputed in early September, putting that month into the comparison period). Second, we compared imports during a base period of April 2011 through September 2011 to imports from October 2011 through March 2012 (assuming knowledge was imputed in late September, putting that month into the base period). It is the Department's practice to base the critical circumstances analysis on all available data, using base and comparison periods of no less than three months.[27] The latest available shipment data that we were able to use for the preliminary determination are data up through March 2012. While Wuxi Suntech also submitted shipment data for April 2012, the data were submitted too close to the preliminary determination to be used in our analysis.

When we compared both Wuxi Suntech's shipments and Trina Solar's shipments[28] during the relevant comparison periods with the base periods, we found that imports of Wuxi Suntech's and Trina Solar's merchandise under consideration increased by more than 15 percent over their respective imports in the base periods in terms of watts during the comparison periods. Hence pursuant to section 351.206(h) of the Department's regulations we consider the imports of Wuxi Suntech's and Trina Solar's merchandise under consideration to be massive.[29] Furthermore, we find that the

Combination Refrigerator-Freezers From Mexico 77 FR 17422, 17425 (March 26, 2012).

[23] *See id.*

[24] *See* Memorandum from Drew Jackson and Heidi Schriefer to The File regarding, ''Analysis of the Preliminary Determination Margin Calculation for Wuxi Suntech Power Co., Ltd.,'' dated May 16, 2012; *see also* Memorandum from Jeff Pedersen and Krisha Hill to The File regarding, ''Analysis of the Preliminary Determination Margin Calculation for Changzhou Trina Solar Energy Co., Ltd.,'' dated May 16, 2012 (collectively, ''Wuxi Suntech and Trina Solar Analysis Memoranda'').

[25] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006) (''*PSF Preliminary Determination*''), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007) (''*PSF Final Determination*''); *see also* ''Separate Rates'' section below.

[26] *See, e.g.,* Petition at Volume IV, Exhibit 13 (an article by Bloomberg, dated September 8, 2011) and Exhibit 16 (an article by Bloomberg, dated September 28, 2011).

[27] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India,* 69 FR 47111, 47118–47119 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India,* 69 FR 76916 (December 23, 2004); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 3.

[28] *See* Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China; Response to Critical Circumstances Questionnaire, on behalf of Trina, dated December 19, 2011; *see also* Crystalline Silicon Photovoltaic Cells from the People's Republic of China: Quantity & Value Data for May 2009 through November 2011, on behalf of Wuxi Suntech dated December 19, 2011.

[29] *See* memorandum from Patrick O'Connor to Christian Marsh regarding ''Antidumping Duty Investigation of Crystalline Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances'', dated

imports of Wuxi Suntech's and Trina Solar's merchandise have been massive over a relatively short period of time, regardless of whether knowledge was imputed to the importers, exporters, or producers in the first or second half of September 2011. Although the respondents have argued that the volume of shipments during the comparison period can be explained by reasons other than reasons relating to AD/CVD issues, the Department has not found that the record supports the respondents' arguments.[30]

In determining whether imports of merchandise under consideration from the respondents who were not individually examined were massive, we relied on the experience of the mandatory respondents. Based on the experience of these mandatory respondents, we find that imports by all other producers or exporters also increased by more than 15 percent. Because, as discussed below, the PRC-wide entity did not respond to the Department's request for information (*see* the section ''Application of Facts Available and Adverse Facts Available'' below), we have no shipment data regarding the PRC-wide entity,[31] and thus we must apply facts available. Furthermore, as discussed below, the Department may use facts available with an adverse inference where a party has failed to cooperate by not acting to the best of its ability. The PRC-wide entity did not act to the best of its ability in responding to the Department's request for information. Therefore, the Department finds that the application of AFA is warranted. Consequently, we also preliminarily determine that imports have been massive over a relatively short period of time with respect to the PRC-wide entity.

Based on the above analysis, we preliminarily determine that critical circumstances exist for Wuxi Suntech, Trina Solar, the separate rate respondents, and the PRC-wide entity.

Non-Market Economy Country

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (''NME'') country.[32] Moreover, the Department's most recent examination of the PRC's NME status determined that such status should continue.[33] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. The Department has not revoked the PRC's status as an NME country, and thus we have treated the PRC as an NME in this preliminary determination and applied our NME methodology.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base normal value (''NV''), in most cases, on the NME producer's FOPs valued in a surrogate market-economy (''ME'') country or countries considered appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department will value FOPs using ''to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—(A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise.'' Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOPs in a single surrogate country.

In its Surrogate Country Memorandum, the Department identified Colombia, Indonesia, the Philippines, South Africa, Thailand, Peru, and Ukraine as being equally comparable to the PRC in terms of economic development.[34] Petitioner argues that Thailand should be selected as the surrogate country because there is significant production capacity, and production of, identical and comparable merchandise in Thailand and there is Thai information on the record for all of the surrogate values that are needed to calculate a margin.[35] Both Wuxi Suntech and Trina Solar argue that India, a country not listed in the Surrogate Country Memorandum, is the most appropriate surrogate country primarily because India's solar cell industry is larger and more developed than that of Thailand and other countries on the surrogate country list.[36] The respondents also contend that India's solar cell industry is more similar in size and development to that of the PRC. Further, both respondents note that the record contains usable financial statements for Indian solar cell producers. Wuxi Suntech and Trina Solar point out that, in its petition, Petitioner argued that the Department should choose India as the surrogate country for initiation purposes and it supported its position that India is the most appropriate surrogate country.

Economic Comparability

The Department considers all seven countries listed in the Surrogate Country Memorandum as having satisfied the economic comparability prong of the surrogate country selection criteria. Unless we find that all of the countries determined to be equally economically comparable are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data or are unsuitable for use for other reasons, we will rely on data from one of these countries.[37]

Once the countries that are economically comparable to the PRC have been identified, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs is both available and reliable.[38]

Producers of Identical or Comparable Merchandise

Section 773(c)(4)(B) of the Act directs the Department, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. The record contains evidence of producers of identical or comparable merchandise in

concurrently with this notice (''Preliminary Critical Circumstances Memorandum'').

[30] *See* Preliminary Critical Circumstances Memorandum.

[31] *See, e.g.,* section 776(a)(1) of the Act.

[32] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 9591, 9593 (March 5, 2009), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 36656 (July 24, 2009).

[33] *See* Memorandum for David M. Spooner, Assistant Secretary for Import Administration, Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China (''China''): China's Status as a Non-Market Economy (''NME'') (August 30, 2006) (memorandum is on file in the Department's Central Records Unit on the record of case number A–570–901).

[34] *See* Surrogate Country Memorandum.

[35] *See, e.g.,* Letter from Petitioner to the Department, regarding ''Crystalline Silicon Photovoltaic (''c-Si PV'') Cells from the People's Republic of China: Comments on Surrogate Country and Initial Proposed Surrogate Values for the Preliminary Determination,'' dated April 12, 2012.

[36] *See, e.g.,* Letter from Wuxi Suntech to the Department, regarding ''Crystalline Silicon Photovoltaic Cells from the People's Republic of China: Comments of Wuxi Suntech Power Co., Ltd.—Surrogate Country and Surrogate Value Selection,'' dated February 21, 2012.

[37] *See Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination,* 76 FR 67703, 67708 (November 2, 2011), unchanged in *Certain Steel Wheels From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances,* 77 FR 17021 (March 23, 2012).

[38] *See id.,* 76 FR at 67708–67709.

Thailand, the Ukraine, and the Philippines. A market survey of worldwide solar cell producers identifies two producers of solar cells in Thailand but none in Ukraine or South Africa.[39] Nevertheless, Trina Solar placed evidence on the record that there is a solar cell producer in Ukraine[40] and Petitioner claims there is a solar cell producer in Ukraine and two in South Africa.[41] Petitioner placed additional evidence on the record that Thailand has four producers of merchandise under consideration.[42] Global Trade Atlas (''GTA'') statistics also identify exports of merchandise under consideration from Thailand of over $5,000,000 for the first eight months of 2011.[43] Export statistics for Colombia, Indonesia, the Philippines, South Africa and Ukraine[44] also show exports for a HTS category that would include merchandise under consideration. Based on information on the record, the Department has determined that Colombia, Indonesia, the Philippines, South Africa, Thailand, and Ukraine are significant producers of comparable merchandise under consideration.

Data Availability

If more than one country satisfies the statutory requirements for selection as a surrogate country, the Department selects a surrogate country from among the potential countries based on data availability and quality. When evaluating surrogate value data, the Department considers several factors including whether the surrogate values are publicly available, contemporaneous with the POI, representative of a broad market average, from an approved surrogate country, tax and duty-exclusive, and specific to the inputs being valued. There is no surrogate value information on the record for South Africa, and a very limited amount of information for the Philippines and Ukraine. In contrast, the record contains usable Thai surrogate values for almost every input that must be valued.

Because Thailand is the only country listed on the Surrogate Country Memorandum found to be both economically comparable to the PRC and a significant producer of comparable merchandise for which we have reliable data to value almost every one of the FOPs, we have selected Thailand as the surrogate country. Given that one of the countries found to be economically comparable to the PRC satisfies the requirements for selection as a surrogate country, for purposes of the preliminary determination, there is no need for the Department to evaluate India as a potential surrogate country.

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an AD investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the date of publication of the preliminary determination.[45]

Targeted Dumping

The statute allows the Department to employ an alternative dumping margin calculation methodology in an AD investigation under the following circumstances: (1) There is a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or periods of time; and (2) the Department explains why such differences cannot be taken into account using the standard average-to-average or transaction-to-transaction methodology.[46] On February 13, 2012, Petitioner alleged targeted dumping with respect to Wuxi Suntech's[47] and Trina Solar's[48] sales to certain U.S. customers and regions, and in certain time periods. In order to determine whether the respondents engaged in targeted dumping, the Department conducted a targeted dumping analysis established in *Steel Nails.*[49] The methodology employed involves a two-stage test; the first stage addresses the pattern requirement and the second stage addresses the significant-difference requirement.[50] We made all price comparisons in the test using prices for comparable merchandise (*i.e.,* by control number or CONNUM). The test procedures are the same for targeted-dumping allegations involving customers, regions, and time periods. We based all of our targeted-dumping calculations on the net U.S. price that we determined for U.S. sales by Wuxi Suntech and Trina Solar in our margin calculations.

As a result of our analysis, we preliminarily determine that for both Wuxi Suntech and Trina Solar there is a pattern of prices for U.S. sales of comparable merchandise that differ significantly among certain purchasers, regions, and time periods in accordance with section 777A(d)(1)(B)(i) of the Act and our practice, as discussed in *Steel Nails* and as modified in *Wood Flooring.* We find, however, that the pattern of price differences can be taken into account using the standard average-to-average methodology because, based on the data before us, the average-to-average methodology does not mask differences in the patterns of prices between the targeted and non-targeted groups. Here, we determine that the standard average-to-average methodology takes into account the price differences because the alternative average-to-transaction methodology yields a difference in the margin that is not meaningful relative to the size of the resulting margin.[51] Accordingly, for this preliminary determination we have applied the standard average-to-average methodology to all of Wuxi Suntech's and Trina Solar's U.S. sales.[52]

[39] *See* Volume I of the Petition at Exhibit I–10.

[40] *See* Trina Solar's April 10, 2012 Additional Surrogate Value Submission at Exhibit 5.

[41] *See* Petitioner's February 21, 2012 submission at 10.

[42] *See* Petitioner's February 21, 2012 submission at 10 and Exhibit 2. *See also* Petitioner's April 12, 2012 submission at 3.

[43] *See* Petitioner's October 25, 2011 supplement to its petition at Exhibit AD–Supp-3.

[44] *Id.*

[45] In accordance with section 351.301(c)(1) of the Department's regulations, for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that section 351.301(c)(1) of the Department's regulations permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information. *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2. Additionally, for each piece of factual information submitted with surrogate value rebuttal comments, the interested party must provide a written explanation of what information that is already on the record of the ongoing proceeding the factual information is rebutting, clarifying, or correcting.

[46] *See* section 777A(d)(1)(B) of the Act.

[47] *See* Letter from Petitioner to the Department, regarding ''Crystalline Silicon Photovoltaic (''CPSV'') Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Targeted Dumping Allegation for Suntech,'' dated February 13, 2012.

[48] *See* Letter from Petitioner to the Department, regarding ''Crystalline Silicon Photovoltaic (''CPSV'') Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Targeted Dumping Allegation for Trina,'' dated February 13, 2012.

[49] *See Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value,* 73 FR 33985 (June 16, 2008) (''*Steel Nails*'') and accompanying Issues and Decision Memorandum at Comments 1–9.

[50] *See* section 777A(d)(1)(B)(i) of the Act and *Steel Nails,* and accompanying Issues and Decision Memorandum at Comment 2.

[51] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, vol. 1 (1994) at 843 (''SAA'').

[52] *See e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 24885, 24888 (May 6, 2010) unchanged in *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Final*

Single Entity Treatment

To the extent that the Department's practice does not conflict with section 773(c) of the Act, the Department has, in prior cases, treated certain NME exporters and/or producers as a single entity if the facts of the case supported such treatment.[53] Pursuant to section 351.401(f)(1) of the Department's regulations, the Department will treat producers as a single entity, or ''collapse'' them, where: (1) Those producers are affiliated; (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for manipulation of price or production.[54] In determining whether a significant potential for manipulation exists, section 351.401(f)(2) of the Department's regulations states that the Department may consider various factors, including: (1) The level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether the operations of the affiliated firms are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.[55]

Section 771(33) of the Act identifies persons that shall be considered ''affiliated'' or ''affiliated persons,'' including, *inter alia:* (1) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization; (2) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (3) any person who controls any other person and such other person.[56] Section 771(33) of the Act further states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

The Department has preliminarily determined that the producers Trina Solar and Trina Solar (Changzhou) Science & Technology Co., Ltd. are affiliated pursuant to sections 771(33)(F) of the Act and that these companies should be treated as a single entity for AD purposes.[57] These companies are under common control and, therefore, are affiliated in accordance with section 771(33)(F) of the Act (which states that affiliated persons include two or more persons directly or indirectly controlling, controlled by, or under common control with, any person). Further, we found that these companies operate production facilities that produce similar or identical products that would not require substantial retooling of their facilities in order to restructure manufacturing priorities.[58] We have also determined that there is a significant potential for the manipulation of price or production among these companies as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations of these companies.[59] Thus we have preliminarily treated these companies as a single entity.

In addition, the Department preliminarily determines that Wuxi Suntech, Luoyang Suntech Power Co., Ltd., Suntech Power Co., Ltd., and Wuxi Sun-Shine Power Co., Ltd. are affiliated pursuant to section 771(33)(F) of the Act and that these companies should be treated as a single entity for AD purposes.[60] These companies are under common control and, therefore, are affiliated in accordance with section 771(33)(F) of the Act. Further, we found that these companies operate production facilities that produce similar or identical products that would not require substantial retooling of their facilities in order to restructure manufacturing priorities.[61] We have also determined that there is a significant potential for the manipulation of price or production among these companies as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations of these companies.[62] Thus we have preliminarily treated these companies as a single entity.

Separate Rates

In the *Initiation Notice,* the Department notified parties that, in order to obtain separate rate status in this investigation, they must timely file a timely response to the Q&V questionnaire and timely file a separate rate application.[63] The Department received timely-filed separate rate applications from 68 companies.

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single AD rate.[64] It is the Department's policy to assign all exporters of merchandise under investigation that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[65] The Department analyzes whether each entity exporting the subject merchandise is sufficiently independent under a test arising from *Sparklers,*[66] as further developed in *Silicon Carbide.*[67] In accordance with the separate rates criteria, the Department assigns separate rates in NME cases if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. If, however, the Department determines that a company is wholly foreign owned, then a separate rate analysis is not necessary to

Determination of Sales at Less Than Fair Value, 75 FR 59223 (September 27, 2010) and *Polyethylene Retail Carrier Bags From Indonesia: Final Determination of Sales at Less Than Fair Value,* 75 FR 16431 (April 1, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

[53] *See Certain Steel Nails From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination,* 73 FR 3928, 3932 (January 23, 2008), unchanged in *Certain Steel Nails From the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 7254 (February 7, 2008) and *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 33977 (June 16, 2008).

[54] *See, e.g., Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review,* 63 FR 12764, 12774–12775 (March 16, 1998).

[55] *See also, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan,* 62 FR 51427, 51436 (October 1, 1997).

[56] *See* sections 771(33)(E)–(G) of the Act.

[57] *See* Memorandum from Lilit Astvatsatrian to Christian Marsh, regarding ''Affiliation and Single Entity Status of Changzhou Trina Solar Energy Co., Ltd. and Trina Solar (Changzhou) Science & Technology Co., Ltd.,'' dated May 16, 2012.

[58] *See* section 351.401(f)(1) of the Department's regulations.

[59] *See id.* and section 351.401(f)(2) of the Department's regulations.

[60] *See* Memorandum from Drew Jackson and Patrick O'Connor to Christian Marsh, regarding ''Affiliation and Single Entity Status of Wuxi Suntech Power Co., Ltd.; Luoyang Suntech Power Co., Ltd.; Suntech Power Co., Ltd.; and Wuxi Sun-Shine Power Co., Ltd.,'' dated May 16, 2012.

[61] *See* section 351.401(f)(1) of the Department's regulations.

[62] *See* section 351.401(f)(2) of the Department's regulations.

[63] *See Initiation Notice,* 76 FR at 70964.

[64] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039, 55040 (September 24, 2008).

[65] *See Sparklers,* 56 FR at 20589, as amplified by *Silicon Carbide.*

[66] *See Sparklers,* 56 FR at 20588.

[67] *See Silicon Carbide,* 59 FR at 22585.

determine whether it is independent from government control.

A. Separate Rate Recipients [68]

Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Separate rate applicants in this investigation stated that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies. Therefore, the Department must analyze whether these respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over their export activities.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of the companies; and (3) other formal measures by the government decentralizing control of companies.[69]

The evidence provided by the SR Recipients supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the companies; and (3) formal measures by the government decentralizing control of Chinese companies.

Petitioner argues that certain Chinese solar cell producers are subject to the legal control of a state-owned enterprise (''SOE'') and thus they have not demonstrated an absence of *de jure* government control.[70] Petitioner claims that the Interim Regulations on Supervision and Management of State-owned Assets of Enterprises (State Council Decree 378) (''Interim Regulations'') give the government, and in particular the State-Owned Assets and Supervision and Administration Commission (''SASAC''), the responsibility and rights of an investor with regard to SOEs which includes the power to elect and remove corporate directors and managers, decide business policy, approve budgets and financial plans, and amend the company's articles of association. Additionally, Petitioner contends that the Interim Regulations promulgated regulations which ensure that there is no clear distinction between SOEs and the government. Thus, according to Petitioner, certain separate rate respondents owned in part by one or more SOEs cannot demonstrate an absence of *de jure* government control because the government has power over the equity interest of the SOEs in the respondent. Petitioner argues that an SOE's ownership interest in a respondent is effectively government property and, thus, the government can control the respondent.

The Department has preliminarily determined that the Interim Regulations do not automatically demonstrate *de jure* control over the export activities of an SOE. Articles 1 and 2 of the Interim Regulations state that the law is intended to be applicable to state-owned enterprises and assets as well as enterprises with state-owned equity.[71] Article 6 further clarifies that SASACs ''perform the responsibilities of investors according to law, supervise and administer State-owned assets of enterprises according to law,'' and, hence, are empowered to act in the capacity of representative of the state's role as ''investor.''

The Department notes that Article 7 of the Interim Regulations provides for the ''separation of government functions from enterprise management and separation of ownership from management.'' Further, Article 10 states that those companies operating under SASAC ''enjoy autonomy in their operation'' and that SASAC ''shall support the independent operation of enterprises according to law, and shall not interfere in their production and operation activities * * *'' The Department also notes that SASAC plays a role in approving the development of certain investment and business plans to ensure that these plans are in line with the PRC's industrial policy objectives as well in the appointment of the board and certain key senior management positions.[72] Therefore, there are contradictions in the Interim Regulations with respect to the separation of the government from the enterprise management. However, while SASAC may play a role with overseeing the overall regulation, development and structure of a state-owned sector, there is nothing on the record to indicate that SASAC's reach extends to such day-to-day activities as export pricing.

In addition, Article 42 of the Interim Regulations states that ''organizational form, organizational structure, rights and obligations * * * shall be governed by the Company Law'', which the Department has previously found to demonstrate an absence of *de jure* control over export activities, including pricing.[73]

Therefore, although SOEs may be shareholders in certain separate rate respondents, even where SASAC is the ultimate representative of the SOE holding shares, the Department finds that there is no information on the record that SASAC's role would extend to control over export activities, including pricing, in these separate rate applicants. Therefore, the Department finds that the laws placed on the record of this investigation establish the absence of *de jure* control of respondents whose shareholders include SOEs.

b. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) Whether the EPs are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.[74] The Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

Each of the SR Recipients have asserted the following: (1) Their EPs are

[68] All separate rate applicants receiving a separate rate are hereby referred to collectively as the ''SR Recipients,'' including the mandatory respondents.

[69] *See Sparklers,* 56 FR at 20589.

[70] *See* Letter from Petitioner to the Department, regarding ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Comments on Separate Rate Application Responses,'' dated March 29, 2012 (''Petitioner Separate Rate Comments'').

[71] *See id.,* at Exhibit 3.

[72] *See id.*

[73] *See, e.g., Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New-Shipper Reviews,* 75 FR 34100 (June 16, 2010), unchanged in *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative and New-Shipper Reviews,* 75 FR 79337 (December 20, 2010).

[74] *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

not set by, and are not subject to, the approval of a governmental agency; (2) they have authority to negotiate and sign contracts and other agreements; (3) they have autonomy from the government in making decisions regarding the selection of management; and (4) they retain the proceeds of their export sales and make independent decisions regarding the disposition of profits or financing of losses.

Evidence placed on the record of this investigation by the SR Recipients demonstrates an absence of *de jure* and *de facto* government control with respect to their exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.*

Petitioner argues that a number of separate rate applicants are not independent from the government with respect to certain activities such as selection of management and disposition of profits/financing losses. The Department has examined the record, including responses to supplemental questionnaires that were issued to a number of separate rate applicants, and preliminarily determined to grant these companies a separate rate.

Also, Petitioner argues that separate-rate respondents with senior managers who are members of the Chinese People's Political Consultative Conference (''CPPCC'') have not established *de facto* independence from the Chinese government.[75] Petitioner claims the CPPCC is under the control of the Chinese government and under the leadership of the Communist Party of the PRC. According to Petitioner, CPCC members must implement the decisions of the CPPCC, including its 12th Five-Year Plan for the solar photovoltaic industry. Hence, Petitioner contends that separate rate respondents with senior managers who are members of the CPPCC have not established *de facto* independence from the Chinese government.

Additionally, Petitioner asserts that separate-rate respondents affiliated with, or having strong ties to, Chinese universities and colleges under the direct supervision of the PRC's Ministry of Education have failed to establish independence from the Chinese government. Petitioner believes that the Chinese government can exert control and influence over solar companies through the universities by threatening to sever-ties between the company and the university which provides its research capabilities to the company or by withdrawing research and development funding or other assistance. Consequently, Petitioner believes such companies have failed to establish independence from the Chinese government.

We have examined the above criteria relating to a *de facto* absence of government control for the separate-rate applicants, including those which Petitioner claims have managers or directors who are members of CPPCC or are affiliated with certain universities and found, based on those criteria, that these companies have demonstrated an absence of *de jure* government control. Petitioner has not demonstrated that a separate rate respondent's relationship with CPPCC or certain universities resulted in a lack of autonomy on the part of the respondent to set EPs, negotiate and sign agreements, select management, or decide how to dispose of profits or financing of losses. Therefore, we are preliminarily granting separate rate status to the entities identified in the ''Preliminary Determination'' section of this notice, below.

Companies Not Receiving a Separate Rate

We have not granted a separate rate to the following companies for the following reasons: (1) Jiangsu Jiasheng Photovoltaic Technology Co., Ltd. failed to submit a timely response to the Department's Q&V questionnaire. The Department stated in the *Initiation Notice* that it ''requires that respondents submit a response to both the quantity and value questionnaire and the separate rate-application by the respective deadlines in order to receive consideration for separate-rate status.''[76] Further, in the Q&V questionnaire the Department stated that it ''will not give consideration to any separate-rate status application made by parties that fail to timely respond to the quantity and value questionnaire or fail to timely submit the requisite separate-rate status application.''[77] (2) Jiawei Solar (Wuhan) Co., Ltd., SunPower Corporation, SunPower Systems SARL, Sunenergy (S.Z.) Co., Ltd., Hanwa Solarone Hong Kong, and Anji DaSol Solar Energy Science and Technology Co., Ltd. did not sell merchandise under consideration to the United States. (3) Jiangyin Hareon Power Co., Ltd. and Wuxi Taichen Machinery & Equipment Co., Ltd. failed to submit a timely response to the Department's supplemental separate rate questionnaire.

Application of Facts Available and Adverse Facts Available

The PRC-Wide Entity and PRC-Wide Rate

The record indicates that there were PRC exporters/producers of the merchandise under consideration during the POI that did not respond to the Department's request for quantity and value information. Specifically, the Department did not receive a response to its Q&V questionnaire from over 30 PRC exporters of merchandise under consideration named in the petition who were issued the questionnaire.[78] Since these non-responsive PRC producers/exporters have not demonstrated that they are eligible for separate rate status, they are part of the PRC-wide entity. Thus, the record indicates that the PRC-wide entity withheld information requested by the Department.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

We find that the PRC-wide entity withheld Q&V information requested by the Department; failed to provide information in a timely manner, and significantly impeded the proceeding by not submitting the requested information. The PRC-wide entity did not file documents indicating it was having difficulty providing the information nor did it request that it be allowed to submit the information in an alternate form. As a result, pursuant to sections 776(a)(2)(A)–(C) of the Act, we find that the use of facts available is appropriate to determine the PRC-wide rate.[79]

[75] *See* Petitioner Separate Rate Comments at 37.

[76] *See Initiation Notice,* 76 FR at 70964.

[77] *See* ''Quantity and Value Questionnaire for Crystalline Silicon Photovoltaic Cells, Whether Or Not Assembled Into Modules (''Solar Cells'') from the People's Republic of China (''PRC'') (''Q&V Questionnaire''), dated November 9, 2011.

[78] *See* Respondent Selection Memorandum. The Department also posted a copy of the Q&V questionnaire on its Web site.

[79] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative*

Continued

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an inference that is adverse to a party if the party failed to cooperate by not acting to the best of its ability to comply with requests for information.[80] The Department finds that the PRC-wide entity's failure to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown.[81] Therefore, because the PRC-wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate.

When employing an adverse inference, section 776(b) of the Act states that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate based on AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. It is the Department's practice to select, as an AFA margin, the higher of the: (a) Highest margin alleged in the petition, or (b) highest calculated margin of any respondent in the investigation.[82] The petition margins are 49.88 percent and 249.96 percent.[83] These rates are higher than any of the weighted-average rates calculated for the companies individually examined. Thus, as AFA, the Department's has selected the rate of 249.96 percent for the PRC-wide entity.

Corroboration of Information

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.'' [84]

The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value.[85] The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[86] To corroborate secondary information, the Department will, to the extent practicable, determine whether the information used has probative value through examining the reliability and relevance of the information.

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this preliminary determination, we compared the petition margins to the margins we calculated for the individually examined respondents. We determined that the petition margin of 249.96 percent is reliable and relevant because it is within the range of the transaction-specific margins [87] on the record for the individually examined exporters of subject merchandise. Thus the highest petition margin has probative value. Accordingly, we have corroborated the petition margin to the extent practicable within the meaning of section 776(c) of the Act.

Margin for the Separate Rate Companies

The Department has preliminarily determined that in addition to the individually examined entities, 59 other companies have demonstrated their eligibility for separate rate status. Normally, the Department's practice is to assign a rate to separate rate entities not individually examined equal to the average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis,* or based entirely on AFA.[88] Thus, we are assigning the SR Recipients a rate equal to an average of the rate calculated for the mandatory respondents.[89] The SR Recipients are listed in the ''Preliminary Determination'' section of this notice.

Date of Sale

Pursuant to section 351.401(i) of the Department's regulations, ''in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business.'' The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.[90]

Sales during the POI were made pursuant to short-term contracts, long-term contracts, and/or purchase orders. Sales were also made on the spot market. Petitioner maintains that Wuxi Suntech's date of sale should be based on contract or purchase order date because: (1) Sales terms are generally fixed in Wuxi Suntech's sales contracts; (2) certain terms under the contracts make it unlikely that changes are made after the contract date; (3) the solar industry uses contracts with fixed prices and terms that rarely change, and (4) Wuxi Suntech did not sufficiently demonstrate that the material terms of its contracts and purchase orders changed. Petitioner also contends that Trina Solar's date of sale should be based on contract date because: (1) Most long-term and short-term contracts do not allow changes in material terms; (2) Trina Solar has not disputed the fact that material terms of sale in its short-term contracts do not change; and (3) the sample documents purportedly

Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003).

[80] *See also* SAA at 870; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000).

[81] *See Nippon Steel Corporation v. United States,* 337 F.3d 1373, 1383 (Fed. Cir. 2003) (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a ''failure to cooperate to the best of a respondent's ability'' existed (*i.e.,* information was not provided ''under circumstances in which it is reasonable to conclude that less than full cooperation has been shown'')).

[82] *See Certain Stilbenic Optical Brightening Agents From the People's Republic of China: Final Determination of Sales at Less Than Fair* Value, 77 FR 17436, 17438 (March 26, 2012).

[83] *See Initiation Notice,* 76 FR at 70963.

[84] *See* SAA at 870.

[85] *See id.*

[86] *See id.*

[87] *See* Wuxi Suntech and Trina Solar Analysis Memoranda.

[88] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007).

[89] *See* Memorandum from Jeff Pedersen to the File, ''Calculation of the Preliminary Margin for Separate Rate Recipients,'' dated May 16, 2012.

[90] *See, e.g., Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review,* 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey,* 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Date of Sale, Comment 1.

showing changes in contract prices do not show changes in prices but consist of amendments to sales contracts that establish new prices. According to Petitioner, these are separate sales agreements that firmly establish all material terms of sale.

The relevant question in considering whether contract date or purchase order date better reflects the date on which the exporter or producer established the material terms of sale, and thus is the appropriate date of sale, is whether the material terms of sale were subject to change on the contract date or purchase order date. The date of sale is the date when the material terms of sale are established and final—that is no longer subject to change.[91] Wuxi Suntech and Trina Solar provided evidence that the material terms of contracts and purchase orders can and do change up until issuance of the commercial invoice.[92]

In *Allied Tube & Conduit Corp. v. United States,* the U.S. Court of International Trade noted that a ''party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.' '' [93] After examining the record, the Department has determined that there is insufficient evidence demonstrating that a date other than invoice date better reflects that date on which the material terms of sale were established. Therefore, the Department has relied upon the earlier of commercial invoice date, or shipment date as the date of sale.

Fair Value Comparisons

In accordance with section 777A(d)(1) of the Act, to determine whether the mandatory respondents sold merchandise under consideration to the United States at less than fair value during the POI, we compared EP and CEP of the sales to NV, as described in the ''Constructed Export Price,'' ''Export Price,'' and ''Normal Value'' sections of this notice.

U.S. Price

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).'' Wuxi Suntech and Trina Solar reported that during the POI, they made CEP sales through their respective U.S. affiliates. In accordance with section 772(b) of the Act, we calculated a CEP for Wuxi Suntech's and Trina Solar's U.S. sales where the merchandise subject to this investigation was sold by the U.S. affiliates on behalf of the respondents to unaffiliated purchasers.

We calculated CEP for Wuxi Suntech and Trina Solar based on delivered prices to unaffiliated purchasers in the United States. We reduced the U.S. sales price by discounts and rebates. We also made deductions from the U.S. sales price, where applicable, for movement expenses in accordance with section 772(c)(2)(A) of the Act. The movement expenses included expenses such as inland freight from the plant to the port of exportation, brokerage and handling incurred in the country of export, international freight, marine insurance, U.S. duties, U.S. inland freight, U.S. inland freight, and other U.S. transportation and warehouse costs. In accordance with section 772(d)(1) of the Act, we also deducted from the U.S. price, direct and indirect selling expenses, credit, expenses, and inventory carrying costs, all of which relate to commercial activity in the United States. Where applicable, we reduced movement expenses by freight. We also adjusted U.S. price by interest revenue and insurance revenue. Finally, we deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act.

Export Price

In accordance with section 772(a) of the Act, we calculated an EP for certain U.S. sales reported by Wuxi Suntech and Trina Solar. We calculated EP based on the packed prices at which merchandise under consideration was sold to unaffiliated purchasers in the United States, or sold for exportation to the United States. We made deductions from U.S. price for movement expenses, as appropriate (*e.g.,* foreign inland freight from the plant to the port of exportation, domestic brokerage, international freight to the port of importation), in accordance with section 772(c)(2)(A) of the Act. Where foreign inland freight or foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate value rates.[94] Where applicable, we also adjusted U.S. price by the value of certain materials provided free of charge.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.[95] Thus, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and section 351.408(c) of the Department's regulations. Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.[96]

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by the individually examined respondents for the POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values (except as discussed below). In selecting the surrogate values, we considered among other factors, the quality, specificity, and contemporaneity of the data.[97] As

[91] *See PSF Preliminary Determination,* 71 FR 77377, unchanged in *PSF Final Determination.*

[92] *See* Trina Solar's February 13, 2012 Supplemental Response at Exhibits SA–2 and SA–7. *See also* Trina Solar's April 2, 2012 Supplemental Response at Exhibit 2SC–3. *See* Wuxi Suntech's March 21, 2012 supplemental questionnaire response at 8–11 and Exhibits 3–X and 3–Y.

[93] *See Allied Tube & Conduit Corp. v. United States,* 132 F. Supp. 2d 1087, 1090 (CIT 2001).

[94] *See* ''Factor Valuation'' section below for further discussion of surrogate value rates.

[95] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products From the People's Republic of China,* 71 FR 19695, 19703 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079 (September 8, 2006).

[96] *See* section 773(c)(3)(A)–(D) of the Act.

[97] *See, e.g., Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of*

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appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added a surrogate freight cost to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all surrogate values used for Wuxi Suntech and Trina Solar can be found in the factor valuation memorandum.[98]

For the preliminary determination, except as noted below, we used Thai import data, as reported by the Thai Customs Department and published by GTA, and other publicly available sources from Thailand in order to calculate surrogate values for Wuxi Suntech's and Trina Solar's FOPs (*e.g.,* direct materials, packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, contemporaneous with, or closest in time to, the POI, product-specific, and tax-exclusive.[99] The record shows that Thai import data obtained through GTA, as well as data used from other Thai sources are product-specific, tax-exclusive, and generally contemporaneous with the POI.[100] In those instances where we could not obtain publicly available information contemporaneous with the POI with which to value FOPs, we adjusted the surrogate values using, where appropriate, the Thai Consumer Price Indexes as published in the IMF's *International Financial Statistics.*

In calculating Thai import-based per-unit surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. Guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.[101] Rather, the Department bases its decision on information that is available to it at the time it makes its determination.[102] We have reason to believe or suspect that prices of inputs from India, Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports from these countries to all markets may be subsidized.[103] Therefore, we have not used prices from these countries in calculating Thailand's import-based surrogate values.

Additionally, in calculating Thailand's import-based per-unit surrogate values, we disregarded prices from NME countries. Finally, we excluded from our calculation of Thailand's import-based per-unit surrogate values imports that were labeled as originating from an ''unspecified'' country because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[104]

To value polysilicon, we used world market prices from Photon Consulting and Energy Trend. We did not inflate the prices since they are contemporaneous with the POI.[105]

Pursuant to section 351.408(c)(1) of the Department's regulations, when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.,* not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping in the PRC and/or subsidies.[106] Where the Department finds ME purchases to be of significant quantities (*i.e.,* 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs,*[107] the Department uses the actual purchase prices to value the inputs. Where the quantity of the reported input purchased from ME suppliers is below 33 percent of the total volume of the input purchased from all sources during the POI, and where otherwise valid, the Department weight-averages the ME input's purchase price with the appropriate surrogate value for the input according to their respective shares of the reported total volume of purchases.[108]

Wuxi Suntech and Trina Solar claimed that certain of their reported material inputs were sourced from an ME country and paid for in ME currencies. Information reported by Wuxi Suntech and Trina Solar demonstrates that for some of the inputs sourced from an ME country and paid

Critical Circumstances, 73 FR 40485 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comment 9.

[98] *See* Memorandum from Jeff Pedersen to The File regarding, ''Antidumping Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Factor Valuation Memorandum'' dated May 16, 2012 (''Factor Valuation Memorandum'').

[99] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004).

[100] *See* Factor Valuation Memorandum.

[101] *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report, H.R. Rep. 100–576 at 590 (1988); *see also Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30763 (June 4, 2007) unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007).

[102] *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039 (September 24, 2008).

[103] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7; *see also Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order,* 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at pages 4–5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review,* 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19–20; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at II. Programs Determined to Confer Subsidies.

[104] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China,* 69 FR 75294, 75301 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China,* 70 FR 24502 (May 10, 2005)

[105] *See* Factor Valuation Memorandum at Attachment XII.

[106] *See, e.g., Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27366 (May 19, 1997).

[107] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717–61718 (October 19, 2006) (''*Antidumping Methodologies: Market Economy Inputs*'').

[108] *See Antidumping Methodologies: Market Economy Inputs,* 71 FR at 61718.

for in ME currencies the input was purchased in significant quantities (*i.e.,* 33 percent or more) from ME suppliers; hence, the Department used each respondent's actual ME purchase prices to value those inputs.[109] Where appropriate, freight expenses were added to the ME prices of the inputs.

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME AD proceedings.[110] In *Labor Methodologies,* the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (''ILO'') Yearbook of Labor Statistics (''Yearbook'').

The Department valued labor using the methodology described in *Labor Methodologies.* Specifically, to value the respondents' labor the Department relied on data reported by Thailand to the ILO in Chapter 6A of the Yearbook for the total manufacturing wage data. Although the Department found that the two-digit description under ISIC–Revision 3.1 (''Manufacture of Machinery and Equipment NEC'') is the best available information on the record with which to value labor because it is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise, Thailand has not reported data specific to the two-digit description since 2000. However, Thailand did report total manufacturing wage data in 2005. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor value using total labor data reported by Thailand to the ILO in 2005, in accordance with section 773(c)(4) of the Act. Because these rates were in effect before the POI, we are adjusting the average value for inflation. A more detailed description of the wage rate calculation methodology is provided in the Factor Valuation Memorandum.

The ILO data from Chapter 6A of the Yearbook, which was used to value labor, reflects all costs related to labor, including wages, and indirect labor costs such as benefits, housing, and training. The financial statements used to calculate the surrogate financial ratios do not include itemized details regarding the indirect labor costs incurred. Therefore, the Department has not made adjustments to the surrogate financial ratios.

Because water was used by the respondents in the production of solar cells, the Department considers water to be a direct material input rather than overhead.[111] We valued water using data from the Metropolitan Waterworks Authority as reported by the Thailand Board of Investment in its 2011 publication *Costs of Doing Business in Thailand.* We did not inflate this rate since it is contemporaneous with the POI.[112]

We valued truck freight using Thai data published in the World Bank publication, *Doing Business in Thailand.* We did not inflate this rate since it is contemporaneous with the POI.[113] We were unable to identify a surrogate value explicitly for inland water freight in Thailand or any other country on the surrogate country list. Thus, we valued inland water freight using the same surrogate value used for truck freight.

We valued ocean freight using rates from the Web site *http://www.apx-ocean-freight.com/,* which lists international ocean freight rates offered by APX Ocean Freight Forwarder (''APX''). The APX database is a web-based service which publishes the ocean freight rates of numerous carriers. These rates are publicly available and cover a wide range of shipping rates which are reported on a daily basis.

We valued marine insurance using a marine insurance rate offered by RJG Consultants. RJG Consultants is an ME provider of marine insurance. The rate is a percentage of the value of the shipment; thus we did not inflate or deflate the rate.

We valued brokerage and handling using a price list for export procedures necessary to export a standardized cargo of goods in Thailand in a 20-foot container. The price list was published in the World Bank publication, *Doing Business in Thailand.* We did not inflate this rate since it is contemporaneous with the POI.[114]

We valued air freight using the rates published on the UPS Web site: *http://www.ups.com.* These rates are publicly available and cover a wide range of air routes which are reported on a daily basis.

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements from Team Precision Public Ltd., Hana Microelectronics Co., Ltd., and KCE Electronics Public Company Limited, producers of comparable merchandise in Thailand. These financial statements cover the fiscal year ending December 2011 and, therefore, are contemporaneous.

Currency Conversion

Where necessary, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted by Wuxi Suntech and Trina Solar.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation.[115] This practice is described in Policy Bulletin 05.1.[116]

Preliminary Determination

The weighted-average dumping margins are as follows:

[109] *See id. See also* Wuxi Suntech and Trina Solar Analysis Memoranda.

[110] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''*Labor Methodologies*'').

[111] *See Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China,* 68 FR 61395 (October 28, 2003) and accompanying Issues and Decision Memorandum at Comment 11.

[112] *See* Factor Valuation Memorandum at Attachments VI and VII.

[113] *See* Factor Valuation Memorandum at Attachment VII.

[114] *See* Factor Valuation Memorandum at Attachments VI and VII.

[115] *See Initiation Notice,* 76 FR at 70964.

[116] *See* the Import Administration's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (''Policy Bulletin 05.1''), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05–1.pdf.*

Exporter	Producer	Weighted-average percent margin
Changzhou Trina Solar Energy Co., Ltd. and Trina Solar (Changzhou) Science & Technology Co., Ltd.	Changzhou Trina Solar Energy Co., Ltd.	31.14
	Trina Solar (Changzhou) Science & Technology Co., Ltd.	
Wuxi Suntech Power Co., Ltd., Luoyang Suntech Power Co., Ltd., Suntech Power Co., Ltd. and Wuxi Sun-shine Power Co., Ltd.	Wuxi Suntech Power Co., Ltd.	31.22
	Luoyang Suntech Power Co., Ltd.	
	Suntech Power Co., Ltd.	
	Wuxi Sun-shine Power Co., Ltd.	
Baoding Tianwei Yingli New Energy Resources Co., Ltd.	Baoding Tianwei Yingli New Energy Resources Co., Ltd.	31.18
	Yingli Energy (China) Company Limited.	
Tianwei New Energy (Chengdu) PV Module Co., Ltd.	Tianwei New Energy (Chengdu) PV Module Co., Ltd.	31.18
Canadian Solar International Limited	Canadian Solar Manufacturing (Changshu) Inc.	31.18
	Canadian Solar Manufacturing (Luoyang) Inc.	
Canadian Solar Manufacturing (Changshu) Inc.	Canadian Solar Manufacturing (Changshu), Inc.	31.18
Canadian Solar Manufacturing (Luoyang) Inc.	Canadian Solar Manufacturing (Luoyang), Inc.	31.18
Hanwha Solarone (Qidong) Co., Ltd.	Hanwha Solarone (Qidong) Co., Ltd.	31.18
CEEG (Shanghai) Solar Science Technology Co., Ltd.	CEEG (Shanghai) Solar Science Technology Co., Ltd.	31.18
	CEEG Nanjing Renewable Energy Co., Ltd.	
CEEG Nanjing Renewable Energy Co., Ltd.	CEEG Nanjing Renewable Energy Co., Ltd.	31.18
Jiawei Solarchina Co., Ltd.	Jiawei Solarchina (Shenzhen) Co., Ltd.	31.18
Yingli Energy (China) Company Limited	Yingli Energy (China) Company Limited	31.18
	Baoding Tianwei Yingli New Energy Resources Co., Ltd.	
LDK Solar Hi-tech (Nanchang) Co., Ltd.	LDK Solar Hi-tech (Nanchang) Co., Ltd.	31.18
LDK Solar Hi-tech (Suzhou) Co., Ltd.	LDK Solar Hi-tech (Suzhou) Co., Ltd.	31.18
Jiawei Solarchina (Shenzhen) Co., Ltd.	Jiawei Solarchina (Shenzhen) Co., Ltd.	31.18
Changzhou NESL Solartech Co., Ltd.	Changzhou NESL Solartech Co., Ltd.	31.18
China Sunergy (Nanjing) Co., Ltd.	China Sunergy (Nanjing) Co., Ltd.	31.18
Chint Solar (Zhejiang) Co., Ltd.	Chint Solar (Zhejiang) Co., Ltd.	31.18
Suzhou Shenglong PV–Tech Co., Ltd.	Suzhou Shenglong PV–TECH Co., Ltd.	31.18
tenKsolar (Shanghai) Co., Ltd.	tenKsolar (Shanghai) Co., Ltd.	31.18
Upsolar Group, Co., Ltd.	HC Solar Power Co., Ltd.	31.18
	Zhiheng Solar Inc.	
	Zhejiang Leye Photovoltaic Science & Technology Co., Ltd.	
	Tianwei New Energy (Chengdu) PV Module Co., Ltd.	
	Zhejiang ZG–Cells Co., Ltd.	
	Zhejiang Xinshun Guangfu Science and Technology Co., Ltd.	
	Zhejiang Jiutai New Energy Co., Ltd.	
Wanxiang Import & Export Co., Ltd.	Zhejiang Wanxiang Solar Co., Ltd.	31.18
Jinko Solar Import and Export Co., Ltd.	Jinko Solar Co., Ltd.	31.18
Jinko Solar International Limited	Jinko Solar Co., Ltd.	31.18
CNPV Dongying Solar Power Co., Ltd.	CNPV Dongying Solar Power Co., Ltd.	31.18
CSG PVTech Co., Ltd.	CSG PVTech Co., Ltd.	31.18
Delsolar Co., Ltd.	Delsolar Co., Ltd.	31.18
Dongfang Electric (Yixing) MAGI Solar Power Technology Co., Ltd.	Dongfang Electric (Yixing) MAGI Solar Power Technology Co., Ltd.	31.18
Eoplly New Energy Technology Co., Ltd.	Eoplly New Energy Technology Co., Ltd.	31.18
ERA Solar Co., Ltd.	ERA Solar Co., Ltd.	31.18
ET Solar Energy Limited	ET Solar Industry Limited	31.18
Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.	Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.	31.18
Himin Clean Energy Holdings Co., Ltd.	Himin Clean Energy Holdings Co., Ltd.	31.18
JA Solar Technology Yangzhou Co., Ltd.	JingAo Solar Co., Ltd.	31.18
Jetion Solar (China) Co., Ltd.	Jetion Solar (China) Co., Ltd.	31.18
Jiangsu Green Power PV Co., Ltd.	Jiangsu Green Power PV Co., Ltd.	31.18
Jiangsu Sunlink PV Technology Co., Ltd.	Jiangsu Sunlink PV Technology Co., Ltd.	31.18
JingAo Solar Co., Ltd.	JingAo Solar Co., Ltd.	31.18
Konca Solar Cell Co., Ltd.	Konca Solar Cell Co., Ltd.	31.18
Leye Photovoltaic Co., Ltd.	Leye Photovoltaic Co., Ltd.	31.18
Lightway Green New Energy Co., Ltd.	Lightway Green New Energy Co., Ltd.	31.18
Motech (Suzhou) Renewable Energy Co., Ltd.	Motech (Suzhou) Renewable Energy Co., Ltd.	31.18
Ningbo ETDZ Holdings, Ltd.	Hangzhou Zhejiang University Sunny Energy Science and Technology Co., Ltd.	31.18
Ningbo Komaes Solar Technology Co., Ltd.	Ningbo Komaes Solar Technology Co., Ltd.	31.18
Ningbo Qixin Solar Electrical Appliance Co., Ltd.	Ningbo Qixin Solar Electrical Appliance Co., Ltd.	31.18
Ningbo Ulica Solar Science & Technology Co., Ltd.	Ningbo Ulica Solar Science & Technology Co., Ltd.	31.18
Perlight Solar Co., Ltd.	Perlight Solar Co., Ltd.	31.18
Risen Energy Co., Ltd.	Risen Energy Co., Ltd.	31.18
Shanghai BYD Company Limited	Shanghai BYD Company Limited	31.18
Shanghai JA Solar Technology Co., Ltd.	Shanghai JA Solar Technology Co., Ltd.	31.18
Shanghai Solar Energy Science & Technology Co., Ltd.	Shanghai Solar Energy Science & Technology Co., Ltd.	31.18
Shenzhen Topray Solar Co., Ltd.	Shenzhen Topray Solar Co., Ltd.	31.18

Exporter	Producer	Weighted-average percent margin
Solarbest Energy-Tech (Zhejiang) Co., Ltd.	Solarbest Energy-Tech (Zhejiang) Co., Ltd.	31.18
Sopray Energy Co., Ltd.	Sopray Energy Co., Ltd.	31.18
Sumec Hardware & Tools Co., Ltd.	Phono Solar Technology Co., Ltd.	31.18
Sun Earth Solar Power Co., Ltd.	Sun Earth Solar Power Co., Ltd.	31.18
Yuhuan Sinosola Science & Technology Co., Ltd.	Yuhuan Sinosola Science & Technology Co., Ltd.	31.18
Yuhuan Solar Energy Source Co., Ltd.	Yuhuan Solar Energy Source Co., Ltd.	31.18
Zhejiang Jiutai New Energy Co., Ltd.	Zhejiang Topoint Photovoltaic Co., Ltd.	31.18
Zhejiang Shuqimeng Photovoltaic Technology Co., Ltd.	Zhejiang Shuqimeng Photovoltaic Technology Co., Ltd.	31.18
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company.	Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company.	31.18
PRC–Wide Rate		249.96

Disclosure

We will disclose to parties the calculations performed in this investigation within five days of the date of pub'lication of this notice in accordance with section 351.224(b) of the Department's regulations.

Suspension of Liquidation

As noted above, the Department found that critical circumstances exist with respect to imports of merchandise under consideration from Wuxi Suntech, Trina Solar, the SR Recipients, and the PRC-wide entity. Therefore, in accordance with section 733(e)(2) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of merchandise under consideration from Wuxi Suntech, Trina Solar, the SR Recipients, and the PRC-wide entity that are entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the **Federal Register** and require a cash deposit or bond for such entries as noted below.

We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which NV exceeds U.S. price, adjusted where appropriate for export subsidies, as follows: (1) The rate for the exporter/producer combinations listed in the table above will be the rate we have determined in this preliminary determination; (2) for all PRC exporters of merchandise under consideration which have not received their own rate, the cash-deposit rate will be the PRC-wide rate; and (3) for all non-PRC exporters of merchandise under consideration which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter.

If importers are attempting to import solar panels/modules with solar cells produced in the PRC from third-countries without third-country case numbers related to this order, the importers should contact CBP Headquarters immediately.

In the companion CVD investigation, the Department preliminarily determined that the products under investigation exported by Trina Solar benefitted from an export subsidy.[117] Therefore, for merchandise under consideration exported by the Trina Solar, we will instruct CBP to reduce Trina Solar's cash deposit rate by the export subsidy rate determined for Trina Solar. Because the ''all-others'' rate in the companion CVD investigation included an export subsidy rate of less than 0.005 percent, we have not adjusted the separate-rate companies' cash deposit rate for export subsidies. None of the separate rate companies in the instant investigation were selected as respondents in the CVD investigation. These cash deposit instructions will remain in effect until further notice.

Certification Requirements

As noted above, the Department has clarified the scope of both the AD and CVD investigations of solar cells by stating that modules, laminates, and panels produced in a third-country from solar cells produced in the PRC are covered by the investigations; however, modules, laminates, and panels produced in the PRC from solar cells produced in a third-country are not covered by the investigations. If an importer imports solar panels/modules that it claims do not contain solar cells that were produced in the PRC, the importer is required to maintain the importer certification in the attachment to this notice. The importer and exporter are also required to maintain the exporter certification in the attachment to this notice if the exporter of the panels/modules for which the importer is making the claim is located in the PRC. We note that while importers and PRC-exporters will be required to maintain the aforementioned certifications and documentation, they will not have to provide this information to CBP as part of the entry documents, unless the certification or documentation is specifically requested by CBP.

If it is determined that the certification or documentation requirements noted in the certification have not been met, the Department intends to instruct CBP to suspend all unliquidated entries for which these requirements were not met and require the posting of a cash deposit or bond on those entries equal to the PRC-wide rate in effect at the time of the entry. If a solar panel/module contains some solar cells produced in the PRC, but the importer is unable or unwilling to identify the total value of the panel/module subject to the order, the Department intends to instruct CBP to suspend all unliquidated entries for which the importer has failed to supply this information and require the posting of a cash deposit or bond on the total entered value of the panel/module equal to the PRC-wide rate in effect at the time of the entry.[118]

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of solar cells, or sales (or the likelihood of sales) for importation, of the merchandise under consideration

[117] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 77 FR 17439, 17453–17454 (March 26, 2012).

[118] *See* memorandum from Maisha Cryor to Christian Marsh regarding ''Crystalline Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Third-Country Case Numbers and Certifications'', dated concurrently with this notice.

within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Department no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline for case briefs.[119] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department. The executive summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 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 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[120] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we intend to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on March 29, 2012 and March 30, 2012, we received requests from Wuxi Suntech and Trina Solar, respectively, that the Department postpone its final determination by 60 days.[121] Additionally, consistent with section 351.210(e)(2) of the Department's regulations, Wuxi Suntech and Trina Solar requested that the Department extend the application of the provisional measures from a 4-month period to a 6-month period. In accordance with section 735(a) of the Act and section 351.210(b) of the Department's regulations, we are granting the requests and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** because: (1) Our preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the merchandise under consideration; and (3) no compelling reasons for denial exist. Suspension of liquidation will be extended accordingly. We are further extending the application of the provisional measures from a four-month period to a six-month period.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: May 16, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Attachment I

Importer Certification

I hereby certify that I am an official of *insert name of company importing solar panels/modules,* that I have knowledge of the facts regarding the importation of the solar panels/modules or other products containing solar panels/modules that entered under entry number(s) *insert entry number(s) covered by the certification,* and *that these solar panels/modules do not contain solar cells produced in the People's Republic of China.* By signing this certificate, I also hereby certify that *insert name of company importing solar panels/modules* maintains sufficient documentation supporting this certification for all solar cells used to produce the solar panels/modules imported under the above-referenced entry number(s). I understand that agents of the importer, such as brokers, are not permitted to make this certification. Also, I am aware that records pertaining to this certification may be requested by CBP. I understand that this certification should be completed at the time of the entry. Also, I understand that failure to maintain the required certification or failure to substantiate the claim that the panels/modules do not contain solar cells produced in the People's Republic of China will result in suspension of all unliquidated entries for which these requirements were not met and the requirement that the importer post an AD cash deposit or, where applicable, a bond, on those entries equal to the PRC-wide rate in effect at the time of the entry and a CVD cash deposit, or where applicable, a bond rate equal to the all-others rate in effect at the time of the entry.

Name of Company Official

Title

Date

Exporter Certification

I hereby certify that I am an official of *insert name of company exporting solar panels/modules,* that I have knowledge of the facts regarding the exportation of the solar panels/modules or other products containing solar panels/modules identified below, and *that these solar panels/modules do not contain solar cells produced in the People's Republic of China.* By signing this certificate, I also hereby certify that *insert name of company exporting solar panels/modules* maintains sufficient documentation supporting this certification for all solar cells used to produce the solar panels/modules identified below. I am aware that records pertaining to this certification may be subject to verification by Department of Commerce officials and I consent to verification with respect to this certification and these records. I understand that this certification should be completed at the time of shipment. I also understand that failure to maintain the required certification or failure to substantiate the claim that the panels/modules do not contain solar cells produced in the People's Republic of China will result in suspension of all unliquidated entries for which these requirements were not met and the requirement that the importer post an AD cash deposit or, where applicable, a bond, on those entries equal to the PRC-wide rate in effect at the time of the entry and a CVD cash deposit, or where applicable, a bond rate equal to the all-others rate in effect at the time of the entry.

The exports covered by this certification are *insert invoice numbers, purchase order numbers, export documentation, etc. to identify the exports covered by the certification.*

Name of Company Official

Title

Date

[FR Doc. 2012–12798 Filed 5–24–12; 8:45 am]

BILLING CODE 3510–DS–P

[119] *See* section 351.309(c)(1)(i) and (d) of the Department's regulations.

[120] *See* section 351.310(c) of the Department's regulations.

[121] *See* Letter from Wuxi Suntech to the Department, regarding ''Crystalline Silicon Photovoltaic Cells from the People's Republic of China: Request to Postpone Final Determination,'' dated March 29, 2012; *see also* Letter from Trina Solar to the Department, regarding ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China; Extend Final Determination,'' dated March 30, 2012.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) is publishing this notice on behalf of the National Fire Protection Association (NFPA) to announce the availability of and request comments on the technical reports that will be presented at NFPA's 2013 Annual Revision Cycle.

DATES: Twenty-one reports are published in the 2013 Annual Cycle Report on Proposals and will be available on June 22, 2012. Comments received by 5:00 p.m. ET on or before August 31, 2012 will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESSES: The 2013 Annual Revision Cycle Report on Proposals is available and downloadable from NFPA's Web site—*www/nfpa.org,* or by requesting a copy from the NFPA, Fulfillment Center, 11 Tracy Drive, Avon, Massachusetts 02322. Comments on the report should be submitted to Amy Beasley Cronin, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471.

FOR FURTHER INFORMATION CONTACT: Amy Beasley Cronin, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471, (617) 770–3000. David F. Alderman, NIST, 301–975–4019.

SUPPLEMENTARY INFORMATION: Since 1896, the National Fire Protection Association (NFPA) has accomplished its mission by advocating scientifically based consensus codes and standards, research, and education for safety related issues. NFPA's *National Fire Codes,*® which holds over 290 documents, are administered by more than 244 Technical Committees comprised of approximately 7,800 volunteers and are adopted and used throughout the world. NFPA is a nonprofit membership organization with approximately 70,000 members from over 70 nations, all working together to fulfill the Association's mission.

The NFPA process provides ample opportunity for public participation in the development of its codes and standards. All NFPA codes and standards are revised and updated every three to five years in Revision Cycles that begin twice each year and that take approximately two years to complete. Each Revision Cycle proceeds according to a published schedule that includes final dates for all major events in the process. The code revision Process contains five basic steps that are followed for developing new documents as well as revising existing documents: Call for Proposals; Report on Proposals (ROP); Call for Comments on the Committee's disposition of the Proposals and publication of these Comments in the Report on Comments (ROC); the Association Technical Meeting at the NFPA Conference & Expo; and finally, the Standards Council Consideration and Issuance of documents.

Note: NFPA rules state that, anyone wishing to make Amending Motions on the Technical Committee Reports (ROP and ROC) must signal his or her intention by submitting a Notice of Intent to Make a Motion by the Deadline of 5:00 p.m. ET on or before April 5, 2013. Certified motions will be posted by May 3, 2013. Documents that receive notice of proper Amending Motions (Certified Amending Motions) will be presented for action at the Annual 2013 Association Technical Meeting. Documents that receive no motions will be forwarded directly to the Standards Council for action and issuance through a Consent Document Ballot by the end of May 2013.

For more information on these new rules and for up-to-date information on schedules and deadlines for processing NFPA Documents, check the NFPA Web site at *www.nfpa.org,* or contact NFPA Codes and Standards Administration.

The purpose of this notice is to request comments on the technical reports that will be presented at NFPA's 2013 Annual Revision Cycle. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments, to Amy Beasley Cronin, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471. Commenters may use the forms provided for comments in the Reports on Proposals. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received by 5:00 p.m. ET on or before August 31, 2012 for the 2013 Annual Cycle Report on Proposals will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the 2013 Annual Cycle Report on Comments by February 22, 2013. A copy of the Report on Comments will be sent automatically to each commenter. Reports of the Technical Committees on documents that do not receive a Notice of Intent to Make a Motion will automatically be forwarded to the Standards Council for action on issuance. Action on the reports of the Technical Committees on documents that do receive a Notice of Intent to Make a Motion will be taken at the Association Technical Meeting, which is held at the NFPA Conference & Expo, June 10–13, 2013 in Chicago, Illinois, by the NFPA membership.

2013 ANNUAL MEETING—REPORT ON PROPOSALS

[P = Partial revision; W = Withdrawal; R = Reconfirmation; N = New; C = Complete Revision]

NFPA 25	Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems	P
NFPA 51B	Standard for Fire Prevention During Welding, Cutting, and Other Hot Work	P
NFPA 56PS	Standard for Fire and Explosion Prevention During Cleaning and Purging of Flammable Gas Piping Systems	P
NFPA 58	Liquefied Petroleum Gas Code	P
NFPA 70	National Electrical Code®	P
NFPA 77	Recommended Practice on Static Electricity	P

2013 ANNUAL MEETING—REPORT ON PROPOSALS—Continued

[P = Partial revision; W = Withdrawal; R = Reconfirmation; N = New; C = Complete Revision]

NFPA 96	Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations	P
NFPA 130	Standard for Fixed Guideway Transit and Passenger Rail Systems	P
NFPA 306	Standard for the Control of Gas Hazards on Vessels	P
NFPA 403	Standard for Aircraft Rescue and Fire-Fighting Services at Airports	P
NFPA 412	Standard for Evaluating Aircraft Rescue and Fire-Fighting Foam Equipment	P
NFPA 502	Standard for Road Tunnels, Bridges, and Other Limited Access Highways	P
NFPA 610	Guide for Emergency and Safety Operations at Motorsports Venues	P
NFPA 780	Standard for the Installation of Lightning Protection Systems	P
NFPA 1002	Standard for Fire Apparatus Driver/Operator Professional Qualifications	P
NFPA 1021	Standard for Fire Officer Professional Qualifications	P
NFPA 1026	Standard for Incident Management Personnel Professional Qualifications	P
NFPA 1031	Standard for Professional Qualifications for Fire Inspector and Plan Examiner	P
NFPA 1033	Standard for Professional Qualifications for Fire Investigator	P
NFPA 1123	Code for Fireworks Display	P
NFPA 1143	Standard for Wildland Fire Management	P

Dated: May 21, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012–12779 Filed 5–24–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL85

Notice of Availability of a Final Supplemental Environmental Impact Statement for Replacement of NOAA National Marine Fisheries Service Southwest Fisheries Science Center in La Jolla, CA

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

ACTION: Notice of availability of the Final Supplemental Environmental Impact Statement (SEIS); Opportunity for comments.

SUMMARY: NOAA announces the public release of the Final SEIS in accordance with the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations, and NOAA Administrative Order 216–6 *Environmental Review Procedures for Implementing the National Environmental Policy Act.* Since completion of the Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) in April of 2009, substantial changes to the proposed action are being considered by NOAA within portions of the project area containing the 2.5-acre property currently occupied by Southwest Fisheries Science Center (SWFSC) and managed by NOAA under long-term lease from the University of California Office of the President (UCOP). These newly proposed actions were not previously analyzed in the Final EIS/EIR and involve additional demolition activities, substantial excavation and grading, installation of a geohazard soil stabilization system, structural upgrade to remaining structures, and other site alterations. These proposed actions were deemed necessary by NOAA based on additional geotechnical information and design recommendations received since approval of the Final EIS/EIR. A Draft and Final SEIS evaluated each environmental topic addressed in the Final EIS/EIR, and focused on the newly proposed action and its potential effects to the human environment. The No-Action Alternative was analyzed and assumes the newly proposed actions would not be implemented. Comments on the Draft SEIS were received during a 45-day public comment period that ended October 31, 2011. The Final SEIS evaluates and responds to these comments. An opportunity to comment on the Final SEIS is provided for 30 days following this Notice of Availability.

DATES: Written comments and input will be accepted on or before June 25, 2012.

ADDRESSES: Written comments should be sent to Robb Gries, Project Engineer, NOAA, Project Planning & Management—Western Region, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115; email *robb.gries@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Robb Gries, NOAA Project Engineer, at the address provided above. A copy of the Final SEIS can be viewed or downloaded at *http://www.seco.noaa.gov/HTML_Blue/OCAO_NEPA.html*

SUPPLEMENTARY INFORMATION: The proposed action evaluated in the April 2009 Final EIS/EIR consisted of the demolition of Buildings B and C and the construction of a new SWFSC building on a property across La Jolla Shores Drive from the existing NMFS facilities. Currently, construction of the SWFSC building at the preferred site is underway. Demolition of Buildings B and C at the existing NOAA property would not occur until construction of the new SWFSC building has been completed.

A Notice of Intent to prepare the SEIS was published in the **Federal Register** on June 30, 2011, and a Notice of Availability of the Draft SEIS was published in the **Federal Register** on September 16, 2011. Consistent with 40 CFR 1502.9(c)(1)(i), this SEIS focuses on the environmental effects of the proposed changes and feasible alternatives including the no-action alternative, and analyzes the potential effects to affected resources such as: geological conditions, hydraulic processes, construction noise, traffic/pedestrian circulation, air emissions, and protected wildlife. Separately, the University of California—San Diego (UCSD) and UCOP intend to determine what additional CEQA documentation is necessary, such as an Addendum to the Final EIS/EIR, based on the findings of the SEIS and other factors.

NOAA has submitted the Final SEIS to the U.S. Environmental Protection Agency for review and comment, in conformance with NEPA implementing regulations. Copies of this document have been made available to persons who commented on the Draft SEIS, to other individuals expressing interest, and posted on the NOAA Web page noted above in order to be accessible to the general public. NOAA is accepting comments on the Final SEIS during a minimum 30-day ''cooling off'' period beginning May 25, 2012, and ending on June 25, 2012.

Dated: May 14, 2012.

Edward Horton,

Chief Administrative Officer, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–12780 Filed 5–24–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC039

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Habitat Committee (HC) will hold a meeting, which is open to the public, to discuss habitat issues related to Council-managed fisheries.

DATES: The work session will be held Tuesday, June 12, 2012 from 8:30 a.m. to 5 p.m. or until business for the day is completed.

ADDRESSES: The meeting will be held at the Pacific Council Office, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Gilden, Associate Staff Officer, Pacific Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss habitat issues related to Council-managed fisheries, including Columbia River fisheries issues, the NOAA Habitat Blueprint, and the Council's development of a Fishery Ecosystem Plan. The HC may also discuss forage fish issues, Army Corps of Engineers levee vegetation policies, ocean energy proposals, and Klamath River water issues. A report is scheduled to be presented to the Pacific Council at the June, 2012 Council meeting in San Mateo, CA.

Although non-emergency issues not contained in the meeting agenda may come before the HC for discussion, those issues may not be the subject of formal HC action during this meeting. HC action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the HC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: May 21, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–12676 Filed 5–24–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC041

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) and its advisory entities will hold public meetings.

DATES: The Pacific Council and its advisory entities will meet June 20–26, 2012. The Pacific Council meeting will begin on Thursday, June 21, 2012 at 8 a.m., reconvening each day through Tuesday, June 26, 2012. All meetings are open to the public, except a closed session will be held at the end of business on Thursday, June 21 to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the San Mateo Marriott Hotel, 1770 South Amphlett Boulevard, San Mateo, CA; telephone: (650) 653–6000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 820–2280 or (866) 806–7204 toll free; or access the Pacific Council Web site, *http://www.pcouncil.org* for the current meeting location, proposed agenda, and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the Pacific Council agenda, but not necessarily in this order:

A. Call to Order
  1. Opening Remarks
  2. Roll Call
  3. Executive Director's Report
  4. Approve Agenda
B. Open Comment Period
  Comments on Non-Agenda Items
C. Habitat
  Current Habitat Issues
D. Groundfish Management
  1. NMFS Report
  2. Barotrauma Workshop and Potential Use of Recompression Catch-and-Release Survival Estimates
  3. Stocks Assessment Planning
  4. Final Recommendations for Exempted Fishing Permits for 2013–14 Fisheries
  5. Tentative Adoption of Final 2013–14 Biennial Harvest Specifications and Management Measures
  6. Trawl Rationalization Trailing Actions
  7. Reconsideration of Initial Catch Shares in the Mothership and Shoreside Pacific Whiting Fisheries
  8. Consideration of Inseason Adjustments
  9. Final 2013–14 Biennial Harvest Specifications and Management Measures
E. Highly Migratory Species Management
  1. Management Reference Points and Measures for 2013–14 Fisheries
  2. International Management Activities and Recommendations
F. Coastal Pelagic Species Management
  1. NMFS Report
  2. Pacific Mackerel Management for 2012–13
G. Administrative Matters
  1. Consideration of Further Protection of Currently Unmanaged Forage Species
  2. Legislative Matters
  3. Advance Notice of Proposed Rulemaking for National Standard 1 Guidelines
  4. Approval of Council Meeting Minutes
  5. Fiscal Matters
  6. Membership Appointments and Council Operating Procedures
  7. Future Council Meeting Agenda and Workload Planning
H. Ecosystem Based Management
  Council Fishery Ecosystem Plan Development
I. Enforcement Issues
  Annual NMFS Enforcement Report

SCHEDULE OF ANCILLARY MEETINGS

Day 1—Wednesday, June 20, 2012	
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Highly Migratory Species Advisory Subpanel	8 a.m.
Highly Migratory Species Management Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Budget Committee	1 p.m.
Legislative Committee	2:30 p.m.
Day 2—Thursday, June 21, 2012	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Joint Meeting of the Coastal Pelagic Species Advisory Subpanel and Coastal Pelagic Species Management Team	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Highly Migratory Species Advisory Subpanel	8 a.m.
Highly Migratory Species Management Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Enforcement Consultants	4:30 p.m.
Chair's Reception	6 p.m.
Day 3—Friday, June 22, 2012	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Coastal Pelagic Species Advisory Subpanel	8 a.m.
Coastal Pelagic Species Management Team	8 a.m.
Ecosystem Advisory Subpanel	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As Needed.
Day 4—Saturday, June 23, 2012	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Ecosystem Advisory Subpanel	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As Needed.
Day 5—Sunday, June 24, 2012	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As Needed.
Day 6—Monday, June 25, 2012	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As Needed.
Day 7—Tuesday, June 26, 2012	
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those

issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: May 22, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–12728 Filed 5–24–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC046

Pacific 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 Pacific Fishery Management Council's (Pacific Council) ad hoc South of Humbug Pacific Halibut Workgroup (SHPHW) will hold a conference call to review background material on Pacific Halibut stock assessment, catch apportionment, and monitoring in Area 2A.

DATES: The conference call will be held Tuesday, June 12, 2012, from 1 p.m. to 3 p.m.

ADDRESSES: The meeting will be held via conference call, with a listening station provided at the Pacific Council Office, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Staff Officer, Pacific Council: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to review progress and interim products relative to the Pacific Halibut stock assessment, catch apportionment process, and catch monitoring in Area 2A, with the objective of reporting how additional information from south of the Oregon/California border could be integrated into existing processes. A report is tentatively scheduled to be presented to the Pacific Council at the September, 2012 Pacific Council meeting in Boise, ID.

Although non-emergency issues not contained in the meeting agenda may come before the SHPHW for discussion, those issues may not be the subject of formal SHPHW action during this meeting. SHPHW action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the SHPHW's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: May 22, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–12802 Filed 5–24–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Northeast Fisheries Science Center, Woods, Hole, MA; Public Meeting/Workshop

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

ACTION: Notice of a public meeting/workshop.

SUMMARY: NOAA's Northeast Fisheries Science Center will sponsor a workshop to address the stock structure of cod in the Gulf of Maine, Georges Bank, Scotian Shelf and Southern New England regions. The Gulf of Maine Research Institute (GMRI) in Portland, ME will organize and host the meeting scheduled for June 12–14, 2012.

DATES: The meeting will be held on Tuesday, June 12, Wednesday, June 13 and Thursday, June 14, 2012, beginning at 9 a.m. each day.

ADDRESSES: The meeting will be held at the Sheraton Harborside Hotel, 250 Market St., Portsmouth, NH 03801; telephone: (603) 431–2300.

FOR FURTHER INFORMATION CONTACT: Patty Collins, Gulf of Maine Research Institute, (207) 228–1625.

SUPPLEMENTARY INFORMATION: The Stock Structure of Atlantic Cod in the Gulf of Maine Region workshop will explore current research to inform the cod assessment process. Invited participants from the fishing and scientific communities will present information on a range of topics. There also will be opportunities for discussion. Online registration is available at *www.gmri.org/codstructureworkshop* or contact Patty Collins at *pcollins@gmri.org* or (207) 228–1625 to register via telephone or email.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Patty Collins at the Gulf of Maine Research Institute, 350 Commercial Street, Portland, ME 04101; telephone: (207) 228–1625 at least 5 days prior to the meeting date.

Dated: May 22, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–12801 Filed 5–24–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC047

North Pacific Fishery Management Council (NPFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Steller Sea Lion Mitigation Committee (SSLMC) will meet in Juneau, AK.

DATES: The meeting will be held June 14–15, 2012, 9 a.m. Alaska time.

ADDRESSES: The meeting will be held at NMFS Alaska Regional Office, 4th Floor Conference Room, 709 W. 9th St., Juneau, AK 99802.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Steve MacLean, NPFMC; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The agenda for this public meeting will be posted on the Council Web site (*www.alaskafisheries.noaa.gov/npfmc*) on June 4, 2012. This public meeting will occur during the scoping period for the Steller Sea Lion Protection Measures EIS (77 FR 22750, April 17, 2012). Information on EIS development, potential alternatives, and issues for analysis may be discussed. The public is encouraged to attend in this meeting, however, comments specific to the EIS should be submitted in writing to NMFS before the close of the scoping period on October 15, 2012. More information on the EIS scoping process and instructions for submitting written public comments are available on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov/sustainablefisheries/sslpm/eis/default.htm.* Additional information is posted on the Council Web site: *http://www.alaskafisheries.noaa.gov/npfmc/.*

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: May 22, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–12803 Filed 5–24–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC042

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council will hold meetings of its Ecosystem-Based Management Committee; Dolphin Wahoo Committee; Shrimp Committee; Snapper Grouper Committee; Ad Hoc Data Collection Committee; King and Spanish Mackerel Committee; Advisory Panel Selection Committee (Closed Session); Scientific and Statistical Selection Committee (Closed Session); Golden Crab Committee; Law Enforcement Committee; Southeast Data Assessment and Review (SEDAR) Committee; and a meeting of the Full Council. The Council will take action as necessary.

The Council will also hold a Habitat Workshop for Council members, an informal public question and answer session regarding agenda items, and a formal public comment session. See **SUPPLEMENTARY INFORMATION** for additional details.

DATES: The meetings will be held June 11–15, 2012. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Renaissance Orlando Airport Hotel, 5445 Forbes Place, Orlando, FL 32812; telephone: (1–800) 545–1985 or (407) 240–1000; fax: (407) 240–1005. Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366 or toll free at (866) SAFMC–10; fax: (843)/769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. Council Member Habitat Workshop: June 11, 2012, 9 a.m. Until 12 Noon

The Council Member Habitat Workshop will receive an overview and demonstration of the Information Management System (IMS). The workshop will include a hands-on session with individual assistance.

2. Ecosystem-Based Management Committee Meeting: June 11, 2012, 1:30 p.m. Until 3:30 p.m.

The Ecosystem-Based Management Committee will receive Advisory Panel (AP) reports, review the decision document for Comprehensive Ecosystem-Based Amendment 3 (CE–BA 3), provide recommendations relative to management measures for Coral Habitat Areas of Particular Concern (HAPC), and public hearings. The Committee will receive an update on ecosystem activities and provide direction to staff.

3. Dolphin Wahoo Committee Meeting: June 11, 2012, 3:30 p.m. Until 4:30 p.m.

The Dolphin Wahoo Committee will receive a report on the status of catches versus Annual Catch Limits (ACLs), as well as a report from the Dolphin Wahoo AP.

4. Shrimp Committee Meeting: June 11, 2012, 4:30 p.m. Until 6 p.m.

The Shrimp Committee will receive a presentation on the Endangered Species Act listing of Atlantic sturgeon and on the Biological Opinion of the South Atlantic Shrimp Fishery. The Committee will also receive reports from its advisory panels and from the Shrimp Review Panel. The Committee will review actions and alternatives in Shrimp Amendment 9, which would expedite the closure process during severe cold events in order to protect overwintering shrimp populations and would revise the Minimum Stock Size Threshold (MSST) proxy for pink shrimp. The Committee is scheduled to recommend the amendment for public hearings, take action as appropriate and provide guidance to staff.

5. Snapper Grouper Committee Meeting: June 12, 2012, 8:30 a.m. Until 5:30 p.m. and June 13, 2012, 8:30 a.m. Until 12 Noon

The Snapper Grouper Committee will receive updates on: Oculina research activities; the status of catches versus quotas for species under quota management (including all snapper grouper species included in the Comprehensive ACL Amendment); the status of the new Southeast Fisheries Science Center (SEFSC) Quota

Monitoring Program; and the status of the delinquent logbook review. The Committee will address any necessary actions as the result of these reports. The Committee will receive updates on the status of amendments under Secretarial Review and reports from the Council's Scientific and Statistical Committee (SSC) and Snapper Grouper AP. The Committee will discuss the resubmittal of Action 4 in Snapper Grouper Amendment 18A addressing the transferability of black sea bass endorsements, and recommend the resubmitted action for formal review. The Committee will also review Amendment 18B that includes measures to limit participation in the commercial golden tilefish fishery, modify the amendment as necessary, and provide recommendations for submission for Secretarial review. The Committee will also review available information and recommendations relative to creating Marine Protected Areas (MPAs) and/or HAPCs for speckled hind and warsaw grouper, select preferred alternatives, and provide recommendations as appropriate for public hearings as part of CE–BA 3. The Committee will also receive a presentation of the Marine Resources Monitoring Assessment and Prediction Program's (MARMAP) fishery-independent catch per unit effort (CPUE), discuss the potential for reopening a limited red snapper fishery via an Emergency Rule, discuss potential changes in black sea bass management, and provide recommendations as appropriate.

6. Ad Hoc Data Collection Committee Meeting: June 13, 2012, 1:30 p.m. Until 5 p.m.

The Ad Hoc Data Collection Committee will receive presentations on quota monitoring/dealer reporting and tracking harvested fish in Florida and NMFS commercial and recreational quotas/ACL monitoring and projections. The Committee will review the joint Gulf and South Atlantic Council Generic Dealer Amendment and provide recommendations. The Committee will also review and discuss actions relative to data collection in CE–BA 3 and provide recommendations for public hearings.

Note: There will be an informal public question and answer session with the NMFS Regional Administrator and the Council Chairman on June 13, 2012, beginning at 5:30 p.m.

7. King and Spanish Mackerel Committee Meeting: June 14, 2012, 8:30 a.m. Until 12 Noon

The King and Spanish Mackerel Committee will receive updates on the status of catches versus ACLs for king mackerel, Spanish mackerel and cobia as well as a report from the Mackerel AP. The Committee will review and discuss the joint Gulf and South Atlantic Mackerel Amendment 19 pertaining to permits and tournament sale requirements, Amendment 20 regarding boundaries and transit provisions and provide recommendations for public hearings. The Committee will review and discuss the South Atlantic Mackerel Framework, and provide guidance to staff.

8. Advisory Panel Selection Committee Meeting: June 14, 2012, 1:30 p.m. Until 2:30 p.m. (Closed Session)

The Advisory Panel Selection Committee will review advisory panel applications and develop recommendations for appointments.

9. Scientific and Statistical Selection Committee Meeting: June 14, 2012, 2:30 p.m. Until 3:30 p.m. (Closed Session)

The Scientific and Statistical Selection Committee (SSC) will review SSC applications and develop recommendations for appointments. The Committee will also review SSC policies.

10. Golden Crab Committee Meeting: June 14, 2012, 3:30 p.m. Until 4:30 p.m.

The Golden Crab Committee will review the ''Expression of Interest'' responses for catch shares from golden crab fishermen as well as Amendment 6, pertaining to establishing a catch share program for the commercial golden crab fishery. The Committee will modify the amendment as appropriate and provide recommendations relative for submission of the amendment for Secretarial review.

11. Law Enforcement Committee Meeting: June 14, 2012, 4:30 p.m. Until 5:30 p.m.

The Law Enforcement Committee will: Review law enforcement efforts in the Deepwater MPAs; and will receive briefings from the NOAA Office of Law Enforcement and the U.S. Coast Guard. The Committee will discuss issues as appropriate and select the 2011 Law Enforcement Officer of the Year.

Note: A formal public comment session will be held on June 14, 2012, beginning at 5:30 p.m., on: Snapper Grouper Amendment 18A, Action 4 (transferability of black sea bass endorsements); Snapper Grouper Amendment 18B (golden tilefish); and Golden Crab Amendment 6 (catch shares); followed by comment on any other item on the agenda.

12. SEDAR Committee Meeting: June 15, 2012, 8 a.m. Until 9 a.m.

The SEDAR Committee will receive an overview of SEDAR activities and a presentation on the SSC Only Reliable Catch Stocks (ORCS) workshop. The Committee will review, discuss and approve the SAFMC Research Prioritization Plan and develop SEDAR Steering Committee recommendations for Council SEDAR members and staff.

Council Session: June 15, 2012, 9:30 a.m. Until 4 p.m.

From 9 a.m. until 9:30 a.m., the Council will call the meeting to order, adopt the agenda, and approve the March 2012 meeting minutes.

From 9:30 a.m. until 10:30 a.m., the Council will receive a report from the Snapper Grouper Committee, approve the resubmittal of Amendment 18A/Action 4 and Amendment 18B for formal Secretarial review, approve speckled hind/warsaw grouper actions in CE–BA 3 for public hearing, consider other Committee recommendations and take action as appropriate.

From 10:30 a.m. until 11 a.m., the Council will receive a report from the Golden Crab Committee, approve Amendment 6 for formal Secretarial review, consider recommendations and take action as appropriate.

From 11 a.m. until 11:15 a.m., the Council will receive a report from the Ecosystem-Based Management Committee, approve Coral HAPC actions in CE–BA 3 for public hearing, consider other Committee recommendations and take action as appropriate.

From 11:15 a.m. until 11:30 a.m., the Council will receive a report from the Dolphin Wahoo Committee, consider other Committee recommendations and take action as appropriate.

From 11:30 a.m. until 11:45 a.m., the Council will receive a report from the Shrimp Committee, approve Amendment 9 for public hearing, consider other Committee recommendations and take action as appropriate.

From 11:45 a.m. until 12 noon, the Council will receive a report from the Ad Hoc Data Collection Committee, approve data actions in CE–BA 3 for public hearing, consider other Committee recommendations and take action as appropriate.

From 1 p.m. until 1:15 p.m., the Council will receive a legal briefing on litigation. (Closed Session)

From 1:15 p.m. until 1:30 p.m., the Council will receive a report from the King and Spanish Mackerel Committee, approve Amendments 19 and 20 for public hearings, consider other Committee recommendations and take action as appropriate.

From 1:30 p.m. until 1:45 p.m., the Council will receive a report from the Advisory Panel Selection Committee, review applications and make appointments, consider other Committee recommendations and take action as appropriate.

From 1:45 p.m. until 2 p.m., the Council will receive a report from the SSC Selection Committee, review applications and make appointments, consider other Committee recommendations and take action as appropriate.

From 2 p.m. until 2:15 p.m., the Council will receive a report from the Law Enforcement Committee, select the Law Enforcement Officer of the Year, consider other Committee recommendations and take action as appropriate.

From 2:15 p.m. until 2:30 p.m., the Council will receive a report from the SEDAR Committee, consider Committee recommendations and take action as appropriate.

From 2:30 p.m. until 4 p.m., the Council will receive presentations and status reports from the NOAA Southeast Regional Office (SERO) and the NMFS SEFSC, review agency and liaison reports, and discuss other business, including upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal final Council action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Except for advertised (scheduled) public hearings and public comment, the times and sequence specified on this agenda are subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by June 5, 2012.

Dated: May 21, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–12677 Filed 5–24–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC043

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Research Set-Aside Committee, Mackerel, Squid, and Butterfish Committee, and its Surfclam, Ocean Quahog Committee will hold public meetings.

DATES: The meetings will be held Monday June 11, 2012 through Thursday, June 14, 2012. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Hilton New York, 1335 Avenue of the Americas, New York, NY 10019; telephone: (212) 586–7000.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION:

Monday, June 11, 2012

The Research Set-Aside Committee (RSA) and NMFS will meet in a closed session from 1 p.m. until 3:30 p.m.

The Research Set-Aside Committee will meet from 3:30 p.m. until 5 p.m.

Tuesday, June 12, 2012

The Mackerel, Squid, and Butterfish Committee will meet from 9 a.m. until 12 p.m.

The Council will convene at 1 p.m.

The Mackerel, Squid, and Butterfish Committee will meet as a Committee of the Whole from 1 p.m. until 3 p.m. (2013 Specifications).

A NY Energy Initiatives Presentation will be held from 3 p.m. until 3:30 p.m.

Bureau of Energy Management (BOEM) presentations will be held from 3:30 p.m. until 4:30 p.m.

A discussion of Monkfish Amendment 6 will be held from 4:30 p.m. until 5 p.m.

The Listening Session will be held from 5 p.m. until 6 p.m.

Wednesday, June 13, 2012

Visioning will be discussed from 9 a.m. until 12 p.m.

The Mackerel, Squid and Butterfish Committee will meet as a Committee of the Whole (Amendment 14) from 1 p.m. until 3 p.m.

The Surfclam and Ocean Quahog Committee will meet as a Committee of the Whole from 3 p.m. until 4 p.m.

A Highly Migratory Species (HMS) presentation will be held from 4 p.m. until 5 p.m.

Thursday, June 14, 2012

A National Standard 1 Guidelines discussion will be held from 9 a.m. until 9:30 a.m.

A clean Ocean Action presentation will be held from 9:30 a.m. until 10 a.m.

A Standardized Bycatch Research Methodology (SBRM) presentation will be held from 10 a.m. until 10:30 a.m.

The Council will hold its regular Business Session from 10:30 a.m. until 12:30 p.m. to approve the April minutes, receive Organizational Reports, the New England Council Liaison Report, Executive Director's Report, Science Report, Committee Reports, and conduct any continuing and/or new business.

Agenda items by day for the Council's Committees and the Council itself are:

On Monday, June 11—The RSA Committee and NMFS will meet in a closed session to review the 2013 RSA proposals. The RSA will review staff recommendations for changes to the RSA program.

On Tuesday, June 12—the Mackerel, Squid, and Butterfish Committee will select Amendment 14 Alternatives to recommend to the Council. The Mackerel, Squid, and Butterfish Committee will meet a Committee of the Whole to develop 2013 quota specifications and associated management measures and review Scientific and Statistical Committee (SSC) recommendations on 2012 butterfish Allowable Biological Catch (ABC) and take any needed actions. Greg Capobianco of the NY Department of State will provide a NY Energy Initiatives presentation. There will be two presentations by Kim Skrupsky of Bureau of Energy Management (BOEM) and Dr. Christopher Clark of Cornell on seismic testing impacts associated with

BOEM's Atlantic Geological and Geophysical Programmatic EIS. The Council will respond to a proposal to remove Individual Transferable Quotas (ITQs) from Monkfish Amendment 6. During the Listening Session a presentation on the effects of climate on fisheries resources of the Mid-Atlantic region will be presented by Jon Hare of NMFS.

On Wednesday, June 13—Discussion on the background and context of the Visioning project, review the objectives and methods for stakeholder data gathering presentation and discussion of stakeholder data report, and the proposal for the next phase of the visioning and strategic plan. The Mackerel, Squid, and Butterfish Committee will meet as a Committee of the Whole to select Amendment 14 alternatives to recommend to NMFS for implementation. The Surfclam and Ocean Quahog Committee will meet as a Committee of the Whole to review and consider changes to the 2013 quota specifications for surfclams and ocean quahogs and update PSP, data collection, 2012 survey, and stock assessment. There will be a presentation by Tom Warren of NMFS on HMS Amendment 7 Scoping (Bluefin tuna management).

On Thursday, June 14—NMFS proposal to review/revise National Standard 1 Guidelines will be discussed. There will be a presentation by Cindy Zipf, regarding Clean Ocean Action. Doug Potts of NMFS will provide a presentation on SBRM alternatives. The Council will hold its regular Business Session to approve the April 2012 minutes, receive Organizational Reports, the New England Council Liaison Report, the Executive Director's Report, Science Report, Committee Reports, and conduct any continuing and/or new business.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: May 21, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–12684 Filed 5–24–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC024

Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Navy Training Exercises in Three East Coast Range Complexes

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

ACTION: Notice; issuance of three modified Letters of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that NMFS has issued three Letters of Authorization (LOAs) to take marine mammals by harassment, incidental to the U.S. Navy's training activities within the Virginia Capes (VACAPES), Jacksonville (JAX), and Cherry Point (CHPT) Range Complexes to the Commander, U.S. Fleet Forces Command, 1562 Mitscher Avenue, Suite 250, Norfolk, VA 23551–2487 and persons operating under his authority.

DATES: Effective from June 5, 2012, through June 4, 2014.

ADDRESSES: Copies of the Navy's request for LOAs, the Navy's 2011–2012 marine mammal monitoring report and the Navy's 2011–2012 exercise report are available by writing to Tammy C. Adams, Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, by telephoning the contact listed here (SEE FOR **FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS (301) 724–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a military readiness activity if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

Regulations governing the taking of marine mammals incidental to the U.S. Navy's training activities at the VACAPES, JAX, and CHPT Range Complexes were published on June 15, 2009 (VACAPES: 74 FR 28328; JAX: 74 FR 28349; CHPT: 74 FR 28370) and remain in effect through June 4, 2014. They are codified at 50 CFR part 218 subpart A (VACAPES), subpart B (JAX), and subpart C (CHPT). These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the Navy's range complex training exercises. For detailed information on these actions, please refer to the June 15, 2009 **Federal Register** Notices and 50 CFR part 218 subparts A, B, and C.

An interim final rule was issued on May 26, 2011 (76 FR 30552) to allow certain flexibilities concerning Navy's training activities at VACAPES and JAX, and LOAs were issued to the Navy on June 1, 2011 (76 FR 33266; June 8, 2011). These LOAs were subsequently modified on January 6, 2012, to allow takes of marine mammals by using time-delayed firing devices (*i.e.,* detonation is controlled by a time-delaying devices instead of being promptly executed) with improved monitoring and mitigation measures (77 FR 2040; January 13, 2012).

On February 12, 2012, NMFS published a final rule (77 FR 4917) that allows for the issuance of multi-year LOAs, as long as the regulations governing such LOAs are valid, and finalized the May 26, 2011 interim rule.

Summary of LOA Request

On January 19, 2012, the Navy submitted an application to take marine mammals incidental to training activities at VACAPES, JAX, and CHPT Range Complexes under the regulations issued on June 15, 2009 (VACAPES: 74 FR 28328; JAX: 74 FR 28349; CHPT: 74 FR 28370) and modified on February 12, 2012 (77 FR 4917). The application requested authorization for two years, to take marine mammals by harassment, incidental to proposed training activities that involve the use of

underwater detonations and the use of time-delay firing devices, as described in the January 13, 2012 **Federal Register** notice announcing the issuance of modified LOAs (77 FR 2040).

Summary of Activity Under the 2011 VACAPES, JAX, and CHPT LOAs

As described in the Navy's Annual Range Complex Exercise Report for the NAVSEA VACAPES, JAX, and CHPT Range Complexes, between January 2, 2011, and January 1, 2012, the training activities conducted by the Navy were within the scope and amounts contemplated by the final rule and identified by the 2011 LOAs. A detailed description of the Navy's 2011 training activities can be found in the exercise reports posted on NMFS Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

Planned Activities for 2012–2014

In 2012 through June 2014, the Navy expects to conduct the same type and amount of training activities identified in the final rules and 2011 LOAs, including the use of time-delay firing devices. No modification is proposed by the Navy for its planned 2012–2014 activities.

Estimated Take for 2012–2014

The estimated takes for the Navy's proposed training activities are the same as those contemplated in the regulations and authorized in the 2011 LOAs.

Summary of Monitoring, Reporting, and other requirements under the 2011 LOA

Annual Exercise Report

The Navy submitted its 2011 exercise reports within the required timeframes and it is posted on the NMFS Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. NMFS has reviewed the report and it contains the information required by the 2011 LOAs. The reports list the amount of training activities conducted between January 2, 2011 and January 1, 2012.

Specifically, at the VACAPES Range Complex, the Navy conducted 14 5-lb charge, 28 10-lb charge, and 3 20-lb charge mine exercise (MINEX); 5 Mk-82 (500 lb bomb) Air-to-Surface Bombing Exercises (BOMEX); 28 AGM–114 (Hellfire missile) exercises and 1 AGM–65 (Maverick missile) exercise (MISSIEX); and 13 5′ explosive Naval gunfire exercises (FIREX with IMPASS). No AGM–88 (HARM missile) and MK–83/GBU–32 (1,000 lb bomb) exercise was conducted during the reporting period.

At the JAX Range Complex, the Navy conducted 9 AGM–114 (Hellfire missile) exercises and 3 AGM–65 (Maverick missile) exercises; and 6 FIREX with IMPASS. No MINEX and no Small Arms Training was conducted during the reporting period.

At the CHPT Range Complex, the Navy conducted only one FIREX with IMPASS. No other exercise (MINEX and MISSIEX) was conducted.

Monitoring and Annual Monitoring Report

The Navy submitted their 2011 annual marine mammal monitoring reports covering the period from January 2, 2011, through January 1, 2012, and the reports are posted on NMFS Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. The Navy conducted the monitoring required by the 2011 LOAs and described in the Monitoring Reports.

For training exercises at the VACAPES Range Complex, the Navy implemented vessel and aerial surveys and deployed passive acoustic monitoring (PAM) devices. The monitoring efforts for 2011 were conducted within the mine neutralization exercise (MINEX) W–50 box in conjunction with a MINEX event, and the Firing Exercise (FIREX) 7C/7D training boxes in junction with a FIREX event.

A vessel survey was conducted on July 14, 2011, in association with a FIREX with IMPASS training event off the coast of Virginia. Four marine mammal observers (MMOs) were stationed aboard a Navy vessel. No marine mammal species were sighted. Vessel surveys were also conducted in association with a MINEX training event off the coast of Virginia Beach, Virginia. Seven MMOs were stationed aboard a Navy vessel. Surveys were conducted on August 7–9, 2011 before, during, and after the training event. During the 3-day monitoring trip, a total of 19 bottlenose dolphin sightings including approximately 91–149 individuals were recorded by the Navy MMOs. No injuries or mortalities of marine mammals were observed during the MINEX training. No marine mammal was sighted between 30 minutes pre-detonation and 30 minutes post-detonation. In addition, aerial surveys were conducted in association with a FIREX training event with IMPASS off the coast of Virginia. Line-transect surveys were conducted on July 13–15, 2011, before, during, and after the training event. Three sightings of marine mammals were made during the 1-day pre-FIREX survey; two sightings of marine mammals were recorded throughout the 1-day during FIREX survey period; and four sightings of marine mammals were recorded during the 1-day post-FIREX survey. No injuries or mortalities of marine mammals were observed during the FIREX training event on July 14. No live explosive rounds were used during the FIREX training. Therefore, no animals were exposed during this VACAPES FIREX with IMPASS training event. Finally, acoustic buoys were deployed on August 7 and 8, 2011, to monitor marine mammal vocalization activity before, during, and after the MINEX event. Six buoys were deployed on both days. Total successful recording time was approximately 38.3 hours, which included 22.75 hours on August 7 and 15.5 hours on August 8. A preliminary analysis of the acoustic recordings was performed on the August 8 data using 1-minute spectrogram window, which showed some odontocete whistles. Based on earlier sightings from that day, the Navy stated that the vocalizations are most likely from bottlenose dolphins.

For training exercises at the JAX Range Complex, aerial surveys were conducted in association with a FIREX training event with IMPASS off the coast of Georgia and Florida. Line-transect surveys were conducted on September 19–21, 2011, before, during, and after the training event. No sightings of marine mammals were recorded during these surveys.

For training exercises at the CHPT Range Complex, aerial surveys were conducted in association with a FIREX with IMPASS training event off the coast of North Carolina. The pre-FIREX line-transact survey on November 29, 2011, was cancelled due to poor weather and low ceiling conditions. No sightings of marine mammals were recorded during the 1.4 hours of total survey flight time (includes on-effort and off-effort intervals) within the survey area covering a 1-day period (November 30, 2011). One large unidentified whale was briefly seen approximately 18 km south of Lookout Bight, North Carolina (approximately 100 km outside of the survey area) on the transit back to the airport.

Adaptive Management

In general, adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) if monitoring efforts should be modified if new information suggests that such modifications are appropriate. All of the 5-year rules and LOAs issued to the Navy include an adaptive management component, which includes an annual meeting between NMFS and the Navy.

NMFS and the Navy conducted an adaptive management meeting in October, 2011, which representatives from the Marine Mammal Commission participated in, wherein we reviewed the Navy monitoring results through August 1, 2011, discussed other Navy research and development efforts, and discussed other new information that could potentially inform decisions regarding Navy mitigation and monitoring.

No changes were requested from the Navy for the 2012–2014 LOAs for VACAPES, JAX, and CHPT Range Complexes.

Authorization

Since there are no changes in the Navy's proposed training activities at the VACAPES, JAX, and CHPT Range Complexes, NMFS' determination that the Navy's training activities at these Range Complexes will have no more than a negligible impact on the affected species or stocks of marine mammals in the action area, as described in the original regulations and the interim regulations, is still valid. There is no subsistence use of marine mammals that could potentially be impacted by the Navy's training activities at the VACAPES, JAX, and CHPT Range Complexes. Further, the level of taking authorized in June 2012 through June 2014 for the Navy's VACAPES, JAX, and CHPT Range Complexes training activities is consistent with our previous findings made for the total taking allowed under the regulations and interim regulations for these Range Complexes. Accordingly, NMFS has issued three two-year LOAs for Navy's training activities conducted at the VACAPES, JAX, and CHPT Range Complexes from June 5, 2012, through June 4, 2014.

Dated: May 21, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–12778 Filed 5–24–12; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* June 25, 2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On March 16, 2012 (77 FR 15736) and March 23, 2012 (77 FR 17035), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products

Product Name/NSN: Parts Kit, Soft Top Troop Area Enclosure, Humvee, Tan/ 2540–01–329–8073
NPA: Montgomery County Chapter, NYSARC, Inc., Amsterdam, NY.
Contracting Activity: Defense Logistics Agency Land and Maritime, Columbus, OH.
Coverage: C–List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Land and Maritime, Columbus, OH.

Product Names/NSNs:
Ice Melt/De-Icer, 10 lbs./6850–01–598–1946
Ice Melt/De-Icer, 20 lbs./6850–01–598–1926
Ice Melt/De-Icer, 40 lbs./6850–01–598–1933
NPA: Bosma Industries for the Blind, Inc., Indianapolis, IN.
Contracting Activity: Defense Logistics Agency Aviation, Richmond, VA.
Coverage: C–List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Aviation, Richmond, VA.

Service

Service Type/Locations: Facilities Maintenance Services, Defense Information Systems Agency, JITC, 2001 Brainard Rd., Building 57305, Fort Huachuca, AZ.
3341 Strauss Avenue, Building 900, Indian Head, MD.
4465 Indian Head Highway, Ely Building, Indian Head, MD.
6910 Cooper Avenue, Fort Meade, MD.
NPAs: Beacon Group SW., Inc., Tucson, AZ (Prime Contractor.
The Centers for Habilitation/TCH, Tempe, AZ (Subcontractor).
Didlake, Inc., Manassas, VA (Subcontractor).
Contracting Activity: defense information systems agency (DISA), DITCO–FT HUACHUCA PL65, Fort Huachuca, AZ.

Patricia Briscoe,

Deputy Director, Business Operations, (Pricing and Information Management).

[FR Doc. 2012–12756 Filed 5–24–12; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from the Procurement List.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes a service previously provided by such agency.

Comments Must Be Received on or Before: June 25, 2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

Extreme Cold Weather Sleep System (ECW)

NSN: 8415–MD–001–0270—Module, Extreme Cold Weather Sleeping Bag (ECW M) US Marine Corps, One size fits all.

NSN: 8415–MD–001–0267—Bag, Sleeping, Outer, Extreme Cold Weather (ECW OSB) US Marine Corps, One size fits all.

NPA: ReadyOne Industries, Inc., El Paso, TX.

Contracting Activity: DEPT OF THE ARMY, W6QK ACC–APG NATICK, NATICK, MA.

Coverage: C-List for 100% of the requirement of the Department of the Army, as aggregated by the Army Contracting Command—Aberdeen Proving Ground, Natick Contracting Division, Natick MA.

NSN: 1670–01–598–5067—Containerized Unitized Bulk Equipment (CUBE) Lifeliner, Water Kit.

NSN: 1670–01–598–5071—Containerized Unitized Bulk Equipment (CUBE) Lifeliner, Fuel Kit.

NPA: Peckham Vocational Industries, Inc., Lansing, MI.

Contracting Activity: Dept of the Army, W6QK ACC–APG Natick, Natick, MA.

Coverage: C–List for 50% of the requirement of the Department of the Army, as aggregated by the Army Contracting Command—Aberdeen Proving Ground, Natick Contracting Division, Natick MA.

Services

Service Type/Location: Laundry and Dry Cleaning Service, Buckley Air Force Base Lodging & Medical Facilities, Buckley AFB, CO.

NPA: Goodwill Industrial Services Corporation, Colorado Springs, CO.

Contracting Activity: Dept of the Air Force, FA2543 460 CONS LGC, Buckley AFB, CO.

Service Type/Location: Kitting Service—Defense High Threat Training Course (Offsite: 1102 Monticello Road, Charlottesville, VA), Department of State, 2216 Gallows Road, Dunn Loring, VA.

NPA: Virginia Industries for the Blind, Charlottesville, VA

Contracting Activity: Department of State, Dunn Loring, VA.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 USC 8501–8506) in connection with the service proposed for deletion from the Procurement List.

End of Certification

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Janitorial/Grounds Maintenance, U.S. Army Reserve Center: Mt. View, Mt. View, CA.

NPA: Social Vocational Services, Inc., San Jose, CA.

Contracting Activity: Dept of the Army, W40M Natl Region Contract OFC, Fort Belvoir, VA.

Patricia Briscoe,

Deputy Director, Business Operations, (Pricing and Information Management).

[FR Doc. 2012–12755 Filed 5–24–12; 8:45 am]

BILLING CODE 6353–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), has submitted a public information collection request (ICR) entitled Process and Impact Evaluation of the Minnesota Reading Corps (MRC) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Scott Richardson, at (202) 606–6903 or email to *srichardson@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by email to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the CNCS, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Propose ways to enhance the quality, utility, and clarity of the information to be collected; and

• Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on March 9, 2012. This comment period ended May 8, 2012. No public comments were received from this Notice.

Description: CNCS is seeking approval of the MRC feasibility and process assessment survey instruments, which are used by beneficiaries of and participants in the structured preK-3 literacy tutoring program implemented by AmeriCorps members serving in Minnesota schools and preschool centers. This project will deepen CNCS's understanding of the MRC model and the program's impact on tutees' educational and other outcomes. This project will also assess the effect of the Minnesota Reading Corps on AmeriCorps member outcomes.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Process and Impact Evaluation of the Minnesota Reading Corps.

OMB Number: TBD.

Agency Number: None.

Affected Public: Current beneficiaries of and participants in the Minnesota Reading Corps program.

Total Respondents: 2895.

Frequency: One-time.

Average Time per Response: 45 minutes.

Estimated Total Burden Hours: 2171.25 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: May 22, 2012.

Marlene Zakai,

Deputy Chief of Staff for Management.

[FR Doc. 2012–12836 Filed 5–24–12; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces; Notice of Meeting

AGENCY: Department of Defense, Office of the Assistant Secretary of Defense.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal Advisory Committee meeting of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces (subsequently referred to as the Task Force) will take place.

DATES: Wednesday, June 13, 2012–Friday, June 15, 2012, from 8:00 a.m. to 5:00 p.m. EDT, each day.

ADDRESSES: Crowne Plaza Old Town Alexandria, 901 N. Fairfax St., Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Mail Delivery service through Recovering Warrior Task Force, Hoffman Building II, 200 Stovall St., Alexandria, VA 22332–0021 ''Mark as Time Sensitive for June Meeting''. Emails to *rwtf@wso.whs.mil.* Denise F. Dailey, Designated Federal Officer; Telephone (703) 325–6640. Fax (703) 325–6710.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is for the Task Force Members to prepare and vote on recommendations and time permitting, discuss the remaining sections of the annual report.

Agenda: (Please refer to *http://dtf.defense.gov/rwtf/meetings.html]* for the most up-to-date meeting information).

Day One: Wednesday, June 13, 2012

8 a.m. Preparatory Session Breakout Groups (Not Open to the Public) Task Force members will prepare position papers and presentations to the Task Force.
9 a.m. Public Presentation Forum. (Open to the public)
9:30 a.m. Break.
9:45 a.m. Task Force Members Review of the Preparatory Session Work. (Open to the Public)
12 p.m. Lunch.
1 p.m. Continue Preparatory Session Breakout Groups. (Not Open to the Public)
2 p.m. Consolidated Voting Session (Open to the Public) Return for review of preparatory sessions' work and begin a recommendation voting session.
5 p.m. Closing.

Day Two: Thursday, June 14, 2012.

8 a.m. Consolidated Voting Session. (Open to the public)
12 p.m. Lunch.
1 p.m. Consolidated Voting Session. (Open to the public)
2 p.m. Consolidated Voting Session. (Open to the Public)
5 p.m. Closing.

Day Three: Friday, June 15, 2012. (All Open to the Public)

8 a.m. If voting has been completed, the Task Force will review next year's recommended installation visits and topics. If voting is not complete, a voting session will continue until complete.
10:15 a.m. Break.
10:30 a.m. Establish matrix breakout for each recommendation. Subject to voting session completion.
12 p.m. Lunch.
1 p.m. Review best practices enclosure. Subject to voting session completion.
2 p.m. Review Executive Summary. Subject to voting session completion
3 p.m. Review Appendices. Subject to voting session completion..
5 p.m. Closing

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces about its mission and functions. If individuals are interested in making an oral statement during the Public Forum time period, a written statement for a presentation of two minutes must be submitted through the contact information in **FOR FURTHER INFORMATION CONTACT** and must identify it is being submitted for an oral presentation by the person making the submission. Identification information must be provided and at a minimum must

include a name and a phone number. Individuals may visit the Task Force Web site at *http://dtf.defense.gov/rwtf/* to view the Charter. Individuals making presentations will be notified by Friday, June 8, 2012. Oral presentations will be permitted only on Wednesday, June 13, 2012 from 9–9:30 a.m. EDT before the Task Force. The number of oral presentations will not exceed ten, with one minute of questions available to the Task Force members per presenter. Presenters should not exceed their two minutes.

Written statements in which the author does not wish to present orally may be submitted at any time or in response to the stated agenda of a planned meeting of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces.

All written statements shall be submitted to the Designated Federal Officer for the Task Force through the contact information in **FOR FURTHER INFORMATION CONTACT**, and this individual will ensure that the written statements are provided to the membership for their consideration.

Statements, either oral or written, being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed in **FOR FURTHER INFORMATION CONTACT** no later than 5 p.m. EDT, Wednesday, June 6, 2012 which is the subject of this notice. Statements received after this date may not be provided to or considered by the Task Force until its next meeting. Please mark mail correspondence as ''Time Sensitive for June Meeting.''

The Designated Federal Officer will review all timely submissions with the Task Force Co-Chairs and ensure they are provided to all members of the Task Force before the meeting that is the subject of this notice.

Reasonable accommodations will be made for those individuals with disabilities who request them. Requests for additional services should be directed to Heather Jane Moore, (703) 325–6640, by 5 p.m. EDT, Wednesday, June 6, 2012.

Dated: May 21, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–12662 Filed 5–24–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board; Federal Advisory Committee Meeting Notice

AGENCY: Office of the Under Secretary of Defense (Policy), Department of Defense.

ACTION: Federal Advisory Committee Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) the Department of Defense announces the following Federal advisory committee meeting of the Defense Policy Board (hereafter referred to as ''the DPB'').

ADDRESSES: The Pentagon, 2000 Defense Pentagon, Washington, DC 20301–2000.

DATES: From Tuesday, June 19, 2012 (8 a.m. to 6 p.m.) through Wednesday, June 20, 2012 (7:30 a.m. to 10:15 a.m.) the DPB will hold a quarterly meeting under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine Act of 1976 (5 U.S.C. 552b, as amended).

FOR FURTHER INFORMATION CONTACT: Ms. Ann Hansen, 2000 Defense Pentagon, Washington, DC 20301–2000. Phone: (703) 571–9232.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To obtain, review and evaluate classified information related to the DPB's mission to advise on: (a) Issues central to strategic DoD planning; (b) policy implications of U.S. force structure and force modernization and on DoD's ability to execute U.S. defense strategy; (c) U.S. regional defense policies; and (d) other research and analysis of topics raised by the Secretary of Defense, the Deputy Secretary or the Under Secretary of Defense for Policy.

Meeting Agenda: Beginning at 8:30 a.m. on June 19 through the end of the meeting on June 20, the DPB will have secret through top secret (SCI) level discussions on national security issues regarding North Korea.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Acting Under Secretary of Defense (Policy), in consultation with the Office of the Department of Defense FACA Attorney, has determined in writing that this meeting be closed to the public because the discussions fall under the purview of Title 5, United States Code, Section § 552b(c)(1) and are so inextricably intertwined with unclassified material that they cannot reasonably be segregated into separate discussions without disclosing secret or classified material.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the DPB at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the DPB's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the GSA's FACA *Database—https://www.fido.gov/facadatabase/public.asp.* Written statements that do not pertain to a scheduled meeting of the DPB may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all committee members.

Dated: May 21, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–12665 Filed 5–24–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors Meeting

ACTION: Notice of Meeting of the Air University Board of Visitors.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the Air University Board of Visitors' meeting will take place on Tuesday, 24 July 2012, from 1:30p.m. to approximately 4 p.m. The meeting will be a conference call meeting. Please contact Mrs. Diana Bunch, Designated Federal Officer, at (334) 953–4547, for further information to access the conference call. The purpose and agenda of this meeting is to provide independent advice and recommendations on matters pertaining to the educational policies and programs of Air University and for the

AFIT Subcommittee to discuss their recent subcommittee meeting. In addition, the Air University Board of Visitors' fall meeting will take place on Monday, November 5th, 2012, from 8 a.m. to 5 p.m. and Tuesday, November 6th, 2012, from 8 a.m. to 5 p.m. The meeting will be held in the Air University Commander's Conference Room located in building 800 at Maxwell Air Force Base, AL. The purpose of this meeting is to provide independent advice and recommendations on matters pertaining to the educational, doctrinal, and research policies and activities of Air University. The agenda will include topics relating to the policies, programs, and initiatives of Air University educational programs. Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155 all sessions of the Air University Board of Visitors' meeting will be open to the public. Any member of the public wishing to provide input to the Air University Board of Visitors should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Air University Board of Visitors until its next meeting. The Designated Federal Officer will review all timely submissions with the Air University Board of Visitors' Board Chairperson and ensure they are provided to members of the Board before the meeting that is the subject of this notice. Additionally, any member of the public wishing to attend this meeting should contact either person listed below at least five calendar days prior to the meeting for information on base entry passes.

FOR FURTHER INFORMATION CONTACT: Mrs. Diana Bunch, Designated Federal Officer, Air University Headquarters, 55 LeMay Plaza South, Maxwell Air Force Base, Alabama 36112–6335, telephone (334) 953–4547.

Henry Williams, Jr.,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2012–12735 Filed 5–24–12; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army

Information on Surplus Land at a Military Installation Designated for Disposal: Fort Tilden U.S. Army Reserve Center, New York

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: This amended notice provides information on withdrawal of surplus property at Fort Tilden U.S. Army Reserve Center, New York, New York. This notice amends the Notice published in the **Federal Register** on May 9, 2006 (71 FR 26930).

DATES: Effective May 29, 2012.

FOR FURTHER INFORMATION CONTACT: Headquarters, Department of the Army, Assistant Chief of Staff for Installation Management, Base Realignment and Closure (BRAC) Division, Attn: DAIM–BD, 600 Army Pentagon, Washington, DC 20310–0600, (703) 545–1318. For information regarding the specific property listed below, contact the Army BRAC Division at the mailing address above or at *ArmyBRAC2005@hqda.army.mil.*

SUPPLEMENTARY INFORMATION: In 2005, Fort Tilden U.S. Army Reserve Center was designated for closure under the authority of the Defense Base Closure and Realignment Act of 1990, Public Law No. 101–510, as amended. On May 9, 2006, the Department of the Army published a Notice in the **Federal Register** (71 FR 26930) that property at this installation was declared surplus to the needs of the Federal Government. Property previously reported as surplus is now required by the Federal Government for park operations at the National Park Service's Gateway National Recreation Area, New York, New York.

Surplus Property List

Deletion: Fort Tilden USARC, 415 State Road and Breezy Point Boulevard.

Authority: This action is authorized by the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510, as amended; 10 U.S.C. 2687 note.

Dated: May 1, 2012.

Paul Cramer,

Acting Deputy Assistant Secretary of the Army, (Installations, Housing and Partnerships).

[FR Doc. 2012–12751 Filed 5–24–12; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place:

1. *Name of Committee:* United States Military Academy Board of Visitors.
2. *Date:* Thursday, June 14, 2012.
3. *Time:* 12:00 p.m.–2:30 p.m. Members of the public wishing to attend the meeting will need to show photo identification in order to gain access to the meeting location. All participants are subject to security screening.
4. *Location:* Jefferson Hall, Haig Room, West Point, NY.
5. *Purpose of the Meeting:* This is the 2012 Summer Meeting of the USMA Board of Visitors (BoV). Members of the Board will be provided updates on Academy issues.
6. *Agenda:* The Academy leadership will provide the Board updates on the following: Physical, Moral/Ethical and Military Programs, to include Summer Training; the Academic Program, Summer Term Academic Program (STAP), Academic Individual Advanced Development (AIAD); the Admissions Program, including the Admissions Process and Class composition goals; and the USMA budget, personnel, and ongoing military construction (MILCON).
7. *Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and the availability of space, this meeting is open to the public. Seating is on a first-come basis.
8. *Committee's Designated Federal Officer or Point of Contact:* Ms. Deadra Ghostlaw, (845) 938–4200, *Deadra.Ghostlaw@us.army.mil.*

SUPPLEMENTARY INFORMATION: By rule, no member of the public attending open meetings will be allowed to present questions from the floor or speak to any issue under consideration by the Board. Any member of the public is permitted to file a written statement with the USMA Board of Visitors. Written statements should be sent to the Designated Federal Officer (DFO) at: United States Military Academy, Office

of the Secretary of the General Staff (MASG), 646 Swift Road, West Point, NY 10996–1905 or faxed to the Designated Federal Officer (DFO) at (845) 938–3214. Written statements must be received no later than five working days prior to the next meeting in order to provide time for member consideration.

FOR FURTHER INFORMATION CONTACT: The Committee's Designated Federal Officer or Point of Contact is Ms. Deadra Ghostlaw, (845) 938–4200, *Deadra.Ghostlaw@us.army.mil.*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–12765 Filed 5–24–12; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Grant Partially Exclusive License of the United States Patent No. 7,824,569 B2, Issued November 2, 2010 Entitled: Soluble Salt Produced From a Biopolymer and a Process for Producing the Salt

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of a prospective partially exclusive license of the following U.S. Patent Application 12/243,084 Filed October 01, 2008 to Green and Grow, LLC for use of the biopolymer product as a natural soil amendment and seed coating that promotes more efficient growth of crops and vegetation.

DATES: Written objections must be filed not later than 15 days following publication of this announcement.

ADDRESSES: United States Army Engineer Research and Development Center, Attn: CEERD–OT (Ms. Bea Shahin), 2902 Newmark Drive, Champaign, IL 61822–1076.

FOR FURTHER INFORMATION CONTACT: Ms. Bea Shahin (217) 373–7234, FAX (217) 373–7210, email *Bea.S.Shahin@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This patent application claims a method by which a biologically-natural material can be produced in bioreactors and transformed for use as a dry solid. The resulting biopolymer material can be used in place of synthetic, petroleum-based polymers for soil amendment applications to achieve increased soil strength, reduced air transport, and decreased soil erosion. During processing, the biopolymer also can be functionalized to improve its adsorption of heavy metals.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–12767 Filed 5–24–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Proposed Reductions in Levels of Service at Locks and Dams on the Ouachita and Black Rivers

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: It is proposed that the hours of availability at Jonesville and Columbia Locks on the Ouachita and Black Rivers will be reduced from the current schedule of 24 hours per day, 7 days per week, 365 days per year to 18 hours per day, separated into two 9 hour periods, 5 a.m. to 2 p.m., and 5 p.m. to 2 a.m., 7 days per week, 365 days per year. It is also proposed that the hours of availability at Felsenthal and H.K. Thatcher Locks on the Ouachita and Black Rivers will be reduced from the current schedule of 24 hours per day, 7 days per week, 365 days per year to 16 hours per day, separated into two 8 hour periods, 5 a.m. to 1 p.m., and 5 p.m. to 1 a.m., 7 days per week, 365 days per year. Constrained funding and fiscal deficit have led to reduced operation and maintenance funding on the Ouachita/Black Waterway. The intended effect is to provide lock availability that matches existing lock usage and to help ensure that minimal dredging needs will be met. Pool levels will not be affected by change of operating hours.

DATES: Proposed implementation date is July 29, 2012.

ADDRESSES: Submit written comments to Mr. James V. Ross, Chief, Operations Division, Vicksburg District, US Army Corps of Engineers, 4155 Clay Street, Vicksburg, MS 39183, or deliver them to Mr. Ross between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday at the address above. Comments received and other materials relevant to the proposed reduction in hours of lock availability will be posted on the Vicksburg District Web site, *http://www.mvk.usace.army.mil/.*

FOR FURTHER INFORMATION CONTACT: Mr. Michael Kidby at the Corps of Engineers Headquarters in Washington, DC, by phone at 202–761–0250.

SUPPLEMENTARY INFORMATION: The legal authority for the regulation governing the use, administration, and navigation of the Ouachita and Black Rivers and Locks is Section 4 of the River and Harbor Act of August 18, 1894 (28 Stat. 362), as amended, which is codified at 33 U.S.C. Section 1. This statute requires the Secretary of the Army to ''prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States'' as the Secretary determines may be required by public necessity. Reference 33 CFR Part 207.249, Ouachita and Black Rivers, Ark. and La., Mile 0.0 to Mile 338.0 (Camden, Ark.) above the mouth of the Black River; the Red River, La., Mile 6.7 (Junction of Red, Atchafalaya and Old Rivers) to Mile 276.0 (Shreveport, La.); use, administration, and navigation.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–12750 Filed 5–24–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Office of Communications and Outreach; Presidential Scholars Program Application

SUMMARY: The United States Presidential Scholars Program is a national recognition program to honor outstanding graduating high school seniors. Candidates are invited to apply based on academic achievements on the Scholastic Aptitude Test (SAT) or American College Testing (ACT) assessments, or on artistic merits based on participation in a national talent search.

DATES: Interested persons are invited to submit comments on or before June 25, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. 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 04813. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should

be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, 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. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Presidential Scholars Program Application.

OMB Control Number: 1860–0504.

Type of Review: Extension.

Total Estimated Number of Annual Responses: 2,600.

Total Estimated Number of Annual Burden Hours: 41,600.

Abstract: The United States Presidential Scholars Program is a national recognition program to honor outstanding graduating high school seniors. Candidates are invited to apply based on academic achievements on the Scholastic Aptitude Test (SAT) or American College Testing (ACT) assessments, or on artistic merits based on participation in a national talent search.

The purpose of the information collection is to compile information about each student candidate who is applying (via the U.S. Presidential Scholars Program Application) to be recognized as a U.S. Presidential Scholar in that year. Candidates are invited to apply via a selection process determined by the Commission on Presidential Scholars. Interested candidates submit applications to be processed and organized for review by a contractor. This information is evaluated first by an independent review committee, which selects some 560 semifinalists, and finally by the Commission on Presidential Scholars, which selects up to 141 Scholars. After this, the information is used for the development of student biographies, press releases, talking points for U.S. Department of Education and White House staff, and/or other publications or purposes. The information obtained through this collection is required to conduct the selection of each year's ''class'' of U.S. Presidential Scholars, as required by Executive Orders 11155 and 12158.

Dated: May 21, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–12786 Filed 5–24–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–327–A]

Application To Export Electric Energy; DC Energy, LLC

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: DC Energy, LLC (DC Energy) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act (FPA).

DATES: Comments, protests, or motions to intervene must be submitted on or before June 25, 2012.

ADDRESSES: Comments, protests, or motions to intervene should be addressed to: Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Christopher.Lawrence@hq.doe.gov,* or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) at 202–586–5260, or by email to *Christopher.Lawrence@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C.824a(e)).

On July 11, 2007, the Department of Energy (DOE) issued Order No. EA–327 authorizing DC Energy to transmit electric energy from the United States to Canada as a power marketer for a five-year term. The current export authority in Order No EA–327 will expire on July 11, 2012. On May 4, 2012, DC Energy filed an application with DOE for renewal of that authority for an additional ten-year term.

In its application, DC Energy states that ''not any of its affiliates own, controls or operates any electric generation, electric distribution or transmission facilities * * *'' DC Energy states that the electric power proposed to be exported to Canada will be purchased from electric utilities and federal power marketing agencies pursuant to voluntary agreements and will be surplus to the system needs of the entities selling the power to DC Energy. The application also indicates that DC Energy is a power marketer authorized by the Federal Energy Regulatory Commission (FERC) to sell energy, capacity, and specified ancillary services at market-based rates.

The existing international transmission facilities to be utilized by DC Energy have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the FERC Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the DC Energy application to export electric energy to Canada should be clearly marked with OE Docket No. 327–A. An additional

copy is to be filed directly with Joelle K. Ogg, General Counsel, DC Energy, LLC, 8065 Leesburg Pike, Sixth Floor, Vienna, VA 22182 and with Andrea Wolfman, Esq., Alston & Bird LLP, 950 F Street NW., Washington, DC 20004. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and if a determination is made by DOE that the proposed action will not have an adverse impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on May 18, 2012.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2012–12761 Filed 5–24–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–321–A, EA–322–A, EA–323–A, EA–324–A and EA–325–A]

Application To Export Electric Energy; Emera Energy Services Subsidiaries

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Five power marketing subsidiaries of Emera Incorporated (Emera) have applied separately to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act (FPA).

DATES: Comments, protests, or motions to intervene must be submitted on or before June 25, 2012.

ADDRESSES: Comments, protests, or motions to intervene should be addressed to: Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Christopher.Lawrence@hq.doe.gov,* or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) at 202–586–5260, or by email to *Christopher.Lawrence@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On April 19, 2007, the Department of Energy (DOE) issued Order No. EA–321, EA–322, EA–323, EA–324 and EA–325, authorizing the Emera Subsidiaries to transmit electric energy from the United States to Canada as power marketers for a five-year term. The current export authorities in Order No EA–321, EA–322, EA–323, EA–324 and EA–325 expired on April 19, 2012. On April 19, 2012, Emera filed five separate applications with DOE for renewal of those authorities for an additional five-year term.

In its application, Emera states that the subsidiaries do ''not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.'' Emera states that the electric power proposed to be exported to Canada will be purchased from electric utilities and federal power marketing agencies pursuant to voluntary agreements and will be surplus to the system needs of the entities selling the power to Emera.

The existing international transmission facilities to be utilized by Emera have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the FERC Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the Emera applications to export electric energy to Canada should be clearly marked with OE Docket No. 321–A, EA–322–A, EA–323–A, EA–324–A or EA–325–A. An additional copy is to be sent to Will Szubielski, Emera Energy Inc., 1223 Lower Water Street, Halifax, Nova Scotia B3J 3S8 and with Bonnie A. Suchman, Esq., Troutman Sanders LLP, 401 9th St. NW., Suite 1000, Washington, DC 20004. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and if a determination is made by DOE that the proposed action will not have an adverse impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on May 18, 2012.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2012–12762 Filed 5–24–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC12–14–000]

Commission Information Collection Activities (FERC–914); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, Cogeneration and Small Power Production—Tariff Filings.

DATES: Comments on the collection of information are due July 24, 2012.

ADDRESSES: You may submit comments (identified by Docket No. IC12–14–000) by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: *Title:* FERC–914, Cogeneration and Small Power Production—Tariff Filings.

OMB Control No.: 1902–0231.

Type of Request: Three-year extension of the FERC–914 information collection requirements with no changes to the current reporting requirements.

Abstract: Section 205(c) of the Federal Power Act (FPA) requires that every public utility have all of its jurisdictional rates and tariffs on file with the Commission and make them available for public inspection, within such time and in such form as the Commission may designate. Section 205(d) of the FPA requires that every public utility must provide notice to the Commission and the public of any changes to its jurisdictional rates and tariffs, file such changes with the Commission, and make them available for public inspection, in such manner as directed by the Commission. In addition, FPA section 206 requires the Commission, upon complaint or its own motion, to modify existing rates or services that are found to be unjust, unreasonable, unduly discriminatory or preferential. FPA section 207 requires the Commission upon complaint by a state commission and a finding of insufficient interstate service, to order the rendering of adequate interstate service by public utilities, the rates for which would be filed in accordance with FPA sections 205 and 206.

In Orders Nos. 671 and 671–A,[1] the Commission revised its regulations that govern qualifying small power production and cogeneration facilities. Among other things, the Commission eliminated certain exemptions from rate regulation that were previously available to qualifying facilities (QFs). New qualifying facilities may need to make tariff filings if they do not meet the new exemption requirements.

FERC implemented the Congressional mandate of the Energy Policy Act of 2005 (EPAct 2005) to establish criteria for new qualifying cogeneration facilities by: (1) Amending the exemptions available to qualifying facilities from the FPA and from PUHCA [resulting in the burden imposed by FERC–914, the subject of this statement]; (2) ensuring that these facilities are using their thermal output in a productive and beneficial manner; that the electrical, thermal, chemical and mechanical output of new qualifying cogeneration facilities is used fundamentally for industrial, commercial, residential or industrial purposes; and there is continuing progress in the development of efficient electric energy generating technology; (3) amending the FERC Form 556[2] to reflect the criteria for new qualifying cogeneration facilities; and (4) eliminating ownership limitations for qualifying cogeneration and small power production facilities. The Commission satisfied the statutory mandate and its continuing obligation to review its policies encouraging cogeneration and small power production, energy conservation, efficient use of facilities and resources by electric utilities and equitable rates for energy customers.

Type of Respondents: New qualifying facilities and small power producers that do not meet Commission exemption criteria.

Estimate of Annual Burden:[3] The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–914 (IC12–14–000): COGENERATION AND SMALL POWER PRODUCTION—TARIFF FILINGS

	Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden (C) × (D)
FPA Section 205 filings	100	1	100	183	18,300
Electric Quarterly Reports (initial)	100	1	100	230	23,000
Electric Quarterly Reports (later)	100	3	300	6	1,800
Change of Status	100	1	100	3	300
Total	N/A	N/A	600	N/A	43,400

The total estimated annual cost burden to respondents is $2,995,016 [43,400 hours ÷ 2,080[4] hours/year = 20.86538 * $143,540/year[5] = $2,995,016].

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

[1] *Revised Regulations Governing Small Power Production and Cogeneration Facilities,* Order No. 671, 71 FR 7852 (2/15/2006), FERC Stats. & Regs. ¶ 31,203 (2006); and *Revised Regulations Governing Small Power Production and Cogeneration Facilities,* Order 671–A, 71 FR 30585 (5/30/2006), in Docket No. RM05–36.

[2] The FERC–556 is cleared separately as OMB Control No. 1902–0075 and is not a subject of this notice.

[3] Burden is defined as 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. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[4] 2080 hours/year = 40 hours/week * 52 weeks/year.

[5] Average annual salary per employee in 2012.

Dated: May 18, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–12700 Filed 5–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14377–000]

Grand Valley Irrigation Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 14377–000.

c. *Date filed:* March 26, 2012.

d. *Applicant:* Grand Valley Irrigation District.

e. *Name of Project:* Dividers Hydroelectric Project.

f. *Location:* The proposed Dividers Hydroelectric Project would be located on the Grand Valley Irrigation Canal where the Mainline canal splits into the Highline and the Lower Mainline in Mesa County, Colorado. The land on which all the project structures is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Charlie Guenther, Grand Valley Irrigation Company, 688 26 Road, Grand Junction, CO 81506, phone (970) 242–2762.

i. *FERC Contact:* Kelly Houff, (202) 502–6393, *Kelly.Houff@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* Due to the small size of the proposed project, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.34(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments filed in response to comments submitted by any resource agency, Indian tribe, or person, must be filed with the Commission within 45 days from the issuance date of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency.

l. *Description of Project:* The Dividers Hydroelectric Project would consist of: (1) An intake pipe approximately 110 feet in length; (2) a powerhouse containing one proposed generating unit with an installed capacity of 185 kilowatts; (3) a discharge pipe approximately 25 feet in length; and (4) appurtenant facilities. The applicant estimates the project would have an average annual generation of 770 megawatt-hours.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, P–14377, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h above.

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a competing development application. A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''COMMENTS'', ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and seven copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: May 18, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–12702 Filed 5–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–595]

Duke Energy Carolinas, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Application Type:* Non-project use of project lands and waters: Water withdrawal.

b. *Project No.:* 2232–595.

c. *Date Filed:* April 19, 2012.

d. *Applicant:* Duke Energy Carolina, LLC.

e. *Name of Project:* Catawba-Wateree Project.

f. *Location:* The proposed non-project use would be located on Lake Norman in Lincoln County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Dennis Whitaker, Duke Energy Carolinas, LLC, Manager Lake Services, P.O. Box 1006, Charlotte, NC 28201–1006, (704) 382–1594.

i. *FERC Contact:* Ms. Andrea Claros, (202) 502–8171, *andrea.claros@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests, is June 18, 2012.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–2232–595) on any comments, motions, or recommendations filed.

k. *Description of Request:* Duke Energy Carolinas, LLC requests Commission approval to allow Duke to authorize the Cowan's Ford Country Club, Inc. to replace a raw water intake pipeline, used for golf course irrigation, on Lake Norman in Lincoln County, North Carolina. An existing pump house and water intake would be removed and replaced with a new intake facility located within 150 feet of the existing intake, in a community access lot, on 0.083 acres of project property. The maximum pumping rate would increase from 320,000 gallons per day (GPD) to 340,000 GPD, and the maximum instantaneous rate would increase from 1,050 gallon per minute (GPM) to 1,500 GPM. The increase in the maximum instantaneous rate will allow for a reduced watering time window.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must (1) Bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: May 18, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–12701 Filed 5–24–12; 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 rate filings:

Docket Numbers: ER11–2780–002.

Applicants: Safe Harbor Water Power Corporation.

Description: Safe Harbor Water Power Corporation's updated market power analysis and notice of change in status related to the merger of Exelon Corporation and Constellation Energy Group, Inc.

Filed Date: 4/11/12.

Accession Number: 20120411–5297.

Comments Due: 5 p.m. ET 6/8/12.

Docket Numbers: ER12–1811–000.

Applicants: Pacific Gas and Electric Company.

Description: Notice of Termination of the Gates E&P Agreement to be effective 3/15/2012.

Filed Date: 5/18/12.
Accession Number: 20120518–5000.
Comments Due: 5 p.m. ET 6/8/12.

Docket Numbers: ER12–1812–000.
Applicants: PacifiCorp.
Description: Application (Specify * * *) of PacifiCorp for waiver of tariff provisions.
Filed Date: 5/17/12.
Accession Number: 20120517–5127.
Comments Due: 5 p.m. ET 6/7/12.

Docket Numbers: ER12–1813–000.
Applicants: The Empire District Electric Company.
Description: Revised OATT Sections to be effective 8/1/2012.
Filed Date: 5/18/12.
Accession Number: 20120518–5065.
Comments Due: 5 p.m. ET 6/8/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–22–000.
Applicants: Cross-Sound Cable Company, LLC.
Description: Supplement to Application of Cross Sound Cable Company, LLC.
Filed Date: 5/14/12.
Accession Number: 20120514–5191.
Comments Due: 5 p.m. ET 5/24/12.

Docket Numbers: ES12–34–001.
Applicants: El Paso Electric Company.
Description: Submission of El Paso Electric Company.
Filed Date: 5/17/12.
Accession Number: 20120517–5077.
Comments Due: 5 p.m. ET 6/7/12.

Docket Numbers: ES12–43–000.
Applicants: MDU Resources Group, Inc.
Description: MDU Resources Group, Inc. Application for Authority to Issue Securities.
Filed Date: 5/18/12.
Accession Number: 20120518–5117.
Comments Due: 5 p.m. ET 6/8/12.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR12–9–000.
Applicants: North American Electric Reliability Corp.
Description: Petition of the North American Electric Reliability Corporation for Approval of Amendments to Delegation Agreement with Midwest Reliability Organization—Amendments to MRO's Bylaws.
Filed Date: 5/17/12.
Accession Number: 20120517–5119.
Comments Due: 5 p.m. ET 6/7/12.

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 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–12734 Filed 5–24–12; 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: RP12–732–000.
Applicants: Golden Triangle Storage, Inc.
Description: Revisions to Request for Service Provisions in FERC Gas Tariff to be effective 6/12/2012.
Filed Date: 5/14/12.
Accession Number: 20120514–5118.
Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: RP12–733–000.
Applicants: Ryckman Creek Resources, LLC.
Description: Compliance Baseline Tariff Filing to be effective 7/16/2012.
Filed Date: 5/15/12.
Accession Number: 20120515–5117.
Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: RP12–734–000.
Applicants: CenterPoint Energy Gas Transmission Company, LLC.
Description: CEGT LLC—May 15, 2012 Negotiated Rate Filing to be effective 5/15/2012.
Filed Date: 5/15/12.
Accession Number: 20120515–5178.
Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: RP12–735–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Negotiated Rate Service Agreement—Rice to be effective 5/16/2012.
Filed Date: 5/15/12.
Accession Number: 20120515–5237.
Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: RP12–736–000.
Applicants: Gulf South Pipeline Company, LP.
Description: EOG 34687–8 Amendment to Negotiated Rate Agreement filing to be effective 5/16/2012.
Filed Date: 5/16/12.
Accession Number: 20120516–5019.
Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: RP12–737–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: Natural Gas Pipeline Company of America LLC. submits tariff filing per 154.204: Negotiated Rate Filing—Tenaska to be effective 5/17/2012.
Filed Date: 5/16/12.
Accession Number: 20120516–5124.
Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: RP12–738–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Negotiated Rate—Tenaska Gas to be effective 5/17/2012 under RP12–738 Filing Type: 570.
Filed Date: 5/16/12.
Accession Number: 20120516–5144.
Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: RP12–739–000.
Applicants: Texas Gas Transmission, LLC.
Description: Clean Up List of Non-Conforming Agreements to be effective 6/17/2012.
Filed Date: 5/17/12.
Accession Number: 20120517–5016.
Comments Due: 5 p.m. ET 5/29/12.

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 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–388–002.
Applicants: Columbia Gas Transmission, LLC.
Description: TCO Prearranged Sales of Capacity to be effective 3/21/2012.
Filed Date: 5/14/12.
Accession Number: 20120514–5074.
Comments Due: 5 p.m. ET 5/29/12.

Docket Numbers: RP12–638–001.
Applicants: Texas Gas Transmission, LLC.
Description: Amendment to RP12–638–000 to be effective 5/1/2012.
Filed Date: 5/15/12.
Accession Number: 20120515–5142.

Comments Due: 5 p.m. ET 5/29/12.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, 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: May 17, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–12707 Filed 5–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR12–17–000]

High Prairie Pipeline, LLC v. Enbridge Energy, Limited Partnership; Notice of Complaint

Take notice that on May 17, 2012, pursuant to section 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206; section 13(1) of the Interstate Commerce Act (ICA), 49 U.S.C. 13(1); and section 343.2(c)(3) of the Commission's Procedural Rules Applicable to Oil Pipeline Proceedings, High Prairie Pipeline, LLC (Complainant) filed a formal complaint against Enbridge Energy, Limited Partnership (Respondent) for violations of sections 3(6), 1(6), 6(1), 1(4) and 6(7) of the ICA and sections 341.0 and 341.8 of the Commission's regulations.

The Complainant states that a copy of the Complaint has been served on the contact for the Respondent as listed on the Commission list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 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 June 6, 2012.

Dated: May 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–12706 Filed 5–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–28–000]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Availability of the Environmental Assessment for the Proposed MPP Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the MPP Project, proposed by Tennessee Gas Pipeline Company, L.L.C. (TGP) in the above-referenced docket. TGP requests authorization to construct and operate 7.9 miles of looped [1] 30-inch-diameter pipeline and facility modifications in northern Pennsylvania. The MPP Project would provide about 240,000 dekatherms of natural gas per day to markets in Ohio and Tennessee.

The EA assesses the potential environmental effects of the construction and operation of the MPP Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Army Corps of Engineers (COE) participated as a cooperating agency in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The COE intends to adopt and use the EA in connection with its evaluation of TGP's Clean Water Act (Section 404) permit application for the MPP Project.

The proposed MPP Project includes the following facilities in Pennsylvania:

- Installation of 7.9 miles of 30-inch-diameter pipeline in Potter County, designated as Loop 313;
- Miscellaneous aboveground equipment along Loop 313 including a pig launcher; [2] and
- Facility modifications at the following four existing compressor stations to provide bi-directional natural gas flow: Station 219 in Mercer County, Station 303 in Venango County, Station 310 in McKean County, and Station 313 in Potter County.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[2] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before June 18, 2012.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances, please reference the project docket number (CP12–28–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.''* You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[3] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

[3] See the previous discussion on the methods for filing comments.

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., CP12–28). 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.*

Dated: May 18, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–12699 Filed 5–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2790–055]

Boott Hydropower, Inc.; Notice of Consulting Parties and Agenda for Section 106 Consultation Meeting

On May 4, 2012, the Federal Energy Regulatory Commission (Commission) issued notice of a section 106 consultation meeting, to be held in Lowell, Massachusetts on May 24, 2012, to address historic preservation issues for the proposed license amendment application for the Lowell Hydroelectric Project No. 2790. Pursuant to section 106 of the National Historic Preservation Act and implementing regulations of the Advisory Council on Historic Preservation, the following are consulting parties for participation in the section 106 consultation meeting: Commission staff, Massachusetts State Historic Preservation Officer, Advisory Council on Historic Preservation, U.S. Department of the Interior, National Park Service, City of Lowell, and Boott Hydropower, Inc. and the Eldred L. Field Hydroelectric Facility Trust (co-licensees for the Lowell Hydroelectric Project). A copy of the agenda for the meeting is attached.

On September 21, 2011, the Pawtucketville Citizens Council filed a request to be a consulting party for the section 106 consultation process in this proceeding. This request is denied. The Commission involves the public and provides opportunities for public comment on historic preservation matters during its licensing and amendment proceedings, and through its environmental review process pursuant to the National Environmental Policy Act. The Commission also allows interested members of the public to file comments on the section 106 process.

Dated: May 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–12708 Filed 5–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER12–678–000; ER12–679–000]

Midwest Independent Transmission System Operator, Inc.; Supplemental Notice Concerning Post-Technical Conference Comments

As announced in the Notice of Technical Conference issued on April 4, 2012, and as required in the Commission's March 30, 2012 order in these dockets,[1] Commission staff convened a technical conference in these proceedings on May 15, 2012 at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC, Room 3M–2A&B. In light of the discussion therein, Commission staff posed questions to the conference participants. Staff requests that parties who choose to file post-technical conference take these questions into account, and respond to them as appropriate, in the course of formulating their written submissions. Post-conference comments need not be limited to the subject matter of these questions, but may address any topic discussed at the conference.

Questions Directed to Midwest Independent Transmission System Operator, Inc.

1. Please explain in depth each step of the commitment process with special

[1] *Midwest Independent Transmission System Operator, Inc.,* 138 FERC ¶ 61,235 (2012).

emphasis on when and how VLR commitments are made as part of the SCUC process. In your response please explain why such VLR commitments are made at that time in the process instead of waiting until after the day-ahead market closes. Explain the difference between modeling VLR for planning and VLR commitments.

2. Please provide a simple example of how to calculate proxies for voltage limits.

3. Please explain the assertion that all low-voltage transmission facilities are presumed to have significant market power and should be designated for Voltage and Local Reliability (VLR) commitments. Please supplement the record with additional materials as appropriate.

4. With regard to your written answer to pre-conference question 3, it appears that some units were not economically dispatched in hours when they had zero unit headroom. Why? Is it possible to have EcoMax equal EcoMin?

5. Please provide a numerical example to illustrate how you perform the calculations detailed in Tab B of your pre-conference comments.

6. Please explain why the word ''or'' that previously conjoined bullets (a) through (c) in proposed tariff section 64.1.3.a.i has been changed to ''and.''

Questions Directed to Potomac Economics, Ltd.

7. Your exhibit refers to units with incremental energy offer prices at half their reference level, as MISO proposes to mitigate through proposed Tariff Section 64.1.3.a.i(a). How could a market participant benefit by offering in this way?

8. Please explain your assertions that market power mitigation is necessary for any generation unit on a line rated less than 100 kV, and that constraints on facilities rated less than 100 kV are unlike constraints on facilities rated above 100 kV. Why are all low-voltage transmission facilities presumed to be locations for the exercise of significant market power? Please supplement the record with additional materials as appropriate.

9. With regard to the slide you presented from the 2010 State of the Market Report, please explain why reference levels have been rising.

10. Please explain why the word ''or'' that previously conjoined bullets (a) through (c) in proposed tariff section 64.1.3.a.i has been changed to ''and.''

Questions Directed to All Conference Participants

11. In light of the discussion at the conference, are changes to the definition of Voltage and Local Reliability Commitment (proposed tariff section 1.697a) necessary, and if so, what should those changes be?

12. There was discussion at the conference of whether it is possible to build a voltage component into locational marginal prices (LMP), and dispatching units for VLR via the Security-Constrained Economic Dispatch (SCUC). Please discuss the competing concerns of accurately constructing locational marginal prices and accurately allocating costs. For example, if it was possible to dispatch VLR units through the SCUC, could this be done on a purely economic basis? What would be the effect on Revenue Sufficiency Guarantee cost incurrence?

13. Conference participants discussed two competing methodologies to address cost causation for resolving voltage limits. The first methodology was allowing the market to resolve such voltage limits by sending a price signal to behind-the-meter generation. The second method was MISO's methodology of uplifting the cost of VLR commitments to local loads.

a. Please explain the advantages and disadvantages of each methodology and explain how a finding of justness and reasonableness could be made for each methodology.

b. Please explain how to take such behind-the-meter generation into account in system models and send price signals.

c. Is it possible to provide incentives for behind-the-meter generation to respond to market forces in such a way as to address voltage issues, and if so, what is the best way to achieve this?

Parties wishing to file comments on the matters discussed at the technical conference, and wishing to reply to comments filed by others, should do so on the following schedule:

Comments: Due on or before June 5, 2012.

Reply comments: Due on or before June 19, 2012.

Dated: May 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–12709 Filed 5–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14385–000]

Coastal Hydropower, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 12, 2012, Coastal Hydropower, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Menasha-Neenah Water Power Project, which would be located on the Fox River, in Winnebago County, Wisconsin. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) Installation of 12 Very Low Head (VLH) 500-kilowatt (kW) turbine units; (2) a proposed 700-foot-long, 12-kilovolt transmission line; (3) a proposed 300-foot-long, 13-kilovolt transmission line; and (4) appurtenant facilities. The proposed Menasha-Neenah Water Power Project would have an estimated average annual generation of 31.5 gigawatt-hours.

Applicant Contact: Neil Anderson, Coastal Hydropower, LLC, Key Centre, 601 108th Avenue NE., Suite 1900, Bellevue, WA 98004; phone: (425) 943–7690.

FERC Contact: Bryan Roden-Reynolds at (202) 502–6618, or via email at *bryan.roden-reynolds@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*). Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end

of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14385) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: May 18, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–12703 Filed 5–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	Communication date	Presenter or requester
Prohibited:		
1. EL01–10–000	4–27–12	Ben Tansey.[1]
2. FA11–21–000	5–10–12	Eric Morris.[2]
3. CP11–56–000	5–16–12	Kevin Burke.
4. CP11–161–000	5–17–12	James C. Yardley.
Exempt:		
1. CP12–30–000	3–28–12	Commission Staff.[3]
2. CP07–52–000/CP07–53–000	4–2–12	Commission Staff.[4]
3. ER12–1204–000	4–9–12	Robert F. Powelson.
4. CP12–30–000	4–12–12	Commission Staff.[5]
5. CP11–515–000	4–17–12	Hon. Nan Hayworth, M.D.
6. P–12495–006	4–18–12	Hon. Cathy McMorris Rodgers.
7. CP12–50–000	4–19–12	Hon. Kent Conrad.
8. EL12–56–000	4–24–12	Hon. Eliot L. Engel.
9. P–2188–000	4–25–12	Hon. Max Baucus.
10. P–12470–000	5–1–12	Commission Staff.[6]
10. AD12–1–000/ER11–4081–000	5–2–12	Justin Vickers.
11. CP12–18–000	5–3–12	U.S. Dept. of Interior Staff.
12. P–2710–057/P–2712–074	5–10–12	Hon. Susan M. Collins.
13. CP11–128–000	5–10–12	Hon. Jane L. Corwin.
14. RM11–26–000/EL11–66–000	5–11–12	Hon. Edward J. Markey.
15. CP11–56–000	5–14–12	Office of the Mayor, New York, NY.
16. CP11–14–000	5–14–12	Commission Staff.[7]
17. AD12–1–000/ER11–4081–000	5–26–12	Joseph M. Power.

[1] Email record.
[2] Email record for both May 10th and May 17th.
[3] Meeting record.
[4] Telephone record.
[5] Meeting record.
[6] Email record.

[7] Telephone record.

Dated: May 21, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–12733 Filed 5–24–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[R08–CO–2012–0001; FRL–9676–4]

Adequacy Determination for Aspen PM_{10} and Fort Collins Carbon Monoxide Maintenance Plans' Motor Vehicle Emissions Budgets for Transportation Conformity Purposes; State of Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that the Agency has found the following adequate for transportation conformity purposes: The ''Revised PM_{10} Maintenance Plan for the Aspen Attainment/Maintenance Area'' [1] and its motor vehicle emissions budget, and the ''Revised Carbon Monoxide Maintenance Plan Fort Collins Attainment/Maintenance Area.'' As more fully explained in the Supplementary Information section of this notice, this finding will affect future transportation conformity determinations.

DATES: This finding is effective June 11, 2012.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number (303) 312–6479, fax number (303) 312–6064, or email *russ.tim@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our,'' are used, we mean EPA.

Transportation conformity is required by section 176(c) of the Clean Air Act (CAA). The conformity rule provisions at 40 CFR 93 require that transportation plans, programs, and projects conform to a State Implementation Plan (SIP) and establish the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the National Ambient Air Quality Standard (NAAQS).

The criteria by which we determine whether a SIP revision's motor vehicle emissions budget (MVEB) is adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4), which was promulgated August 15, 1997 (62 FR 43780). We described our process for determining the adequacy of submitted SIP MVEBs in our July 1, 2004 Transportation Conformity Rule Amendments (69 FR 40004). In addition, in certain areas with monitored ambient carbon monoxide (CO) values significantly below the NAAQS, EPA has allowed states to use limited maintenance plans (LMPs), which contain no future year maintenance projections and, therefore, no MVEBs. (See ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas,'' signed by Joseph Paisie, Group Leader, Integrated Policy and Strategies Group (MD–15), October 6, 1995, also known as EPA's ''LMP Policy.'') In an area covered by an approved carbon monoxide LMP, the Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP) are presumed to automatically satisfy the emissions budget test requirement, and no regional emissions analysis with respect to a MVEB under sections 40 CFR 93.118 or 93.119 (i.e., MVEB(s), build less than no-build, or build less than base year) of the conformity rule is required for RTP and TIP conformity. We used these resources in making our adequacy determinations announced in this notice.

This notice is simply an announcement of findings that we have already made and are as described below:

Aspen (PM_{10}): The State submitted the ''Revised PM_{10} Maintenance Plan for the Aspen Attainment/Maintenance Area'' on May 25, 2011. The State prepared the submittal to meet the requirements of section 175A(b) of the CAA for a second 10-year maintenance plan. EPA sent a letter to the Colorado Department of Public Health and Environment (CDPHE) on August 11, 2011, stating that the submitted Aspen PM_{10} second 10-year maintenance plan and the 2023 $p.m._{10}$ MVEB were adequate for transportation conformity purposes. We posted the ''Revised PM_{10} Maintenance Plan for the Aspen Attainment/Maintenance Area'' for adequacy review on EPA's transportation conformity Web site on June 20, 2011. The public comment period closed on July 20, 2011, and we did not receive any comments in response to the adequacy review posting (see *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm#aspen*).

Fort Collins (Carbon Monoxide): The State submitted the ''Revised Carbon Monoxide Maintenance Plan Fort Collins Attainment/Maintenance Area'' on May 25, 2011. The State prepared the submittal to meet the requirements of section 175A(b) of the CAA for a second 10-year maintenance plan and used, as appropriate, the provisions of EPA's CO LMP policy. Thus, the LMP contains no MVEB. EPA sent a letter to the CDPHE on August 9, 2011, stating that the submitted Fort Collins second 10-year maintenance plan was adequate for transportation conformity purposes. We posted the ''Revised Carbon Monoxide Maintenance Plan Fort Collins Attainment/Maintenance Area'' for adequacy review on EPA's transportation conformity Web site on June 20, 2011. The public comment period closed on July 20, 2011, and we did not receive any comments in response to the adequacy review posting (see *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm#ftcollins*).

For the Aspen PM_{10} maintenance area, the MVEB we found adequate is 1146 pounds of PM_{10} per day in 2023. Following the effective date listed in the **DATES** section of this notice, the Colorado Department of Transportation and the U.S. Department of Transportation are required to use this motor vehicle emissions budget for future transportation conformity determinations for projects in the Aspen PM_{10} maintenance area. As noted above, the ''Revised Carbon Monoxide Maintenance Plan Fort Collins Attainment/Maintenance Area'' contains no MVEB, and, under EPA's LMP interpretation, the North Front Range Metropolitan Planning Organization, the Colorado Department of Transportation, and the U.S. Department of Transportation may presume that RTPs and TIPs satisfy the emissions budget test requirement with respect to such revised plan. However, prior MVEBs may apply as we described in our adequacy letter to the State.

Please note that our adequacy review described above is separate from our rulemaking action on the two maintenance plans discussed above and should not be used to prejudge our ultimate approval or disapproval of each

[1] PM_{10} refers to particulate matter less than or equal to 10 microns in size.

of the SIP revisions. Even if we find a maintenance plan or a maintenance plan and its MVEB adequate for transportation conformity purposes, we may later disapprove the SIP revision.

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

Dated: April 30, 2012.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2012–12797 Filed 5–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2005–0007, FRL–9678–2]

Agency Information Collection Activities; Proposed Collection; Comment Request; EPA Worker Protection Standards for Hazardous Waste Operations and Emergency Response (Renewal)

AGENCY: Environmental Protection Agency (EPA).

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 June 1, 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 July 24, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2005–0007 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: superfund.docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* EPA Docket Center, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–2005–0007. 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: Sella M. Burchette, U.S. Environmental Response Team, MS 101, Building 205, Edison, NJ 08837, telephone number: 721–321–6726; fax number: 732–321–6724; email address: *burchette.sella@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2005–0007 established a public docket for each of the ICRs identified in this document (see the Docket ID. numbers for each ICR that are provided in the text, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Superfund 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 Superfund Docket is 202–566–0276.

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.

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.

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.

Affected entities: Entities potentially affected by this action are those State and local employees engaged in hazardous waste operations and emergency response in the 27 States that do not have Occupational Safety and Health Administration (OSHA) approved State plans.

Title: EPA Worker Protection Standards for Hazardous Waste

Operation and Emergency Response (Renewal).

ICR numbers: EPA ICR No. 1426.09, OMB Control No. 2050–0105.

ICR status: This ICR is currently scheduled to expire on 06/61/12. This is a request renewal of a currently approved collection. 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: Section 126(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires EPA to set worker protection standards for State and local employees engaged in hazardous waste operations and emergency response in the 27 States that do not have Occupational Safety and Health Administration approved State plans. The EPA coverage, required to be identical to the OSHA standards, extends to three categories of employees: Those engaged in clean-ups at uncontrolled hazardous waste sites, including corrective actions at Treatment, Storage, and Disposal (TSD) facilities regulated under the Resource Conservation and recovery Act (RCRA); employees working at routine hazardous waste operations at RCRA TSD facilities; and employees involved in emergency response operations without regard to location. This ICR renews existing mandatory record keeping collection of ongoing activities including monitoring of any potential employee exposure at uncontrolled hazardous waste sites, maintaining records of employee training, refresher training, medical exams and reviewing emergency response plans.

Burden Statement: The annual public reporting and recordkeeping burden for this collection is estimated to average 10.64 hours per response. Burden means to total time, effort, and 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; 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: 24,000.

Frequency of response: Annually.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 255,427 hours.

Estimated total annual costs: $3,528,888, which is entirely for labor. There are no capital investment or maintenance and operational costs.

These burden estimates reflect what is currently approved by OMB, without change. EPA will provide revised burden estimates when the second comment period for this ICR is opened. However, as the universe and regulations have not changed, EPA does not anticipate any substantive changes to the burden figures.

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: May 16, 2012.

James E. Woolford,

Director, Office of Superfund Remediation and Technology Innovation.

[FR Doc. 2012–12838 Filed 5–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9678–3; Docket ID No. EPA–HQ–ORD–2012–0276]

An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, AK

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a public comment period for the draft document titled, ''An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska'' (EPA–910–R–12–004a–d). The document was prepared by the EPA's Region 10 (Pacific Northwest and Alaska), EPA's Office of Water, and EPA's Office of Research and Development. The EPA conducted this assessment to determine the significance of Bristol Bay's ecological resources and evaluate the potential impacts of large-scale mining on these resources. EPA will use the results of this assessment to inform the consideration of options consistent with its role under the Clean Water Act. The assessment is intended to provide a scientific and technical foundation for future decision making; EPA will not address use of its regulatory authority until the assessment becomes final and has made no judgment about whether and how to use that authority at this time.

DATES: The public comment period began Friday, May 18, 2012, and ends Monday, July 23, 2012. Technical comments should be in writing and must be received by EPA by Monday, July 23, 2012.

ADDRESSES: The draft ''An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska'' is available primarily via the Internet on the EPA Region 10 Bristol Bay Web site at *www.epa.gov/bristolbay* as well as on the National Center for Environmental Assessment's Web site under the Recent Additions and the Data and Publications menus at *www.epa.gov/ncea.* A printed copy of the assessment will be placed at public locations in Bristol Bay and in Anchorage, AK. These locations are listed on the Region 10 Web site. A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, your mailing address, and the document title, ''An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska.'' Please also indicate if a paper copy of the full set of appendices is needed.

Comments on the report may be submitted electronically via *www.regulations.gov,* by email, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or email: *ORD.Docket@epa.gov*.

For technical information concerning the report, contact Judy Smith; telephone: 503–326–6994; facsimile: 503–326–3399; or email: *r10bristolbay@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

The U.S. Environmental Protection Agency (EPA) conducted this assessment to determine the significance of Bristol Bay's ecological resources and evaluate the potential impacts of large-scale mining on these resources. The EPA will use the results of this assessment to inform the consideration of options consistent with its role under the Clean Water Act. The assessment is intended to provide a scientific and technical foundation for future decision making. The Web site that describes the project is *www.epa.gov/bristolbay*. This draft document addresses potential impacts to water quality and the salmon fishery that may result from large-scale mining in the Nushagak and Kvichak watersheds of southwest Alaska.

EPA is releasing this draft assessment for the purposes of public comment and peer review. This draft assessment is not final as described in EPA's information quality guidelines, and it does not represent and should not be construed to represent Agency policy or views. EPA utilizes public comments as one means to ensure that science products are complete and accurate. EPA is seeking comments from the public on all aspects of the report, including the scientific and technical information presented in the report, the hypothetical mining scenario used, the data and information used to inform assumptions about mining activities and the evaluations of risk to the fishery, and the potential mitigation measures considered (and effectiveness of those measures). EPA is also specifically seeking any additional data or scientific or technical information about Bristol Bay resources or large-scale mining that should be considered in our evaluation.

EPA will consider any public comments submitted in accordance with this notice when revising the document. After public review and comment, EPA's independent contractor, Versar, Inc., will convene an expert panel for independent external peer review of this draft assessment. The public comment period and external peer review meeting are separate processes that provide opportunities for all interested parties to comment on the assessment. The preferred method to submit comments is through the docket, which is described below. Public meetings will be held in Anchorage, Dillingham, Newhalen, Naknek, Nondalton, and New Stuyahok, AK during the week of June 4–8, 2012. Spoken comments will be accepted at these meetings. The external peer review panel meeting is scheduled to be held in Anchorage, AK on August 7, 8, and 9, 2012. The public will be invited to attend on August 7 and 8, 2012. Further information regarding the external peer review panel meeting will be announced at a later date in the **Federal Register**.

II. How To Submit Technical Comments to the Docket at *www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2012–0276, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: ORD.Docket@epa.gov.* Include the docket number EPA–HQ–ORD–2012–0276 in the subject line of the message.
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), Docket # EPA–HQ–ORD–2012–0276, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. The phone number is 202–566–1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334, EPA West Building, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.
- *Comment at a public meeting:* Spoken comments will be taken at public meetings during June 4–8, 2012. A court reporter will provide a transcription of comments received at the Anchorage and Dillingham meetings for the docket. Audio recording and written notes will be taken for the docket for comments spoken at Naknek, Newhalen, New Stuyahok, and Nondalton.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2012–0276. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available on-line at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information 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 comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and 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 *www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *www.regulations.gov_index.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly

available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: May 21, 2012.

Darrell Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2012–12808 Filed 5–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0163; FRL–9351–4]

Aldicarb; Cancellation Order for Amendments To Terminate Uses; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of May 9, 2012, concerning an amendment to terminate uses of aldicarb. This document is being issued to correct a typographical error.

FOR FURTHER INFORMATION CONTACT: Susan Bartow, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 603–0065; email address: *bartow.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0163. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What does this correction do?

The preamble for FR Doc. 2012–11072 published in the **Federal Register** of May 9, 2012 (77 FR 27226) (FRL–9348–2) is corrected as follows: On page 27227, first column of Table 1, under the heading EPA Registration Number, correct 264–333 to read 264–330.

List of Subjects

Environmental protection, pesticides and pests.

Dated: May 17, 2012.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–12774 Filed 5–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9003–2]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 05/14/2012 Through 05/18/2012

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

SUPPLEMENTARY INFORMATION: EPA is seeking agencies to participate in its e-NEPA electronic EIS submission pilot. Participating agencies can fulfill all requirements for EIS filing, eliminating the need to submit paper copies to EPA Headquarters, by filing documents online and providing feedback on the process. To participate in the pilot, register at: *https://cdx.epa.gov.*

EIS No. 20120157, Final EIS, FTA, GA, Tier 1—Atlanta Beltline City of Atlanta, Proposed Fixed Guideway Transit and Multi-Use Trails System, Right-of-Way Preservation, Fulton County, GA, Review Period Ends: 06/25/2012, Contact: Brian Smart 404–865–5600.

EIS No. 20120158, Draft EIS, USACE, NC, Figure Eight Island Inlet and Shoreline Management Project, Terminal Groin Installation and Supplemental Beach Nourishment, Implementation, New Hanover County, NC, Comment Period Ends: 07/09/2012, Contact: Mickey Sugg 910–251–4811.

EIS No. 20120159, Draft EIS, EPA, FL, Jacksonville Ocean Dredged Material Disposal Site (ODMDS) Designation, Offshore of Jacksonville, FL, Comment Period Ends: 07/09/2012, Contact: Jennifer S. Derby 404–562–9401.

EIS No. 20120160, Draft EIS, USFS, CO, Federal Coal Lease Modifications COC–1362 and COC 67232, Adding 800 and 921 Additional Acres, Paonia Ranger District, Grand Mesa, Uncompahgre and Gunnison National Forests, Gunnison County, CO, Comment Period Ends: 07/09/2012, Contact: Nicole Mortenson 406–329–3163.

EIS No. 20120161, Draft EIS, USFS, NM, North Fork Eagle Creek Wells, Special Use Authorization Project, Operation of Four Municipal Supply Water Wells, Lincoln National Forest, Lincoln County, NM, Comment Period Ends: 07/09/2012, Contact: Deborah McGlothlin 559–920–4952.

EIS No. 20120162, Final Supplement, NOAA, CA, Southwest Fisheries Science Center Demolition, Soil Stabilization and Seismic Improvements, La Jolla, CA, Review Period Ends: 06/25/2012, Contact: Edward Horton 206–526–4837.

EIS No. 20120163, Draft EIS, BLM, NM, AZ, SunZia Southwest Transmission Project, Resource Management Plan Amendment, Construction and Operation of two new 500 kV Transmission Lines, Right-of-Way Grant, Lincoln County, NM and Pinal County, AZ, Comment Period Ends: 08/22/2012, Contact: Adrian Garcia 505–954–2199.

EIS No. 20120164, Draft EIS, BLM, CA, McCoy Solar Energy Project, Development of up to 750-megawatt (mw) Solar Energy Plant, Right-of-Way Grant, Riverside County, CA, Comment Period Ends: 08/22/2012, Contact: Jeff Childers 760–833–7100.

Amended Notices

EIS No. 20120098, Draft EIS, USAF, 00, F–35A Operational Basing, Beddown and Operation of F–35A Aircraft for the Combat Air Forces at One or More Locations throughout the Contiguous U.S. from 2015 through 2020, Comment Period Ends: 06/20/2012, Contact: Nicholas Germanos 757–764–5994.

Revision to FR Notice Published 4/20/2012; Change Comment Period Due Date from 06/01/2012 to 06/20/2012.

Dated: May 22, 2012.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2012–12809 Filed 5–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0390; FRL–9351–3]

Pesticide Products; Receipt of Applications To Register New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register new uses for pesticide products containing currently registered active ingredients, pursuant to the provisions of section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. EPA is publishing this Notice of such applications, pursuant to section 3(c)(4) of FIFRA.

DATES: Comments must be received on or before June 25, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2012–0390, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each registration application summary and may be contacted by telephone or email. The mailing address for each contact person listed is: Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number). If you are commenting on a docket that addresses multiple products, please indicate to which registration numbers your comment applies. If you are commenting on a docket that addresses multiple products, please indicate to which registration numbers your comment applies.

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications for New Uses

EPA received applications as follows to register pesticide products containing currently registered active ingredients pursuant to the provisions of section 3(c) of FIFRA, and is publishing this Notice of such applications pursuant to section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

1. *Registration Number:* 100–1357. *Docket Number:* EPA–HQ–OPP–2012–0379. *Company name and address:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Fludioxonil. *Proposed Classification/Uses:* Fungicide/Ornamental bulb and corm uses. Contact: Erin Malone, (703) 347–0253, email address: *malone.erin@epa.gov.*

2. *Registration Number:* 264–267. *Docket Number:* EPA–HQ–OPP–2012–0241. *Company name and address:* Bayer CropScience LP, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709. *Active ingredient:* Ethephon. *Proposed Classification/Use:* Fungicide/Small Greenhouse Tomatoes. Contact: Dominic Schuler, (703) 347–0260, email address: *schuler.dominic@epa.gov.*

3. *Registration Number:* 264–825. *Docket Number:* EPA–HQ–OPP–2012–0325. *Company name and address:* Bayer CropScience LP, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709. *Active ingredient:* Prothioconazole. *Proposed Classification/Uses:* Fungicide/Cereal

Grain Groups 15 and 16, except Sorghum and Rice, Seed. Contact: Rosemary Kearns, (703) 305–5611, email address: *kearns.rosemary@epa.gov.*

4. *Registration Numbers:* 279–3149, 279–3189, 279–3220, and 279–3370. *Docket Number:* EPA–HQ–OPP–2011–0758. *Company name and address:* FMC Corporation, 1735 Market Street, Philadelphia, PA 19103. *Active ingredient:* Sulfentrazone. *Proposed Classification/Uses:* Herbicide/succulent soybean (edamame). Contact: Bethany Benbow, (703) 347–8072, email address: *benbow.bethany@epa.gov.*

5. *Registration Numbers:* 62719–73, 62719–80, 62719–81, and 62719–84. *Docket Number:* EPA–HQ–OPP–2012–0309. *Company name and address:* Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredient:* Clopyralid. *Proposed Classification/Use:* Herbicide/Teff. Contact: Michael Walsh, (703) 308–2972, email address: *walsh.michael@epa.gov.*

6. *Registration Numbers:* 71512–1 and 71512–8. *Docket Number:* EPA–HQ–OPP–2012–0009. *Company name and address:* ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077. *Active ingredient:* Fluazinam. *Proposed Classification/Uses:* Fungicide/Melon, Subgroup 9A; Pepper/Eggplant, Subgroup 8–10B. Contact: Dominic Schuler, (703) 347–0260, email address: *schuler.dominic@epa.gov.*

7. *Registration Numbers:* 71512–1 and 71512–8. *Docket Number:* EPA–HQ–OPP–2012–0242. *Company name and address:* ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077. *Active ingredient:* Fluazinam. *Proposed Classification/Uses:* Fungicide/Soybean. Contact: Dominic Schuler, (703) 347–0260, email address: *schuler.dominic@epa.gov.*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 15, 2012.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2012–12789 Filed 5–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9677–8]

Proposed Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act for the Wabash Environmental Technologies Site

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice; Request for public comment on proposed CERCLA 122(h)(1) agreement with 21 parties for the Wabash Environmental Technologies Superfund Site.

SUMMARY: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), notification is hereby given of a proposed administrative agreement concerning the Wabash Environmental Technologies hazardous waste site in Terre Haute, Indiana (the ''Site''). EPA proposes to enter into this agreement under the authority of section 122(h) and 107 of CERCLA. The proposed agreement has been executed by: AAA Galvanizing of Dixon, Inc.; Brenntag Mid-South, Inc. (successor to G.S. Robins & Co. and Ulrich Chemical, Inc.); Chemetall US, Inc., fka Oakite Products Inc.; City of Terre Haute Board of Public Works and Safety; ConAgra Foods Inc.; Elixir Industries; Enviromark Corporation; General Electric Company on behalf of GE Silicones and Momentive Performance Materials, Inc.; Glas-Col LLC; Interplastic Corporation; Marathon Pipe Line LLC; Northern Indiana Public Service Company; Perma-Fix of Dayton, Inc./Perma-Fix Environmental Services, Inc.; The Proctor & Gamble Manufacturing Company; Rochester Midland Corporation; Rock-Tenn Company on behalf of Smurfit-Stone; Speedway LLC (formerly known as Speedway SuperAmerica LLC); Superior Oil Company, Inc.; Superior Oil Company, Inc. for Superior Fiberglass & Resins; Technicote, Inc.; and Weatherford International. (the ''Settling Parties'').

Under the proposed agreement, the Settling Parties will pay a total of $710,053.43 to the Hazardous Substances Superfund to resolve EPA's claims against the Settling Parties for response costs incurred by EPA at the Site. EPA has incurred response costs investigating and performing response actions at the Site to mitigate potential imminent and substantial endangerments to human health or the environment presented or threatened by hazardous substances present at the Site.

For thirty days following the date of publication of this notice, the EPA will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before June 25, 2012.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and should refer to: In the Matter of Wabash Environmental Technologies Site, Chicago, Illinois, U.S. EPA Docket No. V–W–12C–997.

FOR FURTHER INFORMATION CONTACT: Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 886–0562.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Sections 9601–9675.

Dated: May 16, 2012.

Richard C. Karl,

Director, Superfund Division, Region 5.

[FR Doc. 2012–12792 Filed 5–24–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been

appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: May 21, 2012.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10440	Alabama Trust Bank, National Association	Sylacauga	AL	5/18/2012

[FR Doc. 2012–12760 Filed 5–24–12; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Interest Projects (SIPs): Initial Review

The meeting announced below concerns Research to Enhance Community-Based Fall Prevention among Older Adults, SIP12–058, and Developing a Compendium of Measures and Questions to Assess Mobility: A Focus on Older Adult Populations, SIP12–059, Panel D, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 11:00 a.m.–6:00 p.m., June 28, 2012 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of ''Research to Enhance Community-Based Fall Prevention among Older Adults, SIP12–058, and Developing a Compendium of Measures and Questions to Assess Mobility: A Focus on Older Adult Populations, SIP12–059, Panel D, initial review.''

Contact Person for More Information: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F–46, Atlanta, Georgia 30341, Telephone: (770) 488–3585, *EEO6@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 17, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–12736 Filed 5–24–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Interest Projects (SIPs): Initial Review

The meeting announced below concerns Medical Resident Knowledge and Practice in Physical Activity, Nutrition, and Obesity Counseling for Primary Prevention of Cancer, SIP12–053, Panel C, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 11:00 a.m.–6:00 p.m., June 26, 2012 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of ''Medical Resident Knowledge and Practice in Physical Activity, Nutrition, and Obesity Counseling for Primary Prevention of Cancer, SIP12–053, Panel C, initial review.''

Contact Person for More Information: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F–46, Atlanta, Georgia 30341, Telephone: (770) 488–3585, *EEO6@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 17, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–12732 Filed 5–24–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Interest Projects (SIPs): Initial Review

The meeting announced below concerns Coordinating Center for the Managing Epilepsy Well (MEW) Prevention Research Centers Network, SIP12–056, and Managing Epilepsy Well (MEW) Collaborating Center for Epilepsy Self-Management Intervention Research, SIP12–057, Panel E, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 11:00 a.m.–6:00 p.m., June 29, 2012 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of ''Coordinating Center for the Managing Epilepsy Well (MEW) Prevention

Research Centers Network, SIP12–056, and Managing Epilepsy Well (MEW) Collaborating Center for Epilepsy Self-Management Intervention Research, SIP12–057, Panel E, initial review.''

Contact Person for More Information: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F–46, Atlanta, Georgia 30341, Telephone: (770) 488–3585, *EEO6@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 17, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–12730 Filed 5–24–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics (BSC, NCHS)

Notice of Cancellation: This notice was published in the **Federal Register** on April 13, 2012, Volume 77, Number 72, page 22326. This meeting scheduled to convene on May 17 and May 18, 2012, is cancelled due to lack of a quorum. Notice will be provided when the meeting is rescheduled in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

Contact Person for More Information: Virginia S. Cain, Ph.D., Director of Extramural Research, NCHS/CDC, 3311 Toledo Road, Room 7208, Hyattsville, Maryland 20782, Telephone (301) 458–4500, Fax (301) 458–4020, Email: *vcain@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 15, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–12295 Filed 5–24–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3257–N]

Medicare and Medicaid Programs; Announcement of the Re-Approval of the Joint Commission as an Accreditation Organization Under the Clinical Laboratory Improvement Amendments of 1988

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the application of the Joint Commission for re-approval as an accreditation organization for clinical laboratories under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) program for all specialty and subspecialty areas under CLIA. We have determined that the Joint Commission meets or exceeds the applicable CLIA requirements. We are announcing the re-approval and granting the Joint Commission deeming authority for a period of 6 years.

DATES: This notice is effective from May 25, 2012 to May 25, 2018.

FOR FURTHER INFORMATION CONTACT: Kathleen Todd, (410) 786–3385.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

On October 31, 1988, the Congress enacted the Clinical Laboratory Improvement Amendments of 1988 (CLIA) (Pub. L. 100–578). CLIA amended section 353 of the Public Health Service Act. We issued a final rule implementing the accreditation provisions of CLIA on July 31, 1992 (57 FR 33992). Under those provisions, we may grant deeming authority to an accreditation organization if its requirements for laboratories accredited under its program are equal to or more stringent than the applicable CLIA program requirements in 42 CFR part 493 (Laboratory Requirements). Subpart E of part 493 (Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program) specifies the requirements an accreditation organization must meet to be approved by CMS as an accreditation organization under CLIA.

II. Notice of Approval of the Joint Commission as an Accreditation Organization

In this notice, we approve the Joint Commission as an organization that may accredit laboratories for purposes of establishing its compliance with CLIA requirements for all specialty and subspecialty areas under CLIA. We have examined the initial Joint Commission application and all subsequent submissions to determine its accreditation program's equivalency with the requirements for approval of an accreditation organization under subpart E of part 493. We have determined that the Joint Commission meets or exceeds the applicable CLIA requirements. We have also determined that the Joint Commission will ensure that its accredited laboratories will meet or exceed the applicable requirements in subparts H, I, J, K, M, Q, and the applicable sections of R. Therefore, we grant the Joint Commission approval as an accreditation organization under subpart E of part 493, for the period stated in the **DATES** section of this notice for all specialty and subspecialty areas under CLIA. As a result of this determination, any laboratory that is accredited by the Joint Commission during the time period stated in the **DATES** section of this notice will be deemed to meet the CLIA requirements for the listed subspecialties and specialties, and therefore, will generally not be subject to routine inspections by a State survey agency to determine its compliance with CLIA requirements. The accredited laboratory, however, is subject to validation and complaint investigation surveys performed by CMS, or its agent(s).

III. Evaluation of the Joint Commission Request for Approval as an Accreditation Organization Under CLIA

The following describes the process used to determine that the Joint Commission accreditation program meets the necessary requirements to be approved by CMS and that, as such, CMS may approve the Joint Commission as an accreditation program with deeming authority under the CLIA program. The Joint Commission formally applied to CMS for approval as an accreditation organization under CLIA for all specialties and subspecialties under CLIA. In reviewing these materials, we reached the following determinations for each applicable part of the CLIA regulations:

A. Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program

The Joint Commission submitted its mechanism for monitoring compliance with all requirements equivalent to condition-level requirements, a list of all its current laboratories and the expiration date of their accreditation, and a detailed comparison of the individual accreditation requirements with the comparable condition-level requirements. The Joint Commission policies and procedures for oversight of laboratories performing laboratory testing for all CLIA specialties and subspecialties are equivalent to those of CLIA in the matters of inspection, monitoring proficiency testing (PT) performance, investigating complaints, and making PT information available. The Joint Commission's submitted requirements for monitoring and inspecting laboratories in the areas of accreditation organization, data management, the inspection process, procedures for removal or withdrawal of accreditation, notification requirements, and accreditation organization resources. The requirements of the accreditation programs submitted for approval are equal to or more stringent than the requirements of the CLIA regulations.

Our evaluation identified Joint Commission requirements pertaining to waived testing that are more stringent than the CLIA requirements. The Joint Commission waived testing requirements include the following:

- Defining the extent that waived test results are used in patient care.
- Identifying the personnel responsible for performing and supervising waived testing.
- Assuring that personnel performing waived testing have adequate, specific training and orientation to perform the testing and can demonstrate satisfactory levels of performance.
- Making certain that policies and procedures governing waived testing-related procedures are current and readily available.
- Conducting defined quality control checks.
- Maintaining quality control and test records.

The CLIA requirements at § 493.15 only require that a laboratory performing waived testing follow the manufacturer's instructions and obtain a certificate of waiver.

B. Subpart H—Participation in Proficiency Testing for Laboratories Performing Nonwaived Testing

The Joint Commission requirements are equal to the CLIA requirements at § 493.801 through § 493.865.

C. Subpart J—Facility Administration for Nonwaived Testing

The Joint Commission requirements are equal to the CLIA requirements at § 493.1100 through § 493.1105.

D. Subpart K—Quality System for Nonwaived Testing

The Joint Commission requirements are equal to or more stringent than the CLIA requirements at § 493.1200 through § 493.1299. For instance, the Joint Commission has control procedure requirements for all waived complexity testing performed.

E. Subpart M—Personnel for Nonwaived Testing

We have determined that Joint Commission requirements are equal to the CLIA requirements at § 493.1403 through § 493.1495 for laboratories that perform moderate and high complexity testing.

F. Subpart Q—Inspections

We have determined that the Joint Commission requirements are equal to the CLIA requirements at § 493.1771 through § 493.1780.

G. Subpart R—Enforcement Procedures

The Joint Commission meets the requirements of subpart R to the extent that it applies to accreditation organizations. The Joint Commission policy sets forth the actions the organization takes when laboratories it accredits do not comply with its requirements and standards for accreditation. When appropriate, the Joint Commission will deny, suspend, or revoke accreditation in a laboratory accredited by the Joint Commission and report that action to CMS within 30 days. The Joint Commission also provides an appeals process for laboratories that have had accreditation denied, suspended, or revoked.

We have determined that the Joint Commission laboratory enforcement and appeal policies are equal to or more stringent than the requirements of part 493 subpart R as they apply to accreditation organizations.

IV. Federal Validation Inspections and Continuing Oversight

The Federal validation inspections of laboratories accredited by the Joint Commission may be conducted on a representative sample basis or in response to substantial allegations of noncompliance (that is, complaint inspections). The outcome of those validation inspections, performed by CMS or our agents, or the State survey agencies, will be our principal means for verifying that the laboratories accredited by the Joint Commission remain in compliance with CLIA requirements. This Federal monitoring is an ongoing process.

V. Removal of Approval as an Accrediting Organization

Our regulations provide that we may rescind the approval of an accreditation organization, such as that of the Joint Commission, for cause, before the end of the effective date of approval. If we determine that the Joint Commission has failed to adopt, maintain and enforce requirements that are equal to, or more stringent than, the CLIA requirements, or that systemic problems exist in its monitoring, inspection or enforcement processes, we may impose a probationary period, not to exceed 1 year, in which the Joint Commission would be allowed to address any identified issues. Should the Joint Commission be unable to address the identified issues within that timeframe, we may, in accordance with the applicable regulations, revoke the Joint Commission's deeming authority under CLIA.

Should circumstances result in our withdrawal of the Joint Commission's approval, we will publish a notice in the **Federal Register** explaining the basis for removing its approval.

VI. Collection of Information Requirements

This notice does not impose any information collection and record keeping requirements subject to the Paperwork Reduction Act (PRA). Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA. The requirements associated with the accreditation process for clinical laboratories under the CLIA program, codified in 42 CFR part 493 subpart E, are currently approved by OMB under OMB approval number 0938–0686.

VII. Executive Order 12866 Statement

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

Authority: Section 353 of the Public Health Service Act (42 U.S.C. 263a).

Dated: May 18, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–12639 Filed 5–24–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3264–PN]

Medicare and Medicaid Programs; Application by American Osteopathic Association/Healthcare Facilities Accreditation Program (AOA/HFAP) for Continuing CMS-Approval of its Ambulatory Surgery Center (ASC) Accreditation Program

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice acknowledges the receipt of an application from American Osteopathic Association/Healthcare Facilities Accreditation Program (AOA/HFAP) for continued recognition as a national accrediting organization for ambulatory surgery centers (ASCs) that wish to participate in the Medicare or Medicaid programs.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 25, 2012.

ADDRESSES: In commenting, refer to file code CMS–3264–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3264–PN, P.O. Box 8016, Baltimore, MD 21244–8010. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3264–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments before only to the following addresses: a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850. If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the section entitled **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Barbara Easterling, (410) 786–0416, Patricia Chmielewski, (410) 786–6899 or Cindy Melanson, (410) 786–0310.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Section 1865(a)(3)(A) of the Social Security Act (the Act), requires that within 60 days of receipt of an organization's complete application, we publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period. Under the Medicare program, eligible beneficiaries may receive covered services in an ambulatory surgical center (ASC) provided certain requirements are met. Section 1832(a)(2)(F)(i) of the Act establishes distinct criteria for facilities seeking designation as an ASC. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 416 specify the conditions that an ASC must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for ASCs.

Generally, in order to enter into an agreement, an ASC must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 416. Thereafter, the ASC is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accrediting organization applying for approval of its accreditation program under part 488, subpart A, must provide us with reasonable assurance that the

accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accrediting organizations to reapply for continued approval of its accreditation program every 6 years or sooner as determined by CMS.

The American Osteopathic Association/Healthcare Facilities Accreditation Program's (AOA/HFAP) current term of approval for their ASC accreditation program expires October 23, 2012.

II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.8(a) require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and, ability to provide us with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of AOA/HFAP's request for continued approval of its ASC accreditation program. This notice also solicits public comment on whether AOA/HFPA's requirements meet or exceed the Medicare conditions for coverage for ASCs.

III. Evaluation of Deeming Authority Request

AOA/HFAP submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its ASC accreditation program. This application was determined to be complete on March 27, 2012. Under Section 1865(a)(2) of the Act and our regulations at § 488.8 (Federal review of accrediting organizations), our review and evaluation of AOA/HFAP will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of AOA/HFAP's standards for an ASC as compared with CMS' ASC conditions for coverage.
- AOA/HFAP's survey process to determine the following:
  + The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.
  + The comparability of AOA/HFAP's processes to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
- AOA/HFAP's processes and procedures for monitoring an ASC found out of compliance with AOA/HFAP's program requirements. These monitoring procedures are used only when AOA/HFAP identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the State survey agency monitors corrections as specified at § 488.7(d).
- AOA/HFAP's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
- AOA/HFAP's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.
- The adequacy of AOA/HFAP's staff and other resources, and its financial viability.
- AOA/HFAP's capacity to adequately fund required surveys.
- AOA/HFAP's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.
- AOA/HFAP's agreement to provide CMS with a copy of the most current accreditation survey, together with any other information related to the survey as we may require (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

V. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Ambulatory surgery center Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 16, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–12823 Filed 5–24–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3266–PN]

Medicare and Medicaid Programs; Application From the Community Health Accreditation Program for Continued Approval of Its Hospice Accreditation Program

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice with comment period acknowledges the receipt of an application from the Community Health Accreditation Program (CHAP) for continued recognition as a national accrediting organization for hospices that wish to participate in the Medicare or Medicaid programs.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 25, 2012.

ADDRESSES: In commenting, refer to file code CMS–3266–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation

to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3266–PN, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3266–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments only to the following addresses: a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lillian Williams, (410) 786–8636. Patricia Chmielewski, (410) 786–6899. Cindy Melanson, (410) 786–0310.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a hospice provided certain requirements are met. Section 1861(dd)(1) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as a hospice. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 418 specify the conditions that a hospice must meet to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for hospice care.

Generally, to enter into an agreement, a hospice must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 418. Thereafter, the hospice is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. However, there is an alternative to surveys by State agencies.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program will be deemed to have met the Medicare conditions. A national accrediting organization applying for approval of its accreditation program under part 488, subpart A, must provide us with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accrediting organizations to reapply for continued approval of its accreditation program every 6 years or as we determine.

Community Health Accreditation Program (CHAP's) current term of approval for their hospice accreditation program expires November 20, 2012.

II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.8(a) require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's: Requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide us with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of CHAP's request for continued approval of its hospice accreditation program. This notice also solicits public comment on whether CHAP's requirements meet or exceed the Medicare conditions for participation for hospices.

III. Evaluation of Deeming Authority Request

CHAP submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its hospice accreditation program. This application was determined to be complete on

March 30, 2012. Under section 1865(a)(2) of the Act and our regulations at § 488.8 (Federal review of accrediting organizations), our review and evaluation of CHAP will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of CHAP's standards for a hospice as compared with CMS' hospice conditions of participation.
- CHAP's survey process to determine the following:
  + The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.
  + The comparability of CHAP's processes to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
- CHAP's processes and procedures for monitoring a hospice found out of compliance with CHAP's program requirements. These monitoring procedures are used only when CHAP identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the State survey agency monitors corrections as specified at § 488.7(d).
- CHAP's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
- CHAP's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.
- The adequacy of CHAP's staff and other resources, and its financial viability.
- CHAP's capacity to adequately fund required surveys.
- CHAP's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.
- CHAP's agreement to provide CMS with a copy of the most current accreditation survey, together with any other information related to the survey as we may require (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

V. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

V. Regulatory Impact Statement

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

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 21, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–12816 Filed 5–24–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4164–FN]

Medicare Program; Approved Renewal of Deeming Authority of the Utilization Review Accreditation Commission for Medicare Advantage Health Maintenance Organizations and Local Preferred Provider Organizations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This notice announces our decision to renew the Medicare Advantage ''deeming authority'' of the Utilization Review Accreditation Commission (URAC) for Health Maintenance Organizations and Preferred Provider Organizations for a term of 6 years. This new term of approval would begin May 26, 2012, and end May 25, 2018.

DATES: This final notice is effective May 26, 2012 through May 25, 2018.

FOR FURTHER INFORMATION CONTACT: Caroline Baker, (410) 786–0116; or Edgar Gallardo, (410) 786–0361.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services through a Medicare Advantage (MA) organization that contracts with CMS. The regulations specifying the Medicare requirements that must be met for a Medicare Advantage Organization (MAO) to enter into a contract with CMS are located at 42 CFR part 422. These regulations implement Part C of Title XVIII of the Social Security Act (the Act), which specifies the services that an MAO must provide and the requirements that the organization must meet to be an MA contractor. Other relevant sections of the Act are Parts A and B of Title XVIII and Part A of Title XI pertaining to the provision of services by Medicare-certified providers and suppliers. Generally, for an entity to be an MA organization, the organization must be licensed by the State as a riskbearing organization as set forth in part 422.

As a method of assuring compliance with certain Medicare requirements, an MA organization may choose to become accredited by a CMS-approved accrediting organization (AO). Once accredited by such a CMS-approved AO, we deem the MA organization to be compliant in one or more of six requirements set forth in section 1852(e)(4)(B) of the Act. For an AO to be able to ''deem'' an MA plan as compliant with these MA requirements, the AO must prove to CMS that its standards are at least as stringent as Medicare requirements. Health maintenance organizations (HMOs) or preferred provider organizations (PPOs) accredited by an approved AO may receive, at their request, ''deemed'' status for CMS requirements with respect to the following six MA criteria: Quality Improvement; Antidiscrimination; Access to Services; Confidentiality and Accuracy of Enrollee Records; Information on Advanced Directives; and Provider Participation Rules. (*See* 42 CFR 422.156(b)). At this time, recognition of accreditation does not include the Part D areas of review set out at § 423.165(b). AOs that apply for MA deeming authority are generally recognized by the health care industry as entities that accredit HMOs and PPOs. As we specify at § 422.157(b)(2)(ii), the term for which an AO may be approved by CMS may not exceed 6 years. For continuing approval, the AO must apply to CMS to

renew its ''deeming authority'' for a subsequent approval period.

The Utilization Review Accreditation Commission (URAC) was approved as a CMS approved accreditation organization for MA deeming of HMOs on May 26, 2006, and that term will expire on May 26, 2012. On December 9, 2011, URAC submitted an application to renew its deeming authority. On that same date, URAC submitted materials requested from CMS which included updates and/or changes to items set out in Federal regulations at § 422.158(a) that are prerequisites for receiving approval of its accreditation program from CMS, and which were furnished to CMS by URAC as a part of their renewal applications for HMOs and PPOs.

II. Deeming Applications Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of deeming applications is conducted in a timely manner. The Act provides us with 210 calendar days after the date of receipt of an application to complete our survey activities and application review process. Within 60 days of receiving a completed application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish an approval or denial of the application.

III. Proposed Notice

In the March 30, 2012, **Federal Register** (77 FR 19288), we published a proposed notice announcing URAC's request for continued CMS approval of its deeming authority for MA HMOs and PPOs. In the proposed notice, we detailed our evaluation criteria. Under section 1852(e)(4) of the Act and our regulations at § 422.158 (Federal review of accrediting organizations), we conducted a review of URAC's application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- The types of MA plans that it would review as part of its accreditation process.
- A detailed comparison of the organization's accreditation requirements and standards with the Medicare requirements (for example, a crosswalk).
- Detailed information about the organization's survey process, including the following—

++ Frequency of surveys and whether surveys are announced or unannounced.

++ Copies of survey forms, and guidelines and instructions to surveyors.

++ Descriptions of—

—The survey review process and the accreditation status decision making process;

—The procedures used to notify accredited MA organizations of deficiencies and to monitor the correction of those deficiencies; and

—The procedures used to enforce compliance with accreditation requirements.

- Detailed information about the individuals who perform surveys for the accreditation organization, including the following—

++ The size and composition of accreditation survey teams for each type of plan reviewed as part of the accreditation process;

++ The education and experience requirements surveyors must meet;

++ The content and frequency of the in-service training provided to survey personnel;

++ The evaluation systems used to monitor the performance of individual surveyors and survey teams; and

++ The organization's policies and practice with respect to the participation, in surveys or in the accreditation decision process by an individual who is professionally or financially affiliated with the entity being surveyed.

- A description of the organization's data management and analysis system with respect to its surveys and accreditation decisions, including the kinds of reports, tables, and other displays generated by that system.
- A description of the organization's procedures for responding to and investigating complaints against accredited organizations, including policies and procedures regarding coordination of these activities with appropriate licensing bodies and ombudsmen programs.
- A description of the organization's policies and procedures with respect to the withholding or removal of accreditation for failure to meet the accreditation organization's standards or requirements, and other actions the organization takes in response to noncompliance with its standards and requirements.
- A description of all types (for example, full, partial) and categories (for example, provisional, conditional, temporary) of accreditation offered by the organization, the duration of each type and category of accreditation and a statement identifying the types and categories that would serve as a basis for accreditation if CMS approves the accreditation organization.
- A list of all currently accredited MA organizations and the type, category, and expiration date of the accreditation held by each of them.
- A list of all full and partial accreditation surveys scheduled to be performed by the accreditation organization as requested by CMS.
- The name and address of each person with an ownership or control interest in the accreditation organization.
- CMS also considers URAC's past performance in the deeming program and results of recent deeming validation reviews, or look-behind audits conducted as part of continuing Federal oversight of the deeming program under § 422.157(d).

In accordance with section 1865(a)(3)(A) of the Act, the March 30, 2012 proposed notice (77 FR 19288) also solicited public comments regarding whether URAC's requirements met or exceeded the Medicare conditions of participation as an accrediting organization for MA HMOs and PPOs. We received no public comments in response to our proposed notice.

IV. Provisions of the Final Notice

A. Differences Between URAC's Standards and Requirements for Accreditation and Medicare's Conditions and Survey Requirements

We compared the standards and survey process contained in URAC's application with the Medicare conditions for accreditation. Our review and evaluation of URAC's application for continued CMS-approval were conducted as described in section III of this final notice, and yielded the following:

- URAC amended its crosswalk to ensure current URAC standards are clearly crosswalked to the following regulatory requirements: §§ 422.128; 422.206(b)(2); 422.112(a)(1); 422.112(a)(2); 422.112(a)(8); 422.112(b)(3); 422.112(b)(4)(iii); 422.112(b)(5); 422.118; 422.152; 422.202(b); and 422.202(c).
- To meet the amendments made at § 422.156 by the final rule published in the April 15, 2011 **Federal Register** (76 CFR 21432), URAC removed Quality Improvement Projects and Chronic Care Improvement Programs from its deeming process.

B. Term of Approval

Based on the review and observations described in section III of this final notice, we have determined that URAC's accreditation program requirements

meet or exceed our requirements. Therefore, we approve URAC as a national accreditation organization with deeming authority for MA HMOs and PPOs, effective May 26, 2012 through May 25, 2018.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplemental Medical Insurance Program)

Dated: May 21, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–12812 Filed 5–24–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1595–N]

Medicare Program; Semi-Annual Meeting of the Advisory Panel on Hospital Outpatient Payment (HOP Panel)—August 27, 28, and 29, 2012

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the second semi-annual meeting of the Advisory Panel on Hospital Outpatient Payment (HOP, the Panel), (the Ambulatory Payment Classification (APC) Panel) for 2012. The purpose of the Panel is to advise the Secretary of the Department of Health and Human Services (DHHS) (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Administrator) on the clinical integrity of the APC groups and their associated weights, and hospital outpatient therapeutic supervision issues.

DATES: *Meeting Date:* The second semi-annual meeting in 2012 is scheduled for the following dates and times. **Note:** The times listed in this notice are Eastern Daylight Time (EDT) and are approximate times; consequently, the meetings may last longer than listed in this notice, but will not begin before the posted times:

- Monday, August 27, 2012, 1 p.m. to 5 p.m. EDT.
- Tuesday, August 28, 2012, 9 a.m. to 5 p.m. EDT.
- Wednesday, August 29, 2012, 9 a.m. to 5 p.m. EDT.

Deadlines

Deadline for Presentations and Comments—5 p.m. EDT, Friday, July 27, 2012. (See below for submission instructions for both hardcopy and electronic submissions.)

Deadline for Meeting Registration—5 p.m. EDT, Friday, August 17, 2012.

(Note: Those who do not preregister may not be able to attend the meeting since seating space is limited).

Deadline for Requests for Special Accommodations—5 p.m. EDT, Friday, August 17, 2012.

Submission Instructions for Presentations and Comments

Because of staffing and resource limitations, we cannot accept written comments and or presentations by FAX, nor can we print written comments and presentations received by email for dissemination at the meeting.

Presentations

Presentations must be based on the scope of the Panel designated in the Charter. Any presentations outside of the scope of this Panel will be returned and/or amendments requested. Unrelated topics include, but are not limited to, the conversion factor, charge compression, revisions to the cost report, pass-through payments, correct coding, new technology applications (including supporting information/documentation), provider payment adjustments, supervision of hospital outpatient diagnostic services and the types of practitioners that are permitted to supervise hospital outpatient services. The Panel may not recommend that services be designated as nonsurgical extended duration therapeutic services.

All presentations will be considered public information and may be posted on the CMS web site and will be shared with the public. Presenters should not send pictures of patients in any of the documents (unless their faces have been blocked out) or include any examples with patient identifiable information.

In order to consider presentation and/or comment requests, we will need to receive the following information:

1. A hardcopy of your presentation; only hardcopy comments and presentations can be reproduced for public dissemination. We note that all presentations are limited to 5 minutes per individual or organization.
2. An email copy of your presentations sent to the Designated Federal Official's (DFO) mailbox, *Raymond.Bulls@cms.hhs.gov.*
3. Form CMS–20017 with complete contact information that includes name, address, phone, and email addresses for all presenters and a contact that can answer any questions and or provide revisions that are requested for the presentation.

○ Presenters must clearly explain the action(s) that they are requesting CMS to take in the appropriate section of the form. A presenter's relationship to the organization that they represent must also be clearly listed.

○ The form is now available through the CMS Forms Web site. The Uniform Resource Locator (URL) for linking to this form is as follows: *http://www.cms.hhs.gov/cmsforms/downloads/cms20017.pdf.*

ADDRESSES: *Meeting Location:* The meeting will be held in the Auditorium, CMS Central Office, 7500 Security Boulevard, Woodlawn, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: For inquiries about the Panel, contact the DFO: Raymond Bulls, 7500 Security Boulevard, Mail Stop C4–03–12, Woodlawn, MD 21244–1850. Phone: (410) 786–7267.

Mail hardcopies and email copies to the following addresses: Raymond Bulls, DFO, CMS, CM, HAPC, DOC—HOPS Panel, 7500 Security Blvd., Woodlawn, MD 21244–1850, Mail Stop C4–03–12, *Raymond.Bulls@cms.hhs.gov*.

Note: We recommend that you advise couriers of the following information: When delivering hardcopies of presentations to CMS, if no one answers at the above phone number, call (410) 786–4532 or (410) 786–7267.

News Media: Representatives must contact our Public Affairs Office at (202) 690–6145.

Advisory Committees' Information Lines: The phone numbers for the CMS Federal Advisory Committee Hotline are 1–877–449–5659 (toll free) and (410) 786–9379 (local).

Web Sites: For additional information on the Panel and updates to the Panel's activities, we refer readers to view our Web site at the following: *http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/*

AdvisoryPanelonAmbulatory PaymentClassificationGroups.html.

You may also search information about the Panel and its membership in the Federal Advisory Committee Act (FACA) database at the following URL: *https://www.fido.gov/facadatabase/public.asp*.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Department of Health and Human Services (DHHS) (the Secretary) is required by section 1833(t)(9)(A) of the Social Security Act (the Act) and section 222 of the Public Health Service Act (PHS Act) to consult with an expert outside advisory panel regarding the clinical integrity of the Ambulatory Payment Classification (APC) groups and relative payment weights. The Panel (which was formerly known as the Advisory Panel on Ambulatory Payment Classification Groups) is governed by the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), as amended (5 U.S.C. Appendix 2), to set forth standards for the formation and use of advisory panels.

The Charter provides that the Panel shall meet up to 3 times annually. We consider the technical advice provided by the Panel as we prepare the proposed and final rules to update the outpatient prospective payment system (OPPS).

II. Agenda

The agenda for the August 2012 meeting will provide for discussion and comment on the following topics as designated in the Panel's Charter:

- Addressing whether procedures within an APC group are similar both clinically and in terms of resource use.
- Evaluating APC group weights.
- Reviewing the packaging of OPPS services and costs, including the methodology and the impact on APC groups and payment.
- Removing procedures from the inpatient list for payment under the OPPS.
- Using single and multiple procedure claims data for CMS' determination of APC group weights.
- Addressing other technical issues concerning APC group structure.
- Recommending the appropriate supervision level (general, direct, or personal) for individual hospital outpatient therapeutic services.

The subject matter before the Panel will be limited to these and related topics. Unrelated topics include, but are not limited to, the conversion factor, charge compression, revisions to the cost report, pass-through payments, correct coding, new technology applications (including supporting information/documentation), provider payment adjustments, hospital outpatient supervision of diagnostic services and the types of practitioners who are permitted to supervise hospital outpatient services.

The Panel may not recommend that services be designated as nonsurgical extended duration therapeutic services.

The Panel may use data collected or developed by entities and organizations, other than the DHHS and CMS in conducting its review. We recommend organizations submit data for the Panel's and CMS staff's review. The Agenda will be posted on the CMS Web site prior to the meeting.

III. Oral Comments

In addition to formal oral presentations, which are limited to 5 minutes per individual or organization, there will be an opportunity during the meeting for public oral comments, which will be limited to 1 minute for each individual and a total of 3 minutes per organization.

IV. Meeting Attendance

The meeting is open to the public; however, attendance is limited to space available. Priority will be given to those who pre-register, and attendance may be limited based on the number of registrants and the space available.

Persons wishing to attend this meeting, which is located on Federal property, must email the DFO to register in advance no later than 5 p.m. (EDT), August 17, 2012. A confirmation will be sent to the requester(s) by return email within 10 days of the meeting.

In your email request for registration, include the following information:

- Name(s) of attendee(s).
- Title(s).
- Organization.
- Office address, including city and state.
- Email address(es).
- Telephone number(s).

V. Security, Building, and Parking Guidelines

The following are the security, building, and parking guidelines:

- Persons attending the meeting, including presenters, must be pre-registered and on attendance list by the prescribed date.
- Individuals who are not pre registered in advance may not be permitted to enter the building and may be unable to attend the meeting.
- Attendees must present valid photo identification to the Federal Protective Service or Guard Service personnel before entering the building. Without a current, valid photo ID, persons may not be permitted entry to the building.
- Security measures include inspection of vehicles, inside and out, at the entrance to the grounds.
- All persons entering the building must pass through a metal detector.
- All items brought into CMS including personal items, for example, laptops and cell phones, are subject to physical inspection.
- The public may enter the building 30 to 45 minutes before the meeting convenes each day.
- All visitors must be escorted in areas other than the lower and first-floor levels in the Central Building.
- The main-entrance guards will issue parking permits and instructions upon arrival at the building.

VI. Special Accommodations

Individuals requiring sign-language interpretation or other special accommodations must send a request for these services to the DFO by 5 p.m. (EDT), Friday, August 17, 2012.

VII. Panel Recommendations and Discussions

The Panel's recommendations at any Panel meeting generally are not final until they have been reviewed and approved by the Panel on the last day of the meeting, before the final adjournment. These recommendations will be posted to our web site after the meeting.

VIII. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

(Catalog of Federal Domestic Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 16, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–12630 Filed 5–24–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Performance Measurement On-Line Tool (PMOTOOL).

OMB No.: New Collection.

Description: The Performance Measurement On-Line Tool (PMOTOOL) was designed by the Children's Bureau to collect data, in an automated format, from specified discretionary grants funded by the Children's Bureau. The data collected by this instrument will be submitted by individual discretionary grantees funded under the following programs: Abandoned Infants Assistance Program, Infant Adoption Awareness Program, Adoption Opportunities Program, Child Abuse and Neglect Program and the Child Welfare Training Program. Grantees will submit this information on semi-annual basis in conjunction with their semi-annual program progress report.

The purpose of this data collection is to assist the Children's Bureau in responding to the government wide performance effort to collect aggregate data over time to assess program progress on discretionary funded programs. The Performance Measurement ON–Line Tool (PMOTOOL) will focus on quantifiable outcome measures that are directly related to the expected social impact or public benefit of each federal program. These measurable outcomes will serve as evidence that the federally funded programs are making progress toward achieving broad, legislated program goals.

Respondents: Selected clusters of competitive grant program funded by the Children's Bureau.

Annual Burden Estimated:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Performance Measurement On-Line Tool.	Abandoned Infants Assistance Program Estimate 20.	2 per fiscal year	One hour per response field	Estimate 40.
Performance Measurement On-Line Tool.	Infant Adoption Awareness Program Estimate 6.	2 per fiscal year	One hour per response field	Estimate 12.
Performance Measurement On-Line Tool.	Adoption Opportunities Program Estimate 45.	2 per fiscal year	One hour per response field	Estimate 90.
Performance Measurement On-Line Tool.	Child Abuse and Neglect Program Estimate 30.	2 per fiscal year	One hour per response field	Estimate 60.
Performance Measurement On-Line Tool.	Child Welfare Training Program Estimate 40.	2 per fiscal year	One hour per response field	Estimate 80.

Estimated Total Annual Burden Hours: 282.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–12704 Filed 5–24–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0429]

Guidance on Meetings With Industry and Investigators on the Research and Development of Tobacco Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Meetings with Industry and Investigators on the Research and Development of Tobacco Products.'' This guidance describes FDA's current policies and recommendations with respect to Agency meetings with tobacco manufacturers, importers, researchers, and/or investigators relating to their plans to conduct research to inform the regulation of tobacco products, or support the development or marketing of tobacco products. The guidance is intended to assist persons seeking a meeting with FDA to discuss the research and development of tobacco products. This guidance does not pertain to other types of meetings or meeting requests with Center for Tobacco Products (CTP) staff.

DATES: Submit either electronic or written comments on this guidance at any time. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 (the PRA) by July 24, 2012 (see section III. Paperwork Reduction Act of 1995 in this document).

ADDRESSES: Submit written requests for single copies of the guidance entitled ''Meetings with Industry and Investigators on the Research and Development of Tobacco Products'' to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments, including comments on the proposed collection of information, to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: With regard to the guidance: Gerie Voss, Center for Tobacco Products, 9200 Corporate Blvd., Rockville, MD 20850,

1–877–287–1373, *gerie.voss@fda.hhs.gov.*

With regard to the proposed collection of information: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *daniel.gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Meetings with Industry and Investigators on the Research and Development of Tobacco Products.'' This guidance is intended to assist tobacco manufacturers, importers, researchers, and investigators, and their representatives who seek meetings with staff of FDA's CTP relating to their plans to conduct research to inform the regulation of tobacco products or support the development or marketing of tobacco products. This guidance does not pertain to other types of meetings or meeting requests with CTP staff.

The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) offers tobacco product manufacturers several pathways to obtain an order from FDA to authorize the marketing of a tobacco product before it may be introduced or delivered into interstate commerce. To provide assistance with these pathways to market particular products, FDA will meet with tobacco product manufacturers, importers, researchers, and investigators (or their representatives) where appropriate.

This guidance is intended to assist persons who seek guidance relating to their research to inform the regulation of tobacco products, or to support the development or marketing of tobacco products. In the guidance, the Agency discusses, among other things:

- What information FDA recommends persons include in such a meeting request,
- How and when to submit such a request, and
- What information FDA recommends persons submit prior to such a meeting.

II. Significance of Guidance

FDA is issuing this guidance as a level 2 guidance consistent with FDA's good guidance practices regulations (21 CFR 10.115). The guidance represents the Agency's current thinking on ''Meetings with Industry and Investigators on the Research and Development of Tobacco Products.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Paperwork Reduction Act of 1995

Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing this notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden on 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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry: Meetings With Industry and Investigators on the Research and Development of Tobacco Products

This guidance is intended to assist persons seeking to have a meeting with FDA on the research and development of tobacco products. This guidance document discusses, among other things: What information FDA recommends that persons include in a meeting request, how and when to submit a request, and what information FDA recommends that persons submit prior to the meeting.

This guidance describes two collections of information: (1) The submission of a meeting request containing certain information and (2) the submission of an information package in advance of the meeting. The purpose of this proposed information collection is to allow FDA to conduct meetings with tobacco manufacturers, importers, researchers, and investigators in an effective and efficient manner.

A. Meeting Requests

Section IV.E of the guidance sets forth FDA's recommendations for materials to be included in a request for a meeting with FDA to discuss the research and development of tobacco products. Under the guidance, FDA recommends that the following information be included in the meeting request:

1. Product name and FDA-assigned Submission Tracking Number (if applicable);
2. Product category (e.g., cigarettes, smokeless tobacco, etc.) (if applicable);
3. Product use (indicate for consumer use or for further manufacturing);
4. Contact information for individual or company requesting the meeting;
5. The type of meeting being requested;
6. A brief statement of the purpose of the meeting, which could include a discussion of the types of studies or data to be discussed at the meeting, the general nature of the primary questions to be asked, and where the meeting fits in the overall product development plans;
7. A draft list of the specific objectives/outcomes expected from the meeting;
8. A preliminary proposed agenda, including estimated amounts of time needed for each agenda item and designated speaker(s);
9. A draft list of specific questions, grouped by discipline;
10. A list of all individuals (including titles and responsibilities) who will attend the meeting on behalf of the tobacco product manufacturer, importer, researcher, or investigator;
11. The approximate date on which supporting documentation (i.e., the meeting information package) likely will be received by FDA; and
12. Suggested dates and times for the meeting (note that generally a meeting will be scheduled for approximately 1 to 1.5 hours).

This information will be used by the Agency to: (1) Determine the utility of the meeting, (2) identify Agency staff necessary to discuss proposed agenda items, and (3) schedule the meeting.

B. Information Packages

An individual submitting a meeting information package to FDA in advance of a meeting should provide summary information relevant to the product and supplementary information pertaining to any issue raised by the individual or

FDA to be discussed at the meeting. As stated in section IV.K of the guidance, FDA recommends that meeting information packages generally include updated information from the meeting request (see items 1 through 8 in section III.A of this document) and:

1. Chemistry, manufacturing, and control data summary (as applicable);
2. Preclinical data summary (as applicable);
3. Clinical data summary (as applicable);
4. Behavioral and product use data summary (as applicable);
5. User and nonuser perception data summary (as applicable); and
6. Investigational plans for studies and surveillance of the tobacco product, including a summary of proposed study protocols containing the following information (as applicable):

a. Study objective(s),
b. Study hypotheses,
c. Study design,
d. Study population (inclusion/exclusion criteria, comparison group(s)),
e. Human subject protection information, including Institutional Review Board information,
f. Primary and secondary endpoints (definition and success criteria),
g. Sample size calculation,
h. Data collection procedures,
i. Duration of followup and baseline and followup assessments, and
j. Data analysis plan(s).

The purpose of the information package is to provide Agency staff the opportunity to adequately prepare for the meeting, including the review of relevant data concerning the product. In the Agency's experience, reviewing such information is critical to achieving a productive meeting. For the information that was previously submitted in the meeting request, the information package should provide updated information that reflects the most current and accurate information available.

C. Description of Respondents

The respondents to this collection of information are manufacturers, importers, researchers, and investigators of tobacco products who seek to meet with FDA to discuss their plans regarding the development or marketing of a tobacco product.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Meeting requests and information packages	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Meeting Requests					
Combining and sending meeting request letters for manufacturers, importers, and researchers	67	1	67	10	670
Meeting Information Packages					
Combining and submitting meeting information packages for manufacturers, importers, and researchers	67	1	67	18	1,206
Collection Totals					1,876

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's estimate of the number of respondents for meeting requests in table 1 of this document is based on the number of meeting requests to be received over the next 3 years. In the first year of this collection, FDA estimates that 50 preapplication meetings will be requested. In year 2, FDA estimates that 100 meetings will be requested, especially as applications and reports for substantial equivalence, etc., are received and acted upon. Once the public knows more about submitting these applications in year 3, the request for meetings is expected to drop back to the year 1 rate of 50 per year. Thus, FDA estimates the number of manufacturers, importers, researchers, and investigators who are expected to submit meeting request requests in table 1 of this document to be 67 (50 year 1 requests + 100 year 2 requests + 50 year 3 requests divided by 3). The hours per response, which is the estimated number of hours that a respondent would spend preparing the information recommended by this guidance to be submitted with a meeting request is estimated to be approximately 10 hours each, and the total burden hours are 670 hours (10 hours preparation/mailing times 67 average respondents per year). Based on FDA's experience, the Agency expects it will take respondents this amount of time to prepare, gather, copy, and submit brief statements about the product and a description of the purpose and details of the meeting.

FDA's estimate of the number of respondents for compiling meeting information packages in table 1 of this document is based on 67 respondents each preparing copies of their information package and submitting them to FDA, for a total of 1,206 hours annually. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information package as recommended by the guidance, is estimated to be approximately 18 hours per information package. Based on FDA's experience, the Agency expects that it will take respondents 1,206 hours of time (67 respondents times 18 hours) to gather, copy, and submit brief statements about the product, a description of the details of the anticipated meeting, and data and information that generally would already have been generated for the planned research and/or product development.

The total number of burden hours for this collection of information is 1,876 hours (67 hours to prepare and submit meeting requests and 1,206 hours to prepare and submit information packages).

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division

of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain an electronic version of this guidance document at *http://www.regulations.gov* or *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm.*

Dated: May 17, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–12775 Filed 5–24–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Public Workshop: Privacy Compliance Workshop

AGENCY: Privacy Office, DHS.

ACTION: Notice Announcing Public Workshop.

SUMMARY: The Department of Homeland Security Privacy Office will host a public workshop, ''Privacy Compliance Workshop.''

DATES: The workshop will be held on June 20, 2012, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The workshop will be held in the conference center at the Federal Trade Commission Building located at 601 New Jersey Avenue NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Rebecca Richards, Privacy Office, Department of Homeland Security, Washington, DC 20528; by telephone 703–235–0780; by facsimile 703–235–0442; or by email at *PIA@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS) Privacy Office will conduct a free public workshop open to all federal employees and contractors to provide in-depth training on the privacy compliance process at DHS. The morning session will consist of overview presentations, including the privacy compliance fundamentals, privacy and data security, and the privacy compliance life cycle. A learning lunch will provide attendees with the opportunity to interact with compliance experts at DHS. The afternoon sessions will cover advanced presentations, including the Paperwork Reduction Act, the Freedom of Information Act, Privacy Compliance Reviews, and program case studies.

Registration and Security: In order to facilitate security requirements of the FTC facility, attendees must register in advance for this workshop. Registration closes at 5:00 p.m., Friday, June 15, 2012. To register, please send an email to *privacyworkshop@hq.dhs.gov,* with ''PRIVComplianceWorkshop'' in the subject line, and include your full name, email address and organizational affiliation in the body of the email. Alternatively, you may call 703–235–0780 to register and to provide the Privacy Office with your full name and organizational affiliation.

All attendees who are employed by a federal agency will be required to show their federal agency employee photo identification badge to enter the building. Attendees who do not possess a federal agency employee photo identification badge will need to show a form of government-issued photo identification, such as a driver's license, in order to verify their previously-provided registration information.

The Privacy Office will only use your name for the security purposes of this specific workshop and to contact you in the event of a change to the workshop.

Special Assistance: The workshop site is fully handicapped accessible, with both the training rooms and restrooms situated on the ground floor.

Mary Ellen Callahan,

Chief Privacy Officer, U.S. Department of Homeland Security.

[FR Doc. 2012–12829 Filed 5–24–12; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4022–DR; Docket ID FEMA–2012–0002]

Vermont; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Vermont (FEMA–4022–DR), dated September 1, 2011, and related determinations.

DATES: *Effective Date:* May 16, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 16, 2012, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to W. Craig Fugate, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the State of Vermont resulting from Tropical Storm Irene during the period of August 27 to September 2, 2011, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act'').

Therefore, I amend my declaration of September 1, 2011, to authorize Federal funds for all categories of Public Assistance at 90 percent of total eligible costs.

This adjustment to State and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act specifically prohibits a similar adjustment for funds provided for Other Needs Assistance (Section 408), and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–12713 Filed 5–24–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–B–1255]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before August 23, 2012.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1255, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *www.fema.gov/pdf/media/factsheets/2010/srp_fs.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Community	Community map repository address
Hardee County, Florida, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.bakeraecom.com/index.php/florida/hardee/*	
City of Bowling Green	City Hall, 107 West Main Street, Bowling Green, FL 33834.
City of Wauchula	City Hall, 225 East Main Street, Wauchula, FL 33873.
Town of Zolfo Springs	Town Hall, 3210 U.S. Route 17 South, Zolfo Springs, FL 33890.
Unincorporated Areas of Hardee County	Hardee County Courthouse Annex, 412 West Orange Street, Room 103, Wauchula, FL 33873.
Charles County, Maryland, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.rampp-team.com/md.htm*	
Town of Indian Head	Town Hall, 4195 Indian Head Highway, Indian Head, MD 20640.
Town of La Plata	Town Hall, 305 Queen Anne Street, La Plata, MD 20646.

Community	Community map repository address
Unincorporated Areas of Charles County	Charles County Government Building, 200 Baltimore Street, La Plata, MD 20646.
Village of Port Tobacco	Village Hall, 8440 Commerce Street, Port Tobacco Village, MD 20677.
Oneida County, New York (All Jurisdictions)	
Maps Available for Inspection Online at: *http://rampp-team.com/ny.htm*	
City of Rome	City Hall, 198 North Washington Street, Rome, NY 13440.
City of Sherrill	City Hall, 377 Sherrill Road, Sherrill, NY 13461.
City of Utica	City Hall, 1 Kennedy Plaza, Utica, NY 13502.
Town of Annsville	Annsville Code Enforcement Office, 9042 Meadows Road, Taberg, NY 13471.
Town of Augusta	Augusta Town Hall Offices, 185 North Main Street, Oriskany Falls, NY 13425.
Town of Ava	Town Hall, 11468 State Route 26, Ava, NY 13303.
Town of Boonville	Town Hall, 13149 State Route 12, Boonville, NY 13309.
Town of Bridgewater	Town Hall, 404 State Route 8, Bridgewater, NY 13313.
Town of Camden	Town Hall, 47 2nd Street, Camden, NY 13316.
Town of Deerfield	Town Clerk's Office, 6329 Walker Road, Deerfield, NY 13502.
Town of Florence	Florence Town Hall, 11897 Thompson Corners Florence Road, Camden, NY 13316.
Town of Floyd	Floyd Town Hall, 8299 Old Floyd Road, Rome, NY 13440.
Town of Forestport	Town Hall, 12012 Woodhull Road, Forestport, NY 13338.
Town of Kirkland	Kirkland Town Hall, 3699 State Route 12B, Clinton, NY 13323.
Town of Lee	Lee Town Hall, 5808 Stokes Lee Center Road, Lee Center, NY 13363.
Town of Marcy	Municipal Offices, 8801 Paul Becker Road, Marcy, NY 13403.
Town of Marshall	Marshall Town Hall, 2651 State Route 12B, Deansboro, NY 13328.
Town of New Hartford	Codes and Zoning Office, 111 New Hartford Street, New Hartford, NY 13413.
Town of Paris	Paris Town Hall, 2580 Sulphur Springs Road, Sauquoit, NY 13456.
Town of Remsen	Town Hall, 10540 Academy Lane, Remsen, NY 13438.
Town of Sangerfield	Town Hall, 1084 State Route 12, Sangerfield, NY 13455.
Town of Steuben	Steuben Town Clerk's Office, 9458 Soule Road, Remsen, NY 13438.
Town of Trenton	Trenton Town Clerk's Office, 8520 Old Poland Road, Barneveld, NY 13304.
Town of Vernon	Town Offices, 4305 Peterboro Road, Vernon, NY 13476.
Town of Verona	Verona Town Office Building, 6600 Germany Road, Durhamville, NY 13054.
Town of Vienna	Vienna Town Hall, 2083 State Route 49, North Bay, NY 13123.
Town of Western	Western Town Hall, 9219 Main Street, Westernville, NY 13486.
Town of Westmoreland	Town Hall, 100 Station Road, Westmoreland, NY 13490.
Town of Whitestown	Whitestown Town Hall, 8539 Clark Mills Road, Whitesboro, NY 13492.
Village of Barneveld	Village Hall, Trenton Municipal Center, 8520 Old Poland Road, Barneveld, NY 13304.
Village of Boonville	Village Hall, 13149 State Route 12, Boonville, NY 13309.
Village of Bridgewater	Village Hall, 7509 State Route 20, Bridgewater, NY 13313.
Village of Camden	Village Hall, 14 Church Street, Camden, NY 13316.
Village of Clayville	Village Office, 2505 Foundry Place, Clayville, NY 13322.
Village of Clinton	Village Hall, Lumbard Hall, 100 North Park Row, Clinton, NY 13323.
Village of Holland Patent	Village Office, 9544 Depot Street, Holland Patent, NY 13354.
Village of New Hartford	Village Codes Department, Butler Hall, 48 Genesee Street, New Hartford, NY 13413.
Village of New York Mills	Village Clerk's Office, 1 Maple Street, New York Mills, NY 13417.
Village of Oneida Castle	Village Hall, 1 1st Street, Oneida Castle, NY 13421.
Village of Oriskany	Village Office, 708 Utica Street, Oriskany, NY 13424.
Village of Oriskany Falls	Village Hall, 185 North Main Street, Oriskany Falls, NY 13425.
Village of Prospect	Village Hall, 116 Upper State Street, Prospect, NY 13435.
Village of Remsen	Village Office, 10606 Pine Street, Remsen, NY 13438.
Village of Sylvan Beach	Village Hall, 808 Marina Drive, Sylvan Beach, NY 13157.
Village of Vernon	Village Hall, 8 Ruth Street, Vernon, NY 13476.
Village of Waterville	Village Hall, 122 Barton Avenue, Waterville, NY 13480.
Village of Whitesboro	Municipal Office, 10 Moseley Street, Whitesboro, NY 13492.
Village of Yorkville	Village Hall, 30 6th Street, Yorkville, NY 13495.
Newport County, Rhode Island (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionI/NewportCountyRIcoastal/Preliminary%20Maps/Forms/AllItems.aspx*	
City of Newport	Planning, Zoning and Inspections Department, City Hall, 3rd Floor, 43 Broadway, Newport, RI 02840.
Town of Jamestown	Town Hall, 93 Narragansett Avenue, Jamestown, RI 02835.
Town of Little Compton	Town Hall, 40 Commons, Little Compton, RI 02837.

Community	Community map repository address
Town of Middletown	Town Hall, 350 East Main Road, Middletown, RI 02842.
Town of Portsmouth	Building Inspection Department, Town Hall, 2nd Floor, 2200 East Main Road, Portsmouth, RI 02871.
Town of Tiverton	Town Hall, 343 Highland Road, Tiverton, RI 02878.
Washington County, Rhode Island (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionI/WashingtonCountyRIcoastal/SitePages/Home.aspx*	
Town of Charlestown	Town Hall, Planning Office, 4540 South County Trail, Charlestown, RI 02813.
Town of Narragansett	Town Hall, Engineering Department, 25 5th Avenue, Narragansett, RI 02882.
Town of New Shoreham	New Shoreham Town Hall, 16 Old Town Road, Block Island, RI 02807.
Town of North Kingstown	Department of Public Works and Engineering, 2050 Davisville Road, North Kingstown, RI 02852.
Town of South Kingstown	Town Hall, 180 High Street, Wakefield, RI 02879.
Town of Westerly	Town Hall, 45 Broad Street, Westerly, RI 02891.
Knox County, Tennessee, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.bakeraecom.com/index.php/tennessee/knox-2/*	
City of Knoxville	City of Knoxville Engineering Division, City County Building, 400 Main Street, Room 480, Knoxville, TN 37902.
Town of Farragut	Town Hall, Engineering Department, 11408 Municipal Center Drive, Farragut, TN 37934.
Unincorporated Areas of Knox County	Knox County Engineering and Public Works Department, 205 West Baxter Avenue, Knoxville, TN 37917.
Leon County, Texas, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.riskmap6.com*	
City of Buffalo	City Hall, 144 Avant Street, Buffalo, TX 75831.
City of Centerville	City Hall, 325 East St. Marys, Centerville, TX 75833.
City of Jewett	City Hall, 114 North Broadway, Jewett, TX 75846.
City of Marquez	City Hall, 320 South Austin Street, Marquez, TX 77865.
City of Normangee	City Hall, 107 Main Street, Normangee, TX 77871.
Town of Leona	Town Hall, 169 Highway 977 East, Leona, TX 75850.
Town of Oakwood	Town Hall, 135 East Broad Street, Oakwood, TX 75855.
Unincorporated Areas of Leon County	Leon County Judge's Office, 130 East St. Marys, Centerville, TX 75833.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: May 14, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–12715 Filed 5–24–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–33]

Notice of Submission of Proposed Information Collection to OMB; Rural Housing Stability Program Registration

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This submission is to request a new collection for the reporting burden associated with registration requirements that Rural Housing Stability Program (RHSP) applicants will be expected to complete prior to actual application. This submission is limited to the reporting burden under the RHSP program, created through the HEARTH Act. The statutory provisions and the implementing interim regulations that govern RHSP require these registration data elements.

DATES: *Comments Due Date:* June 25, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506-New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.epo.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the

Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Rural Housing Stability Program Registration.

OMB Approval Number: 2506-New.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: This submission is to request a new collection for the reporting burden associated with registration requirements that Rural Housing Stability Program (RHSP) applicants will be expected to complete prior to actual application. This submission is limited to the reporting burden under the RHSP program, created through the HEARTH Act. The statutory provisions and the implementing interim regulations that govern RHSP require these registration data elements.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Approximately 230 rural counties, deemed eligible by HUD, will complete the RHSP Registration which will require approximately 1 hour to complete. The registration will occur once per year prior to the release of the annual RHSP Notice of Funding Availability. The approximate total number of hours needed for all applicants reporting per year is 230 hours

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 17, 2012.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–12841 Filed 5–24–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5604–N–05]

Notice of Submission of Proposed Information Collection to OMB: Rural Housing Stability Assistance Program Grant Application-Rural Housing Stability Assistance Program Application

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 24, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–New) and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410–5000; telephone (202) 402–3400, (this is not a toll-free number) or email Ms. Pollard at *Colette_Pollard@hud.gov* for a copy of proposed forms, or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410; telephone (202) 708–16590. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Rural Housing Stability Assistance Program Grant Application-Rural Housing Stability Assistance Program Application.

Description of the Need for the Information and Its Proposed Use: This submission is to request a new collection for the reporting burden associated with application requirements that Rural Housing Stability Assistance Program (RHSP) applicants will be expected to complete.

This submission is limited to the reporting burden under the RHSP program, created through the HEARTH Act. To see the regulations for the new RHSP program and applicable supplementary documents, visit HUD's Homeless Resource Exchange page at *http://www.hudhre.info/.* The statutory provisions and the implementing regulations that govern the program require new application requirements.

Agency Form Numbers: None.

Members of the affected public: RHSP applicant representatives.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

The RHSP Application will be completed by many of the HUD identified 230 rural counties and will require approximately 141 hours to complete. The application process will occur once per year after the release of the annual RHSP notice of funding availability. The total number of hours needed for all reporting per year is 32,319 hours.

Status of proposed information collection: New Collection for the implementation of a related (to the former CoC-based programs) but new program created under the HEARTH Act.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 17, 2012.

Clifford D. Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2012–12842 Filed 5–24–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–40]

Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, an exception was granted to the City of Phoenix Housing Department for the purchase and installation of microwave ovens for the Marcos de Niza project.

FOR FURTHER INFORMATION CONTACT: Donald J. LaVoy, Deputy Assistant Secretary for Office of Field Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4112, Washington, DC, 20410–4000, telephone number 202–402–8500 (this is not a toll-free number); or Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC, 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, on May 3, 2012, upon request of the City of Phoenix Housing Department, HUD granted an exception to applicability of the Buy American requirements with respect to work, using CFRFC grant funds, in connection with the Marcos de Niza project. The exception was granted by HUD on the basis that the relevant manufactured goods (microwave ovens) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: May 18, 2012.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2012–12839 Filed 5–24–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5601–N–20]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a

suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register,** the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Army:* Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, DAIM–ZS, Room 8536, 2511 Jefferson Davis Hwy, Arlington, VA 22202; *GSA*: Mr. John E.B. Smith, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405; *Navy:* Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426, (202) 501–0084; (These are not toll-free numbers).

Dated: May 17, 2012.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 05/25/2012

Suitable/Available Properties

Building

Alaska

B–00877
Fort Greely
Ft. Greely AK 99731
Landholding Agency: Army
Property Number: 21201220052
Status: Unutilized
Comments: off-site removal only; 14,824 sf.; family housing; poor conditions; need repairs; asbestos & lead identified; secured area; prior approval needed to access & relocate

California

R4
Naval Air Station
San Diego CA 92135
Landholding Agency: Navy
Property Number: 77201220009
Status: Excess
Comments: off-site removal; 720 sf.; current use: training rm.; poor conditions; need extensive repairs; secured area; transferee will need prior approval to access property

District of Columbia

2 Bldgs.
Joint Base Anacostia Bolling
Washington DC 20032
Landholding Agency: Navy
Property Number: 77201220008
Status: Unutilized
Directions: 387 and 350T
Comments: off-site removal only; 1,315 sf. (B–350T); 2,800 sf. (B–387); storage/office; extensive repairs needed for B–350T; secured area; need prior approval to access & relocate

Maryland

6 Bldgs.
Naval Support Facility
Indian Head MD
Landholding Agency: Navy
Property Number: 77201220007
Status: Excess
Directions: 1760, 1761, 1762, 1763, 1764, 1765
Comments: off-site removal only; 32 sf. for each; personal shelters during testing; need repairs; 750 ft. from bald eagle nest; secured area; need prior approval to access & relocate

Virginia

Bldg. 1792
Marine Corps Base
Quantico VA 22134
Landholding Agency: Navy
Property Number: 77201220006
Status: Unutilized
Comments: off-site removal only; 14,290 sf.; horse stables; poor conditions; need repairs; need pass to access property

Washington

Log House
281 Fish Hatchery Rd.
Quilcene WA 98376
Landholding Agency: GSA
Property Number: 54201220006
Status: Excess
GSA Number: 9–I–WA–1260
Comments: off-site removal only; 3,385 sf.; residential/office

Suitable/Unavailable Properties

Building

Washington

Former Seattle Branch Bldg.
1015 Second Ave.
Seattle WA 98104
Landholding Agency: GSA
Property Number: 54201220007
Status: Excess
GSA Number: 9–G–WA–1259
Comments: 85,873 sf.; bank; several cracks due to earthquake; possible lead & asbestos; any renovations/new construction will need approval from State Historic Preservation Off.

[FR Doc. 2012–12390 Filed 5–24–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. ONRR–2012–0003]

U.S. Extractive Industries Transparency Initiative Tribal Consultation

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior (Interior) announces a tribal consultation meeting regarding the United States Extractive Industries Transparency Initiative, to be held at the National Congress of American Indians mid-year Conference June 17–20, 2012, in Lincoln, Nebraska. In addition to this meeting, Interior officials welcome the opportunity to speak and meet in person with interested tribes in the months of June and July regarding this initiative. Interior also invites tribes to participate in upcoming USEITI public listening sessions and workshops in May and June.

DATES: Submit comments on the stakeholder assessment by June 29, 2012. We will hold listening sessions and workshops on the following dates:

- Anchorage, Alaska Public Listening Session, 6 p.m.–8 p.m. ADT, May 30, 2012
- Public Webinar, 1 p.m.–3 p.m. EDT, June 1, 2012
- Pittsburgh, Pennsylvania Public Listening Session, 1 p.m.–3 p.m. EDT, June 11, 2012

- New Orleans, Louisiana Public Listening Session, 1 p.m.–3 p.m. CDT, June 12, 2012
- Washington, DC Public Workshop, 10 a.m.–4 p.m. EDT, June 22, 2012

ADDRESSES: Submit comments to: Saman Hussain at telephone number 202.254.5508, or by email at *saman_hussain@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: Saman Hussain at telephone number 202.254.5508, or by email at *saman_hussain@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: In 2011, President Obama announced the United States' commitment to the global Extractive Industries Transparency Initiative (EITI). Given the significant role that the Department of the Interior plays in collecting revenue for resource extraction on federal lands, the President named Secretary Ken Salazar as the senior U.S. official responsible for implementing of the United States Extractive Industries Transparency Initiative (USEITI). Currently, the Federal Government collects revenues on behalf of some tribes and individual allottees (amounting to $538 million in the Federal Fiscal Year (ending on September 30, 2011) and then distributes the revenues through others.

In February, we sent a Dear Tribal Leader letter, inviting tribes to provide initial comment on USEITI and formation of the Multi-Stakeholder Group responsible for overseeing its implementation. Later that month, we also published a notice in the **Federal Register** seeking public comment on formation of a multi-stakeholder group to implement USEITI (74 FR 11151). In that notice, we stated that we would hold a series of public listening sessions to provide additional opportunities for public comment. In March, we held listening sessions in St. Louis, Missouri; Denver, Colorado; Houston, Texas; and Washington, DC. The Consensus Building Institute (CBI), an independent third-party facilitator, analyzed the input from these four public listening sessions, interviews with potential stakeholders, and written comments that we received. This input has formed the basis of CBI's independent stakeholder assessment and findings regarding options for establishing the U.S. Multi-Stakeholder Group, which will be responsible for implementing USEITI.

The CBI stakeholder assessment is available online at *www.doi.gov/EITI.* Alternatively, you may request a copy of the assessment from Saman Hussain whose contact information is listed above in this Notice. We encourage tribes to participate in the public comment period through June 29, 2012, to provide feedback on the stakeholder assessment and recommended options for establishing the U.S. Multi-Stakeholder Group. During the public comment period, five public listening sessions, a public webinar, a public workshop, and a tribal consultation session will be held. Details on participating in the webinar will be available from Saman Hussain and online at *www.doi.gov/EITI.*

For further information on EITI, please visit the USEITI Web page at *http://www.doi.gov/EITI.*

Dated: May 21, 2012.

Amy Holley,

Acting Assistant Secretary, Policy, Management and Budget.

[FR Doc. 2012–12827 Filed 5–24–12; 8:45 am]

BILLING CODE 4310–T2–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Secretarial Commission on Indian Trust Administration and Reform

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: The Office of the Secretary is announcing that the Secretarial Commission on Indian Trust Administration and Reform (the Commission) will hold a public meeting on June 11 and 12, 2012. The Commission has gathered input and information from two public meetings and has requested feedback on five questions regarding the development of a comprehensive evaluation of how the Department of the Interior manages and administers its trust responsibilities to American Indians and Alaska Natives. The five questions can be found at *http://www.doi.gov/cobell/commission/index.cfm* under ''Tribal Outreach Letter.'' The Secretarial Commission's charter requires the Commission to provide well-reasoned and factually based recommendations for potential improvements to the existing management and administration of the trust administration system. The Commission is committed to early public engagement and welcomes your participation in these important meetings.

DATES: The Commission's public meeting will begin at 8 a.m. and end at 5 p.m. on June 11, 2012, and will begin at 8:30 a.m. and end at 4 p.m. on June 12, 2012. Attendance is open to the public, but limited space is available. Members of the public who wish to attend should respond by June 7, 2012, to: *trustcommission@ios.doi.gov.*

ADDRESSES: The public meeting will be held at the Office of the Special Trustee for American Indians, 4400 Masthead Street NE., Room 145, Albuquerque, NM 87109. The meeting will be held in a federal facility. We encourage you to respond to *trustcommission@ios.doi.gov* by June 7, 2012, and plan on arriving early with your photo ID to adhere to building security requirements.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer, Lizzie Marsters, Chief of Staff to the Deputy Secretary, Department of the Interior, 1849 C Street NW., Room 6118, Washington, DC 20240; or email to *Lizzie_Marsters@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: As part of President Obama's commitment to fulfilling this nation's trust responsibilities to American Indians and Alaska Natives, the Secretary of the Interior appointed five members to serve on the Secretarial Commission on Indian Trust Administration and Reform, established under Secretarial Order No. 3292, dated December 8, 2009. The Commission plays a key role in the Department's ongoing efforts to empower Indian nations and strengthen government-to-government relationships.

The Commission will complete a comprehensive evaluation of the Department's management and administration of the trust assets within a two-year period and offer recommendations to the Secretary of the Interior on how to improve in the future. The Commission will:

(1) Conduct a comprehensive evaluation of the Department's management and administration of the trust administration system;

(2) Review the Department's provision of services to trust beneficiaries;

(3) Review input from the public, interested parties, and trust beneficiaries, which should involve conducting a number of regional listening sessions;

(4) Consider the nature and scope of necessary audits of the Department's trust administration system;

(5) Recommend options to the Secretary to improve the Department's management and administration of the trust administration system based on information obtained from the Commission's activities, including whether legislative or regulatory changes are necessary to implement the improvements; and

(6) Consider the provisions of the American Indian Trust Fund Management Reform Act of 1994

providing for termination of the Office of the Special Trustee for American Indians (OST), and make recommendations to the Secretary regarding termination.

The following items will be on the agenda:

Monday, June 11, 2012

- Welcome blessing
- Status update on settlement
- Review and report on Commission operations
- Trust Relationship Subcommittee report and panel session
- Trust Models Subcommittee report and panel session
- Discussion of comments received to-date in response to questions in Commission Outreach letter
- Public round robin session to share perspectives regarding any of the previous panel discussion questions
  - Do you have any recommendations or suggestions that would improve the government-to-government relationship between the Department of the Interior and tribes with respect to trust administration?
  - Are there any other trust administration models the Commission should examine as it looks towards improving the Department of the Interior's trust administration and management?
- Commissioner reflections from round robin
- Review agreements and action items for the day

Tuesday, June 12, 2012

- Status update on BIA consultations, preliminary overview of comments
- Trust Management and Administration Subcommittee report
- Trust Management and Administration Panel Session presentation and discussion
- Commission work plan—discuss updates, including updates to subcommittee charge
- Public round robin session to share perspectives regarding any of the previous panel discussion questions
  - Do you have any recommendations to improve or streamline delivery of services to trust beneficiaries? This includes matters related to financial management and accounting functions, as well as natural resource management functions.
  - Do you have any recommendations to improve or strengthen trust management and/or administration based on information gathered in the course of litigation and settlement of the recent tribal breach-of-trust cases announced in early April of this year?
  - Given that the sunset provision in the American Indian Trust Fund Management Reform Act of 1994 was predicated on OST's oversight and reform responsibilities, and that OST now has additional operational duties, should the Commission recommend sunsetting the OST?
- Suggested topics for next meeting
- Review action items and meeting accomplishments
- Closing blessing, adjourn

Written comments may be sent to the Designated Federal Officer listed in the **FOR FURTHER INFORMATION CONTACT** section above. To review all related material on the Commission's work, please refer to *http://www.doi.gov/cobell/commission/index.cfm.* All meetings are open to the public.

Dated: May 19, 2012.

David J. Hayes,

Deputy Secretary.

[FR Doc. 2012–12739 Filed 5–24–12; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2012–N049; 1265–0000–1037–S3]

Hart Mountain National Antelope Refuge, Lake County, OR; Draft Comprehensive Conservation Plan and Draft Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to revise the comprehensive conservation plan (CCP) for Hart Mountain National Antelope Refuge (Refuge). An environmental impact statement (EIS) evaluating effects of various CCP alternatives will also be prepared. We provide this notice in compliance with the National Environmental Policy Act and our CCP policy to advise the public, other Federal and State agencies, and Tribes of our intentions and to obtain public comments, suggestions, and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, please send your written comments by July 24, 2012. We will hold public meetings to begin the CCP planning process in various communities in the vicinity of the Refuge. Meeting dates, times, and locations will be announced in news releases, planning updates, and on our Web site: *http://www.fws.gov/sheldonhartmtn/Hart/refuge_planning.html.*

ADDRESSES: Information about the Refuge is available on our Web site *http://www.fws.gov/sheldonhartmtn/Hart/index.html.* Send your comments or requests for information by any of the following methods:

Online: http://www.fws.gov/sheldonhartmtn/Hart/refuge_planning.html. Follow the web link to our online comment form.

U.S. Mail: Project Leader, Sheldon—Hart Mountain National Wildlife Refuge Complex, P.O. Box 111, Lakeview, OR 97630.

FOR FURTHER INFORMATION CONTACT: Aaron Collins, (541) 947–3315, ext. 223.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for revising the Refuge CCP. This notice complies with our CCP policy and the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et seq.), to (1) advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge and (2) obtain suggestions and information on the scope of issues to consider in the EIS and during development of the CCP.

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 (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 hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCPs at least every 15 years in accordance with the

Refuge Administration Act. The existing management plan for the Refuge was completed in 1994. The revised CCP will include updates and changes needed to comply with the Refuge Administration Act and current Service policies.

Each unit of the Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the Refuge System mission and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of the Refuge.

We will conduct the environmental review of this project and develop an EIS in accordance with the requirements of NEPA, NEPA regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and our policies and procedures for compliance with those laws and regulations.

Hart Mountain National Antelope Refuge

The Refuge's approved boundary encompasses 277,893 acres of sagebrush steppe uplands in Lake County, Oregon; of this, the Service owns approximately 270,686 acres. The Refuge was established for the following purposes.

''* * * as a range and breeding ground for antelope and other species of wildlife * * *'' Executive Antelope Range (OR) Order 7523, dated Dec. 21, 1936;

''* * * for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.'' 16 U.S.C. 715d (Migratory Bird Conservation Act);

''* * * for the development, advancement, management, conservation, and protection of fish and wildlife resources * * *'' 16 U.S.C. 742f(a)(4);

''* * * for the benefit of the United States Fish and Wildlife Service, in performing its activities and services * * *'' 16 U.S.C. 742f(b)(1) (Fish and Wildlife Act of 1956); and

''* * * suitable for—(1) incidental fish and wildlife-oriented recreational development, (2) the protection of natural resources, (3) the conservation of endangered species or threatened species * * *'' 16 U.S.C. 460k–1.

The Refuge encompasses a massive fault block ridge known as Hart Mountain, which ascends abruptly almost three-quarters of a mile above the Warner Valley and then extends along nearly the entire western edge of the Refuge in a series of rugged cliffs, steep slopes, and knife-like ridges. The eastern slope descends gradually in a series of hills and a broad, gentle plain. Refuge habitats primarily include various sagebrush uplands interspersed with meadows, seasonal shallow playas, and pothole lakes. Aspen line the few perennial streams, and western juniper cover steep canyon slopes along the mountain escarpment. The Refuge provides important but seasonal habitat for its signature species, the American pronghorn antelope, and also for mule deer, bighorn sheep, and a wide variety of raptors and smaller migratory birds. The Refuge also provides habitat for year-round resident wildlife, which includes a full assemblage of sagebrush steppe mammals, amphibians, fish, invertebrates, and birds, and provides some of the most intact and important remaining habitat for the imperiled greater sage-grouse.

Preliminary Issues, Concerns, and Opportunities

The following preliminary issues, concerns, and opportunities have been identified for the Refuge, and may be evaluated in the CCP. Additional issues may be identified during public scoping.

- *Habitat management and restoration.* What management actions are needed to sustain and restore antelope and priority species and habitats over the next 15 years? How is the quality of the Refuge's sagebrush steppe habitat being impacted by fire suppression and encroachment from western juniper? What effects will climate change have on pronghorn and other species the Refuge was established to conserve?
- *Invasive species control.* Invasive species, primarily cheatgrass (*Bromus tectorum*), degrade habitat for most sagebrush steppe wildlife. How can we reduce the incidence and spread of cheatgrass and other damaging weeds while maintaining a healthy mosaic of sagebrush habitats?
- *Visitor services and education opportunities.* Compatible wildlife observation, photography, interpretation, environmental education, fishing, and hunting are provided at the Refuge. How can we improve the quality of these services and programs while minimizing impacts to Refuge wildlife and habitats? What volunteer programs and partnerships can we develop to improve outreach and education and ensure adequate visitor facilities are maintained in keeping with the Refuge's primitive and historic character?
- *Land protection and planning.* Fish and wildlife depend not only upon the Refuge, but also a much larger supporting landscape influenced by changes in climate, land use, and other activities. What management actions, including partnerships and/or additional landscape protection measures, are needed to sustain and restore priority species and habitats, maintain water quality, improve habitat protection and connectivity, and reduce habitat fragmentation?
- *Wildlife and habitat monitoring.* What data are needed and how can we obtain those data regarding antelope and key species and their habitats to accurately measure population numbers and trends and to measure the effectiveness of projects and progress toward our management objectives in order to adjust future management actions accordingly?

The following issue, previously addressed, will not be considered in the CCP.

- *Grazing.* In the Refuge's 1994 management plan, livestock grazing was evaluated and found incompatible with the purposes for the Refuge and the use was discontinued. Following amendment of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) by the National Wildlife Refuge System Improvement Act of 1997, the Service adopted an Appropriate Use Policy. The Appropriate Use Policy requires an Appropriate Use analysis and finding for uses of a refuge prior to the completion of a Compatibility Determination. Pursuant to this policy, we have reevaluated the use of livestock grazing on Hart Mountain National Antelope Refuge through an Appropriate Use Finding. Considering results from a number of studies that evaluated changes in conditions and management of Refuge habitats following livestock removal, we have determined that grazing is not beneficial to Refuge resources and cannot be accommodated without impacting existing wildlife-dependent uses. Therefore, we have concluded that livestock grazing is not an appropriate use on the Hart Mountain National

Antelope Refuge and will not be considered in the revised CCP.

Public Meetings

We will give the public an opportunity to provide input at public meetings. We will hold a meeting on May 31, 2012, at 6 p.m. at Daly Middle School, 220 South H Street, Lakeview, Oregon. We will hold another meeting on June 4, 2012, at 6 p.m. at Plush Elementary School in Plush, Oregon. These public open houses will be announced in press releases, planning updates, and on our Web site: *http://www.fws.gov/sheldonhartmtn/Hart/refuge_planning.html.* You may also send comments anytime during the planning process by mail or email (see **ADDRESSES**).

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 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.

Dated: April 2, 2012.

Richard R. Hannan,

Acting Regional Director, Pacific Region, Portland, Oregon.

[FR Doc. 2012–12353 Filed 5–24–12; 8:45 am]

BILLING CODE 4410–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Habematolel Pomo of Upper Lake—Tribal Liquor Ordinance No. 2008–01

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Tribal Liquor Ordinance No. 2008–01 of the Habematolel Pomo of Upper Lake. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Indian Country of the Habematolel Pomo of Upper Lake. The land is trust land and this Ordinance allows for the possession and sale of alcoholic beverages within the jurisdiction of the Habematolel Pomo of Upper Lake. This Ordinance will increase the ability of the tribal government to control the distribution and possession of liquor within their jurisdiction, and at the same time will provide an important source of revenue, the strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Amendment is effective May 25, 2012.

FOR FURTHER INFORMATION CONTACT: Sophia Torres, Tribal Government Specialist, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, CA 95825, Phone: (916)978–6073; Fax: (916)916–6099: or De Springer, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW., MS–4513–MIB, Washington, DC 20240; Telephone (202) 513–7640.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Habematolel Pomo of Upper Lake adopted this Ordinance by Resolution No. 04–12–03 on April 16, 2012.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Habermatolel Pomo of Upper Lake Executive Council duly adopted the Tribal Liquor Ordinance No 2008–01 of the Habematolel Pomo of Upper Lake by Resolution No. 04–12–03 on April 16, 2012.

Dated: May 22, 2012.

Donald E. Laverdure,

Acting Assistant Secretary—Indian Affairs.

The Tribal Liquor Ordinance No 2008–01 of the Habematolel Pomo of Upper Lake shall read as follows:

Article I—Title

This Ordinance shall be known as the ''Liquor Ordinance of the Habematolel Pomo of Upper Lake.''

Article II—Authority

This Liquor Ordinance is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83–277, and 67 Stat. 586, 18 U.S.C. section 1161), as interpreted by Rice v. Renner, 463 U.S. 713 (1983) and the Constitution of the Habematolel Pomo of Upper Lake, a federally recognized Indian tribe (''Tribe''), approved on May 12, 2004 and the Tribe's inherent sovereign authority.

Article III—Purpose

The purpose of this Liquor Ordinance is to regulate and to control the possession and sale of liquor on lands within the jurisdiction of the Habematolel Pomo of Upper Lake. The enactment of a tribal ordinance governing liquor possession and sale on Tribal Lands will increase the ability of the Tribal Government to control liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of Tribal Government services.

Article IV—Tribal Jurisdiction

This Ordinance applies to all lands in which the Habematolel Pomo Of Upper Lake holds an ownership interest and which are defined as Indian country under 18 U.S.C. 1151. At the time of enacting this Ordinance, the Habematolel Pomo of Upper Lake do not have an ownership interest in any lands defined by 18 U.S.C.1154(c) as fee-patented land in a non-Indian community or rights-of-ways which run through Tribal lands. This Ordinance is in conformity with California State alcohol laws as required by 18 U.S.C. 1161.

Article V—Definitions

As used in this Liquor Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise.

A. ''Alcohol'' means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions of this substance.

B. ''Alcoholic Beverage'' is synonymous with the term ''Liquor'' as defined in Letter F of this Article.

C. ''Bar'' means any establishment with special space and accommodations for sale by the glass and for consumption on the premises of any liquor or alcoholic beverage, as herein defined.

D. ''Beer'' means any alcoholic beverage obtained by the fermentation or any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer but does not include sake, known as Japanese rice wine.

E. ''Executive Council'' as used herein means the body authorized by the Habematolel Pomo of Upper Lake Constitution to promulgate all tribal ordinances and regulations.

E. ''General Membership'' means the general membership of the Habematolel Pomo of Upper Lake which is composed

of the voting membership of the Tribe as a whole.

F. ''Liquor'' includes the four varieties of liquor herein defined (Alcohol, Spirits, Wine, and Beer), and all fermented spirituous, vinous, or malt liquor or combination thereof, and mixed liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substance, which contain more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

G. ''Liquor License'' the license authorized to be issued to those who have met the qualifications of this Ordinance at Article VIII, which grants a licensee the ability to sell Alcohol or Liquor on Tribal Lands.

H. ''Liquor Store'' means any store at which liquor is sold and, for the purposes of this Liquor Ordinance, includes stores only a portion of which are devoted to sale of liquor or beer.

I. ''Malt Liquor'' means Beer, strong beer, ale, stout, and porter.

J. ''Package'' means any container or receptacle used for holding liquor.

K. ''Public Place'' includes state or county or Tribal or federal highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishment; public buildings; public meeting halls; lobbies, halls and dining rooms of hotels, restaurants, theater, gaming facilities, entertainment centers, store garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds of character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public. For the purpose of this Liquor Ordinance, ''Public Place'' shall also include any establishment other than a single family home which is designed for or may be used by more than just the owner of the establishment.

L. ''Sale'' and ''Sell'' include exchange, barter, and traffic and also include the selling or supplying or distributing by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or wine by any person to any person.

M. ''Spirits'' means any beverage which contains alcohol obtained by distillation including wines exceeding seventeen percent of alcohol by weight.

N. ''Tribe'' means the Habematolel Pomo of Upper Lake.

O. ''Tribal Designee'' is a person designated by the majority of the Executive Council to fulfill a specific task pursuant to this Liquor Ordinance.

P. ''Tribal Land'' means any land held in trust by the United States for the Tribe as a whole including any such land that is leased by the Tribe in trust or lands that may be leased by the Tribe to another party.

Q. ''Liquor Trust Account'' means the account designated by the Executive Council for deposit of proceeds from any tax or fee levied by the Executive Council and relating to the sale of alcoholic beverages.

R. ''Taxpayer'' is the licensee who is obligated to pay taxes from the sale of alcoholic beverages pursuant to this Liquor Ordinance.

S. ''Trust Agent'' means the Executive Council (see ''Executive Council'') or their designee.

T. ''Wine'' means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits such as port, sherry, muscatel and angelica, not exceeding seventeen percent of alcohol by weight.

Article VI—Powers of Enforcement

Section 1. Powers. The Executive Council, in furtherance of this Liquor Ordinance, shall have the following powers and duties:

a. To publish and enforce the rules and regulations governing the sale, manufacture, and distribution of Alcoholic Beverages on Tribal Lands.

b. To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Executive Council to perform its functions; all such employees shall be Tribal employees;

c. To issue licenses permitting the sale or manufacture or distribution of liquor on Tribal Lands;

d. To hold hearings on violations of this Liquor Ordinance or for the issuance or revocation of licenses hereunder pursuant to Section VI;

e. To bring suit in the appropriate court to enforce this Liquor Ordinance as necessary;

f. To determine and seek damages for violation of this Liquor Ordinance;

g. To make such reports to the General Membership; as may be required herein;

h. To collect taxes and fees levied or set by the Executive Council, and to keep accurate records, books and accounts; and

i. To exercise such other powers as are necessary and appropriate to fulfill the purposes of this Ordinance and as may be defined in the Tribe's Constitution, Article X, Sections 1 and 2.

Section 2. Limitation on Powers. In the exercise of its powers and duties under this Liquor Ordinance, the individual members of the Executive Council shall not accept for personal gain any gratuity, compensation or other items of value from any liquor wholesaler, retailer, vendor or distributor or from any licensee.

Section 3. Inspection Rights. The premises on which Liquor is sold or distributed shall be open for inspection by the Executive Council or its designee at all reasonable times, which includes the hours the business is open to the public, for the purposes of ascertaining whether the rules and regulations of this Liquor Ordinance are being followed.

Article VII—Sales of Liquor

Section 1. Tribal Liquor License Required; Tribally Owned Businesses. No sales of Alcoholic Beverages shall be made on Tribal Lands, except at a tribally licensed or tribally owned business. Nothing in this section shall prohibit a tribal licensee or the Tribe from purchasing liquor from other sources for resale, or the delivery to the Tribe for a tribal licensee of liquor purchased from other sources for resale on Tribal Lands.

Section 2. Sale only on Tribal Land. All Liquor sales shall be on Tribal Lands.

Section 3. Sales for Cash. All Liquor sales within Tribal Lands shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the use of ATM cards, debit cards, or major credit cards such as MasterCard, Visa, American Express, etc. as a means of securing payment for the sale.

Section 4. Sale for Personal Consumption. All sales shall be for the personal use and consumption of the purchaser. Resale of any Alcoholic Beverages purchased on Tribal Lands is prohibited. Any person who is not licensed pursuant to this Liquor Ordinance who purchases an Alcoholic Beverage on Tribal Lands and sells it, whether in the original container or not, shall be in violation of this Liquor Ordinance and shall be subjected to

paying a fine and/or damages to the Tribe as set forth herein.

Article VIII—Licensing

Section 1. Tribal Liquor License Requirements. No Tribal license shall be issued under this Liquor Ordinance except upon a sworn application filed with the Executive Council or its designee containing a full and complete showing of the following:

a. Satisfactory proof that the applicant is or will be duly licensed by the State of California to sell alcoholic beverages;

b. Satisfactory proof that the applicant is of good moral character and reputation and that the applicant is financially responsible;

c. The description of the premises in which the alcoholic beverages are to be sold and proof that the applicant is the owner of such premises or the lessee of such premises for at least the term of the license;

d. Agreement by the applicant to accept and abide by all conditions of the Tribal license;

e. Payment of a fee established from time to time by the Executive Council. Said fee is established initially at $250.00 annually but can be changed by Executive Council Resolution at any time;

f. Satisfactory proof that neither the applicant, nor the applicant's spouse, nor any principal owner, officer, shareholder, or director of the applicant, if an entity, has ever been convicted of a felony or a crime of moral turpitude as defined by the laws of the State of California;

g. Satisfactory proof that notice of the application has been posted in a prominent, noticeable place on the premises where alcoholic beverages are to be sold for at least thirty (30) days prior to consideration by the Executive Council and has been published at least twice in a local newspaper serving the community that may be affected by the license as the Executive Council may authorize. The notice shall state the date, time, and place when the application shall be considered by the Executive Council pursuant to Section 2 of this ordinance.

Section 2. Hearing on Application for Tribal Liquor License. All applications for a Tribal liquor license shall be considered by the Executive Council in open session at which the applicant, his, her or its attorney and/or representative, and any person protesting the application shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the application. After the hearing, the Executive Council, by vote, shall determine whether to grant or deny the application based on: (1) The requirements of Section 1 of this Liquor Ordinance; and (2) whether the Executive Council, in its discretion, determines that granting the license is in the best interest of the Tribe. In the event that the applicant is a member of the Executive Council, or the applicant is a member of the immediate family of an Executive Council member, such related Executive Council member shall not vote on the application or participate in the application hearing as an Executive Council member.

Section 3. Temporary Permits. The Executive Council or their designee may grant a temporary permit for the sale of Liquor for a period not to exceed three (3) days to any person applying to the same in connection with a Tribal or community activity, provided that the conditions prescribed in Section 4 of this Liquor Ordinance shall be observed by the person holding the temporary permit. Each permit issued shall specify the types of intoxicating beverages to be sold. Further, a fee of $50.00 will be assessed on temporary permits and may be waived at the discretion of the Executive Council (i.e. charitable events, fundraisers, etc.).

Section 4. Conditions of a Tribal Liquor License. Any Tribal liquor license issued under this Liquor Ordinance shall be subject to such reasonable conditions as the Executive Council shall enact including but not limited to the following:

a. The license shall be for an initial term not to exceed one (1) year and may be extended up to 5 years at the discretion of the Executive Council.

b. The licensee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises.

c. The licensed premises shall be subject to patrol by Tribal law enforcement personnel and such other law enforcement officials as may be authorized under Federal, State, or Tribal law.

d. The licensed premises shall be open to inspection by duly authorized Tribal Designee at all times during the regular business hours.

e. Subject to the provisions of subsection ''g'' of this section, no Liquor or intoxicating beverages shall be sold, served, disposed of, delivered, or given to any person, or consumed on the licensed premises except in conformity with the hours and days prescribed by the laws of the State of California, and in accordance with the hours enacted by the Executive Council, provided that the licensed premises shall not operate or open earlier, or operate or close later, than is permitted by the laws of the State of California.

f. No Liquor shall be sold within 200 feet of a polling place on Tribal, State or Federal, Election days, or when a referendum is held by the Tribe, and including special days of observation as designated by the Executive Council.

g. All acts and transactions under authority of the Tribal Liquor License shall be in conformity with the laws of the State of California, with this Liquor Ordinance, and with any Tribal liquor license issued pursuant to this Liquor Ordinance.

h. No person under the age permitted under the laws of the State of California shall be sold, served, delivered, given, or allowed to consume Alcoholic Beverages in the licensed establishment or area.

i. There shall be no discrimination in the operations under the Tribal Liquor License by reason of race, color, gender, creed, religion or sexual preference.

Section 5. License Not a Property Right. Notwithstanding any other provision of this Liquor Ordinance, a Tribal liquor license is a mere permit for a fixed duration of time. A Tribal liquor license shall not be deemed a property right or vested right of any kind, nor shall the granting of a Tribal liquor license give rise to a presumption of legal entitlement to a license/permit in a subsequent time period.

Section 6. Assignment or Transfer. No Tribal license issued under this Liquor Ordinance shall be assigned or transferred without the prior written approval of the Executive Council expressed by formal, written resolution and/or transfer order.

Article IV—Rules, Regulations, and Enforcement

Section 1. Sale or Possession with Intent to Sell Without a Permit. Any person who shall sell or offer for sale or distribute in any manner, any Liquor in violation of this Liquor Ordinance, or who shall operate or shall have Liquor in his possession with intent to sell or distribute without a license or permit, shall be in violation of this Liquor Ordinance.

Section 2. Purchases from Other than Licensed or Allowed Facilities. Any person who, while on Tribal lands, buys Liquor from any person other than at a properly licensed or allowed facility shall be in violation of this Liquor Ordinance.

Section 3. Sales to Persons under the Influence of Liquor. Selling any Alcoholic Beverage or Liquor to any obviously intoxicated person is a violation of this Ordinance.

Section 4. Consumption or Possession of Liquor by Persons Under 21 Years of Age. No person under the age of 21 years shall consume, acquire or have in his possession any Alcoholic Beverage. No person shall permit any other person under the age of 21 to consume Liquor on his premises or any premises under his control except in those situations set out in this section. Any person violating this section shall be in violation of a separate violation of this Liquor Ordinance for each and every drink so consumed.

Section 5. Sales of Liquor to Persons Under 21 Years of Age. Any person who shall sell or provide liquor to any person under the age of 21 years shall be in violation of this Liquor Ordinance for each sale or drink provided.

Section 6. Transfer of Identification to Minor. Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain liquor shall be in violation of this Ordinance; provided that corroborative testimony of witness other than the minor shall be a requirement of finding a violation of this Liquor Ordinance.

Section 7. Use of False or Altered Identification. Any person who attempts to purchase an Alcoholic Beverage through the use of a false or altered identification shall be in violation of this Liquor Ordinance.

Section 8. Acceptable Identification. Where there may be a question of a person's right to purchase liquor by reason of his or her age, such person shall be required to present any one of the following forms of identification which shows his or her correct age and bears his or her signature and photograph: (1) A driver's license of any state or identification card issued by any state department of motor vehicles; (2) United States active duty military; (3) a passport, or Habematolel Pomo of Upper Lake Tribal I.D. with photo.

Section 9. Violations of this Liquor Ordinance. Any person in violation of this Ordinance shall be liable to pay the Tribe a civil fine not to exceed $500 per violation as civil damages to defray the Tribe's cost of enforcement of this Liquor Ordinance. In addition to any penalties so imposed, any license or permit issued hereunder may be suspended or canceled by the Executive Council for the violation of any of the provisions of this Liquor Ordinance, or of the Tribal license or permit, upon hearing before the Executive Council after 10 days notice to the licensee. The decision of the Executive Council shall be final and no appeal there from is allowed. The Executive Council shall grant all persons in any hearing regarding violations, penalties, or license suspensions under this Ordinance all the rights and due process granted by the Indian Civil Rights Act, 25 U.S.C. 1301, et seq. Notice of a Executive Council hearing regarding an alleged violation of this Ordinance shall be given to the affected individual(s) or entities at least 10 days in advance of the hearing. The notice will be delivered in person or by certified mail with the Executive Council retaining proof of service. The notice will set out the right of the alleged violator to be represented by Counsel retained by the alleged violator, the right to speak and to present witnesses and to cross examine any witnesses against them.

Section 10. Possession of Liquor Contrary to This Liquor Ordinance. Alcoholic Beverages which are possessed contrary to the terms of this Liquor Ordinance are declared to be contraband. Any Tribal agent, employee, or officer who is authorized by the Executive Council to enforce this section shall have the authority to, and shall, seize all contraband and preserve it for evidentiary purposes for use by the Executive Council or Federal or State law enforcement agencies.

Section 11. Disposition of Seized Contraband. Any officer seizing contraband shall preserve the contraband in accordance with the appropriate California law code. Upon being found in violation of this Liquor Ordinance by the Executive Council, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Tribe.

Article X—Taxes

Section 1. Sales Tax. There is hereby levied and shall be collected a tax on each sale of Alcoholic Beverages on Tribal Lands in the amount of one percent (1%) of the amount actually collected. The tax imposed by this section shall apply to all retail sales of liquor on Tribal Lands and shall be in addition to any tax imposed on such liquor sales by the State of California.

Section 2. Payment of Taxes to Tribe. All taxes from the sale of Alcoholic Beverages on Tribal Lands shall be paid to the Trust Agent of the Tribe.

Section 3. Taxes Due. All taxes from the sale of Alcoholic Beverages on Tribal Lands are due and payable to the Trust Agent of the Tribe within thirty (30) days of the end of the calendar quarter for which the taxes are due.

Section 4. Reports. Along with payment of the taxes imposed herein, the Taxpayer shall submit a written accounting for the quarter of all income from the sale or distribution of alcoholic beverages as well as for the taxes collected.

Section 5. Audit. As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on Tribal Lands. Said review or audit may be done annually or as designated by the Executive Council through its agents or employees whenever, in the opinion of the Executive Council, such a review or audit is necessary to verify the accuracy of reports as defined in Section 4 of this Article.

Article XI—Profits

Section 1. Disposition of Proceeds. The gross proceeds collected by the Executive Council from all licensing provided under this Liquor Ordinance, or the imposition of civil penalties for violating this Ordinance, or from the taxation of the sales of Alcoholic Beverages on Tribal Lands, shall be distributed as follows:

a. For the payment of all necessary personnel, administrative costs, and legal fees for the administration and enforcement of this Liquor Ordinance and its activities.

b. The remainder shall be turned over to the Liquor Trust Account of the Tribe.

Article XII—Severability and Miscellaneous

Section 1. Severability. If any provision or application of this Liquor Ordinance is determined upon review by a court of competent jurisdiction to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

Section 2. Prior Enactments. Any and all prior ordinances, resolutions or enactments of the Executive Council which are inconsistent with the provisions of this Liquor Ordinance are hereby repealed.

Section 3. Conformance with Tribal, State and Federal Law. This Ordinance conforms to all Tribal law and governing documents such as the Constitution and By-Laws. All provisions and transactions under this Ordinance shall be in conformity with California State law regarding alcohol to the extent required by 18 U.S.C. 1161 and with all Federal laws regarding alcohol in Indian country.

Section 4. Enforcement. All actions brought by the Executive Council to enforce the provisions of this Ordinance shall be filed in the Tribal Court of the Habematolel Pomo of Upper Lake. In the absence of a tribal court, said actions

shall be filed in Federal Court in the Northern District of California and be appealable in the Federal Court system. If the Federal Court should determine that it lacks jurisdiction over said action, it shall be filed in the California State Court in County of Lake with subject matter jurisdiction and venue over the action. The first court system to have jurisdiction over an enforcement action which may be brought in Tribal, Federal, or State Court, shall have exclusive jurisdiction over such actions.

Section 5. Effective Date. This Ordinance becomes effective after the Secretary of the Interior certifies the Ordinance and publishes it in the **Federal Register**.

Article XIII—Amendment

Section 1. Amendment or Repeal. This Ordinance may be amended or repealed by a majority vote of the Executive Council at a duly called meeting. Amendments of this Ordinance shall become effective after the Secretary of the Interior certifies and publishes the Amendments in the **Federal Register**.

Article XIV—Sovereign Immunity

Section 1. Nothing contained in this Liquor Ordinance is intended to nor does in anyway limit, alter, restrict, or expressly or unequivocally waive the Tribe's sovereign immunity from unconsented suit or action.

[FR Doc. 2012–12843 Filed 5–24–12; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY922000–L57000000.BX0000; WYW173408]

Notice of Competitive Coal Lease Sale, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that certain coal resources in the North Porcupine Coal Tract described below in Campbell County, Wyoming, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended.

DATES: The lease sale will be held at 10 a.m. on Thursday, June 28, 2012. Sealed bids must be submitted on or before 4 p.m. on Wednesday, June 27, 2012.

ADDRESSES: The lease sale will be held in the First Floor Conference Room (Room 107), of the Bureau of Land Management (BLM) Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003. Sealed bids must be submitted to the Cashier, BLM Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Mavis Love, Land Law Examiner, or Kathy Muller Ogle, Coal Coordinator, at 307–775–6258, and 307–775–6206, respectively.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by BTU Western Resources, Inc., Gillette, Wyoming. The coal resource to be offered consists of all reserves recoverable by surface mining methods in the following-described lands located approximately 5 to 7 miles north of the Campbell/Converse county line, adjacent and up to 7 miles east of the main line railroad, and adjacent to the western and northern lease boundary of the North Antelope Rochelle Mine.

Sixth Principal Meridian

T. 42 N., R. 70 W.,
- Sec. 19, lots 9 through 20 inclusive;
- Sec. 20, lots 5 through 16 inclusive;
- Sec. 21, lots 1 through 16 inclusive;
- Sec. 22, lots 3 through 6 inclusive, and lots 9 through 16 inclusive;
- Sec. 26, lots 3 through 6 inclusive, and lots 9 through 16 inclusive;
- Sec. 27, lots 1 through 16 inclusive;
- Sec. 28, lots 1 through 4 inclusive;
- Sec. 29, lots 1 through 4 inclusive;
- Sec. 30, lots 5 through 8 inclusive;

T. 42 N., R. 71 W.,
- Sec. 22, lots 20, 21 and 24;
- Sec. 23, lots 5 through 16 inclusive;
- Sec. 24, lots 5 through 16 inclusive;
- Sec. 25, lots 1 through 4 inclusive;
- Sec. 26, lots 1 through 6 inclusive, and lots 11 through 14 inclusive;
- Sec. 27, lot 9 and lots 15 through 17 inclusive, and lots 20, 22, 23, 25, 28, and 30;
- Sec. 34, lots 1 through 12 inclusive; and
- Sec. 35, lots 3 through 6 inclusive, and lots 11 through 14 inclusive.

Containing 6,364.28 acres, more or less, in Campbell County, Wyoming.

The LBA tract is adjacent to Federal leases to the east and south as well as a State of Wyoming lease to the north, all controlled by the North Antelope Rochelle Mine. It is also adjacent to a Federal lease to the east, which is part of Peabody Energy Corporation's School Creek Mine. It is adjacent to additional unleased Federal coal to the west and north.

Most of the acreage offered has been determined to be suitable for mining except for the mainline railroad right-of-way along the western boundary of the LBA. Features such as roads, utilities, and pipelines can be moved to permit coal recovery. In addition, numerous oil, gas, and coal bed natural gas wells are located on the LBA. The estimate of the bonus value of the coal lease will include consideration of the future production from these wells. An economic analysis of this future income stream will consider reasonable compensation to the gas lessee for lost production of the natural gas when the wells are bought out by the coal lessee. The majority of the surface estate of the tract is within the Thunder Basin National Grasslands and managed by the U.S. Forest Service. The remainder of the surface estate is owned by various Peabody Energy Corporation subsidiaries and a small portion is owned by the State of Wyoming.

The tract contains surface mineable coal reserves in the Wyodak-Anderson coal zone currently being recovered in the adjacent, existing mine. The Wyodak-Anderson is the only mineable seam on the tract. The thickness ranges from about 69 feet in the east to about 96 feet in the west. Overburden depths range from about 196 to 430 feet thick.

The tract contains an estimated 721,154,828 tons of mineable coal. This estimate of mineable reserves includes the seam mentioned above but does not include any tonnage from localized seams or splits containing less than 5 feet of coal. It does not include the adjacent State of Wyoming coal or the adjacent School Creek Mine Federal lease, although these reserves could possibly be recovered in conjunction with the LBA. It also excludes coal within and along the railroad right-of-way as required by typical mining practices. The total mineable stripping ratio of the coal in bank cubic yards per ton is approximately 4:1. Potential bidders for the LBA should consider the recovery rate expected from thick seam mining.

The North Porcupine LBA coal is ranked as subbituminous C. The overall average quality on an as-received basis is 8,892 British Thermal Units per pound containing approximately 0.20 percent sulfur. These quality averages place the coal reserves near the high end of the range of coal quality currently being mined in the Wyoming portion of the Powder River Basin.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets or exceeds the BLM's estimate of the fair market value (FMV) of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand delivered.

The BLM Wyoming State Office Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m. local time on Wednesday, June 27, 2012, will not be considered. The minimum bid is not intended to represent FMV. The FMV of the tract will be determined by the Authorized Officer after the sale. The lease that may be issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payment to the United States of 12.5 percent of the value of coal produced by surface mining methods. The value of the coal will be determined in accordance with 30 CFR 1206.250.

Pursuant to the regulation at 43 CFR 3473.2(f), the applicant for the North Porcupine Tract, BTU Western Resources, Inc., has paid a total case-by-case cost recovery processing fee in the amount of $83,694. The successful bidder for the North Porcupine Tract, if someone other than the applicant, must pay to the BLM the $83,694 previously paid by BTU Western Resources, Inc. Additionally, the successful bidder must pay all processing costs the BLM will incur after the date this sale notice is published in the **Federal Register,** which are estimated to be $10,000.

Bidding instructions for the LBA tract offered and the terms and conditions of the proposed coal lease are available from the BLM Wyoming State Office at the address above. Case file documents, WYW173408, are available for inspection at the BLM Wyoming State Office.

Mary E. Trautner,

Acting State Director.

[FR Doc. 2012–12679 Filed 5–24–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA–051552, LLCAD07000 L51010000.FX0000 LVRWB10B3980]

Notice of Availability of a Draft Environmental Impact Statement for the Proposed McCoy Solar Energy Project and Possible Land Use Plan Amendment, Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Palm Springs/South Coast Field Office, Palm Springs, California, has prepared a Draft California Desert Conservation Area (CDCA) Plan Amendment (PA) and Draft Environmental Impact Statement (EIS) for McCoy Solar, LLC's right-of-way (ROW) application for the McCoy Solar Energy Project (MSEP), and by this notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Draft EIS/PA within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Draft EIS by any of the following methods:

- *Web site http://www.ca.blm.gov/elcentro.*
- *Email: camccoysep@blm.gov.*
- *Fax:* 951–697–5299.
- *Mail:* ATTN: Jeffery Childers, Project Manager, BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553–9046.

Copies of the Draft EIS/PA are available in the California Desert District Office at the above address.

FOR FURTHER INFORMATION CONTACT: For further information, or to have your name added to our mailing list, contact Jeffery Childers; telephone 951–697–5308; address BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553–9046; email *jchilders@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 applicant, McCoy Solar, LLC, has requested a ROW authorization to construct, operate, maintain, and decommission an up to 750 megawatt (MW) photovoltaic solar energy generation facility and necessary ancillary facilities on about 7,700 acres of BLM managed lands with a footprint of approximately 4,893 acres for the solar facility. The proposed 16-mile generation tie line, with a ROW width of 100 feet, will require about 200 acres of public and private lands. The proposed 20-acre switch yard will be located adjacent to and connect into Southern California Edison's Colorado River Substation. The MSEP site is located approximately 13 miles northwest of the City of Blythe, California, and approximately 32 miles east of Desert Center.

The BLM will decide whether to grant, grant with modification, or deny a ROW to McCoy Solar, LLC, for the proposed MSEP. The BLM is proposing to amend the CDCA Plan by designating the project area as either available or unavailable for solar energy projects. The CDCA Plan (1980, as amended), while recognizing the potential compatibility of renewable energy generation facilities with other uses on public lands, requires that all sites proposed for power generation or transmission not already identified in the CDCA Plan be considered through the plan amendment process. If the BLM decides to grant a ROW for this project, the CDCA Plan would be amended as required.

In addition to the proposed action and a no action alternative, the BLM is analyzing a reduced acreage alternative and a reconfigured generation tie line alternative. The Draft EIS/PA also analyzes two no-project alternatives that reject the project but amend the CDCA Plan to make the project area either:

(1) Available for future solar generation energy projects; or

(2) Unavailable for future solar energy generation projects.

The BLM's Preferred Alternative has been identified as the Proposed Action.

The Draft EIS/PA evaluates the potential impacts of the proposed MSEP on air quality, biological resources, cultural resources, water resources, geological resources and hazards, land use, noise, paleontological resources, public health, socioeconomics, soils, traffic and transportation, visual resources, wilderness characteristics, and other resources.

A Notice of Intent to Prepare an EIS/Environmental Impact Report for the MSEP project was published in the **Federal Register** on August 29, 2011 (76 FR 167). The BLM and Riverside County held public scoping meetings in Palm Desert and Blythe on September 20, 2011 and October 19, 2011. The formal scoping period ended on November 18, 2011.

Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.),

Monday through Friday, except holidays.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6 and 1506.10; 43 CFR 1610.2 and 1610.5

Cindy Staszak,

Acting Deputy State Director, California.

[FR Doc. 2012–12560 Filed 5–24–12; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMA00000 L12200000.DF0000]

Notice of Public Meeting, Albuquerque Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management, Albuquerque District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting date is June 22, 2012, at the Albuquerque District Office, 435 Montano Rd., NE., Albuquerque, New Mexico 87107. The meeting is scheduled from 9 a.m. to 4 p.m. The public comment period will begin at 3:30 p.m. The public may send written comments to the RAC at the above address. All RAC meetings are open to the public. Depending on the number of individuals wishing to comment and time available, the time for individual oral comments may be limited.

FOR FURTHER INFORMATION CONTACT: Gina Melchor, Albuquerque District Office, 435 Montano Rd., NE., Albuquerque, New Mexico 87107, 505–761–8935. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in New Mexico.

At this meeting, topics include a discussion on the RAC Charter and Operating Procedures, Election of Officers, and presentations from the Socorro and Rio Puerco Field Office Managers.

Edwin J. Singleton,

District Manager.

[FR Doc. 2012–12657 Filed 5–24–12; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Remanded Biological Opinions on the Coordinated Long-Term Operation of the Central Valley Project and State Water Project

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of extension of public comment period for the scoping process.

SUMMARY: The Bureau of Reclamation is extending the public comment period for the scoping process to June 28, 2012. We published the notice of intent in the **Federal Register** on March 28, 2012 (77 FR 18858). The public review was originally scheduled to end on May 29, 2012.

DATES: Written comments as part of the scoping process will be accepted on or before June 28, 2012.

ADDRESSES: Send written comments to Janice Piñero, Endangered Species Compliance Act Specialist, Bureau of Reclamation, Bay-Delta Office, 801 I Street, Suite 140, Sacramento, CA 95814–2536; fax to (916) 414–2439; or email at *jpinero@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Janice Piñero at (916) 414–2428; or email at *jpinero@usbr.gov.*

Public Disclosure

Before including your name, 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.

Dated: May 7, 2012.

Anastasia T. Leigh,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 2012–12738 Filed 5–24–12; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; Alltech Associates, Inc.

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on April 19, 2012, AllTech Associates Inc., 2051 Waukegan Road, Deerfield, Illinois 60015, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Lysergic acid diethylamide (7315)	I
Heroin (9200)	I
Cocaine (9041)	II
Codeine (9050)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II

The company plans to import these controlled substances for the manufacture of reference standards.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to Drug Enforcement Administration, Office of Diversion

Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 25, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in Schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: May 15, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–12828 Filed 5–24–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; Noramco, Inc.

Pursuant to Title 21 Code of Federal Regulations § 1301.34(a), this is notice that on August 18, 2011, Noramco, Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801–4417, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

Drug	Schedule
Phenylacetone (8501)	II
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II
Tapentadol (9780)	II

The company plans to import the raw Opium (9600) and Poppy Straw Concentrate (9670) to manufacture other controlled substances. The company plans to import Tapentadol (9780) in intermediate form for the bulk manufacture of Tapentadol (9780) which it will distribute to its customers. The company plans to import the Phenylacetone (8501) in bulk for the manufacture of a controlled substance.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (2007).

In regard to the non-narcotic raw material, any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule I or II, which fall under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 25, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR § 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: May 15, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–12825 Filed 5–24–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Capricorn Pharma, Inc.

By Notice dated March 8, 2012, and published in the **Federal Register** on March 20, 2012, 77 FR 16262, Capricorn Pharma, Inc., 6900 English Muffin Way, Unit A, Frederick, Maryland 21703, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of Fentanyl (9801), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance in finished dosage form (FDF) from foreign sources for analytical testing and clinical trials in which the foreign FDF will be compared to the company's own domestically manufactured FDF. This analysis is required to allow the company to export domestically manufactured FDF to foreign markets.

In reference to the import of Fentanyl (9801), the authorization for the import of this basic class of controlled substance is granted only for analytical testing and clinical trials. This authorization does not extend to the import of a finished FDA approved or non-approved dosage form for commercial distribution in the United States.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Capricorn Pharma, Inc., to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Capricorn Pharma, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: May 15, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–12824 Filed 5–24–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Meridian Medical Technologies

By Notice dated March 23, 2012, and published in the **Federal Register** on April 2, 2012, 77 FR 19716, Meridian Medical Technologies, 2555 Hermelin Drive, St. Louis, Missouri 63144, made application by renewal to the Drug Enforcement Administration (DEA) to

be registered as an importer of Morphine (9300), a basic class of controlled substance listed in schedule II.

The company manufactures a product containing morphine in the United States. The company exports this product to customers around the world, including Europe. The company has been asked to ensure that its product sold to European customers meets standards established by the European Pharmacopeia, which is administered by the Directorate of the Quality of Medicines (EDQM). In order to ensure that its product will meet European specifications, the company seeks to import morphine supplied by EDQM to use as reference standards. This is the sole purpose for which the company will be authorized by DEA to import morphine.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Meridian Medical Technologies to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Meridian Medical Technologies to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substances listed.

Dated: May 15, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–12813 Filed 5–24–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Penick Corporation

By Notice dated April 17, 2012 and published in the **Federal Register** on April 26, 2012, 77 FR 24983, Penick Corporation, 33 Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Coca Leaves (9040)	II
Raw Opium (9600)	II
Poppy Straw (9650)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances to manufacture bulk controlled substance intermediates for sale to its customers. Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (2007)

DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Penick Corporation to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Penick Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: May 15, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–12830 Filed 5–24–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Cerilliant Corporation

By Notice dated March 8, 2012, and published in the **Federal Register** on March 20, 2012, 77 FR 16261, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
4-methyl-N-methylcathinone (1248).	I
1-Pentyl-3-(1-naphthoyl)indole (7118).	I
1-Butyl-3-(1-naphthoyl) indole (7173).	I
1-[2-(4-Morpholinyl)-ethyl}-3-(1-naphthoyl)indole (7200).	I
5-(1,1-Dimethylheptyl)-2-{(1R,3S)-3-hydroxycyclohexyl]-phenol (7297).	I
5-(1,1-Dimethyloctyl)-2[(1R,3S)-3-hydroxycyclohexyl] phenol (7298).	I
3,4-methylenedioxypyrovalerone (7535).	I
3,4-methylenedioxy-N-methylcathinone (7540).	I
Desomorphine (9055)	I

The company plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Cerilliant Corporation to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Cerilliant Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: May 15, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–12826 Filed 5–24–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Pcas-Nanosyn, LLC

By Notice dated January 30, 2012, and published in the **Federal Register** on February 6, 2012, 77 FR 5847, PCAS-Nanosyn, LLC, 3331–B Industrial Drive, Santa Rosa, California 95403, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Phencyclidine (7471)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company is a contract manufacturer. At the request of the company's customers, it manufactures derivatives of controlled substances in bulk form only.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of PCAS-Nanosyn, LLC. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated PCAS-Nanosyn, LLC. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: May 15, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–12820 Filed 5–24–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Siemens Healthcare Diagnostics, Inc.

By Notice dated January 26, 2012, and published in the **Federal Register** on February 6, 2012, 77 FR 5847, Siemens Healthcare Diagnostics Inc., 100 GBC Drive, Mail Stop 514, Newark, Delaware 19702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Ecgonine (9180)	II
Morphine (9300)	II

The company plans to produce the listed controlled substances in bulk to be used in the manufacture of reagents and drug calibrator controls which are DEA exempt products.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Siemens Healthcare Diagnostics Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Siemens Healthcare Diagnostics Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: May 15, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–12822 Filed 5–24–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Sigma Aldrich Research Biochemicals, Inc.

By Notice dated January 26, 2012, and published in the **Federal Register** on February 6, 2012, 77 FR 5847, Sigma Aldrich Research Biochemicals, Inc., 1–3 Strathmore Road, Natick, Massachusetts 01760–2447, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
4-methyl-N-methylcathinone (1248)	I
Aminorex (1585)	I
Alpha-ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
3,4-methylenedioxypyrovalerone (7535)	I
3,4-methylenedioxy-N-methylcathinone (7540)	I
Tetrahydrocannabinols (7370)	I
4–Bromo-2,5-dimethoxyamphetamine (7391)	I
4–Bromo-2,5-dimethoxyphenethylamine (7392)	I
2,5–Dimethoxyamphetamine (7396)	I
3,4–Methylenedioxyamphetamine (7400)	I
N–Hydroxy-3,4-methylenedioxyamphetamine (7402)	I
3,4–Methylenedioxy-N-ethylamphetamine (7404)	I
3,4–Methylenedioxymethamphetamine (7405)	I
Psilocybin (7437)	I

Drug	Schedule
5–Methoxy-N,N-diisopropyltryptamine (7439)	I
1-[1-(2–Thienyl)cyclohexyl]piperidine (7470)	I
N–Benzylpiperazine (7493)	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Nabilone (7379)	II
1–Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Ecgonine (9180)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metazocine (9240)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

The company plans to manufacture reference standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Sigma Aldrich Research Biochemicals, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Sigma Aldrich Research Biochemicals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: May 15, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–12821 Filed 5–24–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Mallinckrodt LLC

By Notice dated January 23, 2012, and published in the **Federal Register** on January 31, 2012, 77 FR 4828, Mallinckrodt Inc., 3600 North Second Street, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Norlevorphanol (9634)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
4–Anilino-N-phenethyl-4-piperidine (8333)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II

Drug	Schedule
Metopon (9260)	II
Dextropropoxyphene, bulk (non-dosage forms)(9273)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Opium tincture (9630)	II
Opium, powdered (9639)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances for internal use and for sale to other companies.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Mallinckrodt, LLC., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Mallinckrodt, LLC., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: May 15, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–12817 Filed 5–24–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 05–12]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Tuesday, June 5, 2012: 1 p.m.—Issuance of Proposed Decisions in claims against Libya; Hearing on the Record on Objection to Commission's Proposed Decision in Claim No. LIB–II–083.

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Judith H. Lock, Executive Officer, Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975.

Jaleh F. Barrett,

Chief Counsel.

[FR Doc. 2012–12873 Filed 5–23–12; 11:15 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Settlement Agreements Between a Plan and Party in Interest

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Settlement Agreements Between a Plan and Party in Interest,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before June 25, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Prohibited Transaction Exemption (PTE) 94–71 exempts from certain restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and section 4975(c)(2) of the Internal Revenue Code of 1986 (Code) a settlement agreement entered into between a plan and a party in interest resulting from an investigation of an employee benefit plan by the Department. PTE 03–39 similarly exempts from certain restrictions of the ERISA and certain taxes of the Code, settlement agreements entered into between a plan and a party in interest in avoidance of litigation.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not

display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1210–0091. The current OMB approval is scheduled to expire on June 30, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on December 7, 2011 (76 FR 76439).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1210–0091. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Settlement Agreements between a Plan and Party in Interest.

OMB Control Number: 1210–0091.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 4.

Total Estimated Number of Responses: 1080.

Total Estimated Annual Burden Hours: 30.

Total Estimated Annual Other Costs Burden: $335.

Dated: May 22, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–12807 Filed 5–24–12; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Labor Advisory Committee for Trade Negotiations and Trade Policy

ACTION: Notice of renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), the Secretary of Labor and the United States Trade Representative have taken steps to renew the Labor Advisory Committee for Trade Negotiations and Trade Policy. The Committee will be chartered pursuant to section 135(c)(1) and (2) of the Trade Act of 1974, 19 U.S.C. 2155(c)(1) and (2), as amended by section 1103 of the Trade Agreements Act of 1979, Public Law 96–39, 93 Stat. 144, 308 (1979), section 1631 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418, 102 Stat. 1107, 1264 (1988); and Executive Order 11846 of March 27, 1975, 3 CFR, 1971–1975 Comp., p. 971 (which delegates certain Presidential responsibilities conferred in section 135 of the Trade Act of 1974 to the United States Trade Representative).

Purpose: The Labor Advisory Committee for Trade Negotiations and Trade Policy consults with and makes recommendations to the Secretary of Labor and the United States Trade Representative on general policy matters concerning labor and trade negotiations, operations of any trade agreement once entered into, and other matters arising in connection with the administration of the trade policy of the United States. The renewal of the charter of the Labor Advisory Committee for Trade Negotiations and Trade Policy is necessary and in the public interest and will provide information that cannot be obtained from other sources. The Committee shall provide its views to the Secretary of Labor and the Unites States Trade Representative through the Bureau of International Labor Affairs of the U.S. Department of Labor. The Committee will comprise no more than 30 members representing the labor community.

The Committee will meet at irregular intervals at the call of the Secretary of Labor and the United States Trade Representative.

FOR FURTHER INFORMATION CONTACT: Anne M. Zollner, Designated Federal Official and Division Chief, Trade Policy and Negotiations, Office of Trade and Labor Affairs, Bureau of International Labor Affairs, Department of Labor, Frances Perkins Building, Room S–5317, 200 Constitution Ave. NW., Washington, DC 20210, telephone (202) 693–4890.

Signed at Washington, DC, this day 18 of May 2012.

Carol Pier,

Acting Deputy Undersecretary of the International Labor Affairs Bureau.

[FR Doc. 2012–12696 Filed 5–24–12; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act of 1998 (WIA); Notice of Incentive Funding Availability Based on Program Year (PY) 2010 Performance

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, in collaboration with the Department of Education, announces that eight states are eligible to apply for Workforce Investment Act (WIA) (Pub. L. 105–220, 29 U.S.C. 2801 *et seq.*) incentive grant awards authorized by section 503 of the WIA.

DATES: The eight eligible states must submit their applications for incentive funding to the Department of Labor by July 9, 2012.

ADDRESSES: Submit applications to the Employment and Training Administration, Office of Policy Development and Research, Division of Strategic Planning and Performance, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210, *Attention:* Karen Staha and Luke Murren. Telephone number: 202–693–3733 (this is not a toll-free number). Fax: 202–693–2766. Email: *staha.karen@dol.gov* and *murren.luke@dol.gov.* Information may also be found at the ETA Performance Web site: *http://www.doleta.gov/performance.*

SUPPLEMENTARY INFORMATION: Eight states (see Appendix) qualify to receive a share of the $10.4 million available for incentive grant awards under WIA section 503. These funds, which were contributed by the Department of Education from appropriations for the Adult Education and Family Literacy Act (AEFLA), are available for the eligible states to use through June 30, 2014, to support innovative workforce development and education activities that are authorized under title IB (Workforce Investment Systems) or title II (AEFLA) of WIA, or under the Carl D. Perkins Career and Technical Education

Act of 2006 (Perkins IV), 20 U.S.C. 2301 *et seq.,* as amended by Public Law 109–270. In order to qualify for a grant award, a state must have exceeded its performance levels for WIA title IB and adult education (AEFLA). (Due to the lack of availability of PY 2010 performance data under the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III), the Department of Labor and the Department of Education did not consider states' performance levels under the Perkins Act in determining incentive grants eligibility.) The goals included employment after training and related services, retention in employment, and improvements in literacy levels, among other measures. After review of the performance data submitted by states to the Department of Labor and to the Department of Education, each Department determined for its program(s) which states exceeded their performance levels (the Appendix at the bottom of this notice lists the eligibility of each state by program). These lists were compared, and states that exceeded their performance levels for both programs are eligible to apply for and receive an incentive grant award. The amount that each state is eligible to receive was determined by the Department of Labor and the Department of Education, based on the provisions in WIA section 503(c) (20 U.S.C. 9273(c)), and is proportional to the total funding received by these states for WIA title IB and AEFLA programs.

The states eligible to apply for incentive grant awards and the amounts they are eligible to receive are listed in the following chart:

State	Award
Arizona	$1,301,336
Arkansas	970,974
Kentucky	1,178,136
Louisiana	1,098,228
Minnesota	1,099,840
New Hampshire	824,616
Tennessee	1,322,906
Texas	2,651,995

Signed in Washington, DC, on this 18st day of May 2012.

Jane Oates,

Assistant Secretary for Employment and Training.

APPENDIX

State	Incentive grants PY 2010/FY 2011 Exceeded state performance levels		
	WIA (Title IB)	AEFLA (adult education)	WIA Title IB; AEFLA
Alabama			
Alaska			
Arizona	X	X	X
Arkansas	X	X	X
California		X	
Colorado	X		
Connecticut			
District of Columbia			
Delaware		X	
Florida			
Georgia	X		
Hawaii	X		
Idaho		X	
Illinois			
Indiana			
Iowa			
Kansas			
Kentucky	X	X	X
Louisiana	X	X	X
Maine			
Maryland	X		
Massachusetts	X		
Michigan	X		
Minnesota	X	X	X
Mississippi	X		
Missouri		X	
Montana			
Nebraska			
Nevada			
New Hampshire	X	X	X
New Jersey	X		
New Mexico		X	
New York		X	
North Carolina		X	
North Dakota	X		
Ohio		X	
Oklahoma		X	
Oregon			
Pennsylvania			
Puerto Rico			
Rhode Island		X	
South Carolina			
South Dakota			
Tennessee	X	X	X
Texas	X	X	X

APPENDIX—Continued

State	Incentive grants PY 2010/FY 2011 Exceeded state performance levels		
	WIA (Title IB)	AEFLA (adult education)	WIA Title IB; AEFLA
Utah		X	
Vermont			
Virginia			
Washington			
West Virginia			
Wisconsin			
Wyoming			

States in **bold** exceeded their performance levels for both AEFLA and WIA Title IB programs.

[FR Doc. 2012–12772 Filed 5–24–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0012]

The Temporary Labor Camps Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Temporary Labor Camps Standard (29 CFR 1910.142).

DATES: Comments must be submitted (postmarked, sent, or received) by July 24, 2012.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0012, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2012–0012). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may contact Theda Kenney at the address below to obtain a copy of the Information Collection Request (ICR).

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

OSHA is requesting approval from the Office of Management and Budget (OMB) for certain information collection requirements contained in the Temporary Labor Camps Standard (29 CFR 1910.142). The main purpose of these provisions is to eliminate the incidence of communicable disease among temporary labor camp residents. The Standard requires camp superintendents to report immediately to the local health officer the name and address of any individual in the camp known to have, or suspected of having, a communicable disease. Whenever there is a case of suspected food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting or jaundice is a prominent symptom, the Standard requires the camp superintendent to report that immediately to the health authority. In addition, the Standard requires that where the toilet rooms are shared, separate toilet rooms must be provided for each sex. These rooms must be ''marked for men'' and'' for women'' by signs printed in English and in the native language of the persons occupying the camp, or marked with easily understood pictures or symbols.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Temporary Labor Camps Standard (29 CFR 1910.142). OSHA is proposing to decrease its existing burden hour estimate from 67 hours to 54 hours, for a total decrease of 13 hours. Based on new data from the National Agricultural Statistics Service, the Agency decreased the number of migrant workers from 135,830 to 109,760 workers. Additionally, based upon this new data, the Agency decreased the number of ''incidents of notifiable diseases'' from 833 cases to 673.

The Agency will summarize any comments submitted in response to this notice and will include this summary in its request to OMB for approval.

Type of Review: Extension of a currently approved collection.

Title: Temporary Labor Camps (29 CFR 1910.142).

OMB Control Number: 1218–0096.

Affected Public: Business or other for-profits; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 673.

Frequency of Response: On occasion.

Average Time per Response: Time per response is 5 minutes (.08 hour) to report each incident to local public health authorities.

Estimated Total Burden Hours: 54 hours.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2012–0012). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on May 22, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–12705 Filed 5–24–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0017]

Reports of Injuries to Employees Operating Mechanical Power Presses; Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Requirement

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirement contained in the Standard on Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)).

DATES: Comments must be submitted (postmarked, sent, or received) by July 24, 2012.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0017, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2012–0017). All comments, including any

personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

In the event a worker is injured while operating a mechanical power press, 29 CFR 1910.217(g) requires an employer to provide information to OSHA regarding the accident within 30 days of the accident. This information includes the employer's and worker's name(s), workplace address and location; injury sustained; task being performed when the injury occurred; number of operators required for the operation and the number of operators provided with controls and safeguards; cause of the accident; type of clutch, safeguard(s), and feeding method(s) used; and means used to actuate the press stroke. OSHA's Directorate of Standards and Guidance, or the State agency administering a plan approved by the Assistant Secretary of Labor for Occupational Safety and Health, collects the information. These reports are a source of up-to-date information on power press machines. Particularly, this information identifies the equipment used and conditions associated with these injuries.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirement contained in the Standard on Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)). OSHA is proposing to decrease the existing burden hour estimate for the collection of information requirement specified by the Provision from 13 hours to 9 hours, for a total decrease of 4 hours. This adjustment is a result of a decline in the number of reports received by OSHA annually.

The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)).

OMB Number: 1218–0070.

Affected Public: Business or other for-profits; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 83.

Frequency of Response: On occasion.

Average Time Per Response: Five minutes (.08 hour) for a secretary to submit the report to OSHA and 15 minutes (.25 hour) for a supervisor to obtain the information regarding the accident and to prepare the written report.

Estimated Total Burden Hours: 9.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2012–0017). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection

and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on May 22, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–12710 Filed 5–24–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0019]

National Advisory Committee on Occupational Safety and Health (NACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of meetings of the National Advisory Committee on Occupational Safety and Health (NACOSH) and NACOSH Work Groups.

SUMMARY: NACOSH will meet June 20, 2012, in Washington, DC. In conjunction with the committee meeting, NACOSH Work Groups will meet on June 19, 2012.

DATES: *NACOSH meeting:* NACOSH will meet from 9 a.m. to 5 p.m. on Wednesday, June 20, 2012.

NACOSH Work Group meetings: NACOSH Work Groups will meet Tuesday, June 19, 2012. (For Work Group meeting times, see the NACOSH Work Group section in the **SUPPLEMENTARY INFORMATION** section of this notice.)

Submission of comments, requests to speak, speaker presentations and requests for special accommodations: Comments, requests to speak at the NACOSH meeting, speaker presentations, and requests for special accommodations for the NACOSH and NACOSH Work Group meetings must be submitted (postmarked, sent, transmitted) by June 11, 2012.

ADDRESSES: *NACOSH and NACOSH Work Group meetings:* NACOSH and its Work Groups will meet in Room N3437 A/B/C, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Submission of comments, requests to speak and speaker presentations: You may submit comments, requests to speak at the NACOSH meeting and speaker presentations, identified by the docket number in this **Federal Register** notice (Docket No. OSHA–2012–0019), by one of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for making submissions.

Facsimile: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Mail, express delivery, messenger or courier service: You may submit your materials to the OSHA Docket Office, Docket No. OSHA–2012–0019, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (887) 889–5627). Deliveries (hand, express mail, messenger, courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t., weekdays.

Requests for special accommodations: Please submit requests for special accommodations for the NACOSH and NACOSH Work Group meetings to Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (220) 693–1999; email *chatmon.veneta@dol.gov.*

Instructions: All submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2012–0019). Because of security-related procedures, submission by regular mail may result in significant delay in receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions. For additional information about submitting comments, requests to speak and speaker presentations see the **SUPPLEMENTARY INFORMATION** section of this notice.

Comments, requests to speak and speaker presentations, including personal information provided, will be placed in the public docket and may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Mr. Frank Meilinger, OSHA, Office of Communications, U.S. Department of Labor, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; *meilinger.francis2@dol.gov.*

For general information: Ms. Deborah Crawford, OSHA, Directorate of Evaluation and Analysis, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1932; email *crawford.deborah@dol.gov.*

SUPPLEMENTARY INFORMATION:

NACOSH Meeting

NACOSH will meet Wednesday, June 20, 2012, in Washington, DC. NACOSH meetings are open to the public.

Section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) authorizes NACOSH to advise the Secretaries of Labor, and Health and Human Services, on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory body and operates in compliance with the OSH Act, the Federal Advisory Committee Act (5 U.S.C. App. 2), and regulations issued pursuant to those laws (29 CFR 1912a, 41 CFR part 102–3).

The tentative agenda of the NACOSH meeting includes:

- Remarks from the Assistant Secretary of Labor for Occupational Safety and Health (OSHA);
- Remarks from the Director of the National Institute for Occupational Safety and Health (NIOSH);
- OSHA Directorate of Standards and Guidance presentation on the Hazard Communication final rule and the Globally Harmonized System for the Classification and Labeling of Chemicals (GHS) Standard;
- OSHA enforcement program updates;
- Presentation on recent changes and improvements in OSHA's Whistleblower Program;
- Presentation on the joint NIOSH–OSHA fall prevention in construction campaign;
- NACOSH Work Group reports and Committee administrative business; and
- Discussions on emerging issues.

OSHA transcribes NACOSH meetings and prepares detailed minutes of the meetings. OSHA places the meeting transcripts and minutes in the public record of the NACOSH meeting. The

public record also includes Work Group reports, speaker presentations, comments and other materials submitted to NACOSH.

NACOSH Work Groups

NACOSH existing Work Groups, Injury and Illness Prevention Programs and Recordkeeping, will meet June 19, 2012, at 1:30 p.m. and 2:30 p.m., respectively.

OSHA is establishing a new NACOSH Effectiveness Measures Work Group to provide OSHA with recommendations on approaches to measure the effectiveness of OSHA's strategies, programs and activities. This Work Group will meet at 3:30 p.m., June 19.

The Work Groups will report back to the full committee at the June 20, 2012, NACOSH meeting.

Public Participation

NACOSH and NACOSH Work Group meetings. NACOSH and NACOSH Work Group meetings are open to the public. Any individual attending meetings at the U.S. Department of Labor must enter the building at the Visitors' Entrance, 3rd and C Streets, NW., and pass through Building Security. Attendees must have valid photo identification to enter the building. Please contact Ms. Crawford for additional information about building security measures for attending the NACOSH and NACOSH Work Group meetings.

Individuals needing special accommodations to attend NACOSH and NACOSH Work Group meetings should contact Ms. Chatmon.

Submission of written comments, requests to speak and speaker presentations: Interested parties must submit written comments, requests to speak at the NACOSH meeting and speaker presentations by June 11, 2012, using one of the methods listed in the **ADDRESSES** section. All submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2012–0019). OSHA will provide submissions to NACOSH members prior to the meeting.

Because of security-related procedures, submission by regular mail may result in significant delay in receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, messenger or courier service.

Requests to speak must state the amount of time requested to speak, the interest the individual represents (e.g., organization name), if any, and a brief outline of the presentation. Electronic speaker presentations (e.g., PowerPoint) must be compatible with PowerPoint 2010 and other Microsoft 2010 formats. Requests to address NACOSH may be granted as at the discretion of the NACOSH chair and as time permits.

Public docket of the NACOSH meeting: OSHA puts comments, requests to speak and speaker presentations, including any personal information you provide, in the public record of this NACOSH meeting without change and those documents may be available online at *http://www.regulations.gov.* Therefore, OSHA cautions individuals about submitting certain personal information such as social security numbers and birthdates.

OSHA also puts the meeting transcripts and minutes, Work Group reports and other documents from the NACOSH meeting in the public record of the NACOSH meeting. Although all submissions are listed in the *http://www.regulations.gov* index, some documents (e.g., copy- righted materials) are not publicly available to read or download through that Web site. All submissions, including copyrighted material, are available for inspection and copying in the OSHA Docket Office.

To read or download documents in the public record of the NACOSH meeting, go to Docket No. OSHA–2012–0019 at *http://www.regulations.gov.* Please contact the OSHA Docket Office for information about materials not available through that Web site and for assistance in using the Internet to locate submissions and other documents in the public record.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, also is available at the OSHA Web site at *http://www.osha.gov.*

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by Section 7 of the Occupational Safety and Health Act of 1970 (U.S.C. 656), the Federal Advisory Committee Act (5 U.S.C. App. 2); 29 CFR part 1912a; 41 CFR part 102–3; and Secretary of Labor's Order No. 1–2012 (77 FR 3912 1/25/2012).

Signed at Washington, DC, on May 22, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–12771 Filed 5–24–12; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (12–035)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent To Grant Exclusive Research Only License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive, research only license in the United States to practice the invention described and claimed in U.S. Patent Nos. 7,309,738 and 7,968,648 entitled ''Approach for Achieving Flame Retardancy while Retaining Physical Properties in a Compatible Polymer Matrix,'' to the Leather Institute, having its principal place of business at 142 Route 35, Red Bank, NJ 07701. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–7214; Facsimile: 321–867–1817.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL

32899. Telephone: 321–867–7214; Facsimile: 321–867–1817. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

Sumara M. Thompson-King,

Acting Deputy General Counsel.

[FR Doc. 2012–12788 Filed 5–24–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials: Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of Opening of Additional Materials.

SUMMARY: This notice announces the opening of additional Nixon Presidential Historical Materials by the Richard Nixon Presidential Library and Museum, a division of the National Archives and Records Administration. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (PRMPA, 44 U.S.C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR part 1275), the Agency has identified, inventoried, and prepared for public access additional textual materials with certain information redacted as required by law, including the PRMPA.

DATES: The Richard Nixon Presidential Library and Museum intends to make the materials described in this notice available to the public on Tuesday, June 26, 2012, at the Richard Nixon Library and Museum's primary location in Yorba Linda, CA, beginning at 9:30 a.m. PDT/12:30 p.m. EDT. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials must notify the Archivist of the United States in writing of the claimed right, privilege, or defense within 30 days of the publication of this notice.

ADDRESSES: The Richard Nixon Presidential Library and Museum, a division of the National Archives, is located at 18001 Yorba Linda Blvd., Yorba Linda, CA. Researchers must have a NARA researcher card, which they may obtain when they arrive at the Library. Selections from these materials will be available at *www.nixonlibrary.gov.* Petitions asserting a legal or constitutional right or privilege that would prevent or limit public access to the materials must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Rd., College Park, Maryland 20740–6001.

FOR FURTHER INFORMATION CONTACT: Paul Wormser, Acting Director, Richard Nixon Presidential Library and Museum, 714–983–9119.

SUPPLEMENTARY INFORMATION: The following materials will be made available in accordance with this notice:

1. *Previously restricted textual materials.* Volume: 14 cubic feet. A number of textual materials previously withheld from public access have been reviewed for release and/or declassified under the systematic declassification review provisions and under the mandatory review provisions of Executive Order 13526, the Freedom of Information Act (5 U.S.C. 552), or in accordance with 36 CFR 1275.56 (Public Access regulations). The materials are from integral file segments for the National Security Council (NSC Files and NSC Institutional Files); the Henry A. Kissinger (HAK) Office Files, including HAK telephone conversation transcripts, along with the White House Central Files: Staff Member and Office Files, Anne Armstrong; and White House Central Files: Subject Files, Confidential Files, FG 6–11–1/Peter Flanigan.

2. *White House Central Files, Staff Member and Office Files.* Volume: 67 cubic feet. The White House Central Files Unit was a permanent organization within the White House complex that maintained a central filing and retrieval system for the records of the President and his staff. The Staff Member and Office Files consist of materials that were transferred to the Central Files but were not incorporated into the Subject Files. The following file groups will be made available: First Lady's Press Office.

3. *White House Central Files, Name Files:* Volume: 2 cubic feet. The Name Files were used for routine materials filed alphabetically by the name of the correspondent; copies of documents in the Name Files were usually filed by subject in the Subject Files. The following Name Files folders will be made available: A-Abbot, B; Wilcox, J.; Thimmesch, Nick; Hoffer; Rozell; Johnson, Lyndon B. Mr. & Mrs.

4. *Sub-Cabinet MUG File:* Volume 1 cubic foot. A collection of 8x10 photographic prints collected from Federal government departments and agencies during the Richard Nixon Administration, depicting presidential sub-cabinet personnel. These materials were collected by the Office of Presidential Papers and Archives (OPPA) to assist in the identification of individuals. OPPA Staff Director, Jack Nesbitt collected the photographs.

Dated: May 16, 2012.

David Ferriero,

Archivist of the United States.

[FR Doc. 2012–12622 Filed 5–24–12; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. NCUA is proposing a data collection change to the credit union Profile as well as the 5300 Call Report. NCUA is proposing to add a new account to the Contacts section of the Profile to identify the initial date of election or appointment of each official to help assess the longevity of credit union board members. Additionally, NCUA is planning to add a question to the Regulatory section of the Profile where credit unions will be required to certify their compliance with 12 CFR 701.4. On the 5300 Call Report, NCUA will revise the regulatory reporting requirements by eliminating the data collection on modified loans and target data collection efforts on loans meeting the definition of a troubled debt restructured loan under Generally Accepted Accounting Principles.

DATES: Comments will be accepted until July 24, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

NCUA Contact: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOMail@ncua.gov.*

OMB Contact: Office of Management and Budget, Attn: Desk Officer for the National Credit Union Administration, Office of Information

and Regulatory Affairs, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION:

I. Abstract and Request for Comments

NCUA is amending the currently approved collection for 3133–0004. Two specific forms are used, NCUA Form 5300 and NCUA Profile Form 4501A, also known as the Call Report and Profile, respectively. Section 741.6 of the NCUA Rules and Regulations requires all federally insured credit unions to submit a Call Report quarterly. 12 CFR 741.6. The information enables the NCUA to monitor credit unions whose share accounts are insured by the National Credit Union Share Insurance Fund. NCUA uses the information collected from these Call Reports to fulfill its mission of supervising credit unions and the Federal Reserve Board uses it to monitor and control the nation's money supply and the system of financial institutions. Congress and various state legislatures use this information to monitor, regulate, and control credit unions and financial institutions. The changes made to the Profile and Call Report form for December 2012 will help the National Credit Union Administration assess the longevity of credit union board members and provide data to assess financial risks and loan practices of credit unions. There is a decrease of 4,515 hours from the last submission (2011). The decrease is noted as an adjustment of the number of credit unions completing Form 5300 from 7,264 federally insured credit unions to 7,093. This decline is due strictly to credit union mergers and liquidations.

The NCUA requests that you send your comments on this collection to the location listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review. 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.

II. Data

Proposal for the following collection of information:

OMB Number: 3133–0004.

Form Number: NCUA 5300.

Type of Review: Revision to the currently approved collection.

Title: Revisions to NCUA Call Reports.

Description: The financial and statistical information is essential to NCUA in carrying out its responsibility for the supervision of federally insured credit unions. The information also enables NCUA to monitor all federally insured credit unions whose share accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF).

Respondents: All Credit Unions.

Estimated Number of Respondents/Recordkeepers: 7,093.

Estimated Burden Hours per Response: 6.6 hours.

Frequency of Response: Quarterly.

Estimated Total Annual Burden Hours: 187,255.

Estimated Total Annual Cost: $5,495,934.

By the National Credit Union Administration Board on May 18, 2012.

Mary Rupp,

Secretary of the Board.

[FR Doc. 2012–12782 Filed 5–24–12; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 76 FR 4947, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.* Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions f the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the 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 should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: ''National Sciences Foundation Proposal/Award Information-Grant Proposal Guide''

OMB Approval Number: 3145–0058.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project: The National Science Foundation Act of 1950 (Pub. L.

81–507) set forth NSF's mission and purpose:

''To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense. * * *''

The Act authorized and directed NSF to initiate and support:

- Basic scientific research and research fundamental to the engineering process;
- Programs to strengthen scientific and engineering research potential;
- Science and engineering education programs at all levels and in all the various fields of science and engineering;
- Programs that provide a source of information for policy formulation; and
- Other activities to promote these ends.

Over the years, NSF's statutory authority has been modified in a number of significant ways. In 1968, authority to support applied research was added to the Organic Act. In 1980, The Science and Engineering Equal Opportunities Act gave NSF standing authority to support activities to improve the participation of women and minorities in science and engineering.

Another major change occurred in 1986, when engineering was accorded equal status with science in the Organic Act. NSF has always dedicated itself to providing the leadership and vision needed to keep the words and ideas embedded in its mission statement fresh and up-to-date. Even in today's rapidly changing environment, NSF's core purpose resonates clearly in everything it does: Promoting achievement and progress in science and engineering and enhancing the potential for research and education to contribute to the Nation. While NSF's vision of the future and the mechanisms it uses to carry out its charges have evolved significantly over the last four decades, its ultimate mission remains the same.

Use of the Information: The regular submission of proposals to the Foundation is part of the collection of information and is used to help NSF fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 40,000 proposals annually for new projects, and makes approximately 10,500 new awards.

Support is made primarily through grants, contracts, and other agreements awarded to more than 2,000 colleges, universities, academic consortia, nonprofit institutions, and small businesses. The awards are based mainly on evaluations of proposal merit submitted to the Foundation.

The Foundation has a continuing commitment to monitor the operations of its information collection to identify and address excessive reporting burdens as well as to identify any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s).

Burden on the Public: The Foundation estimates that an average of 120 hours is expended for each proposal submitted. An estimated 51,000 proposals are expected during the course of one year for a total of 6,120,000 public burden hours annually.

Dated: May 22, 2012.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2012–12773 Filed 5–24–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No(s). 50–424 and 50–425; NRC–2010–0389]

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 1 and 2; Application and Amendments to Facility Operating License Involving Proposed No Significant Hazards Consideration Determination, and Containing Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing and petition for leave to intervene, Order.

DATES: Comments must be filed by June 25, 2012. A request for a hearing must be filed by July 24, 2012. Any potential party as defined in Title 10 of the Code of Federal Regulations (10 CFR), Section 2.4, who believes access to Sensitive Unclassified Non-Safeguards Information is necessary to respond to this notice must request document access by June 4, 2012.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2010–0389. You may submit comments by any of the following methods.

- *Federal rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0389 Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.
- *Email comments to: Rulemaking.Comments@nrc.gov*. If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Patrick G. Boyle, Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–3936, email: *Patrick.Boyle@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2010–0389 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0389.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The application for amendment dated March 22, 2012, contains sensitive unclassified

non-safeguards information (proprietary) and, accordingly, those portions are being withheld from public disclosure. A redacted version of the application for amendment, dated March 22, 2012, is available in ADAMS under Accession No. ML12087A307.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2010–0389 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–68 and NPF–81, issued to Southern Nuclear Operating Company, Inc. (SNC or the licensee), for operation of the Vogtle Electric Generating Plant, Units 1 and 2 (VEGP), located in Burke County, Georgia.

The proposed amendments would revise VEGP's Technical Specifications (TS) associated with the ''Steam Generator (SG) Program'' allowing the exclusion of portions of the SG tubes below the top of the SG tube sheet from periodic SG tube inspections during the remaining licensed operations of the plant. Furthermore, the amendment requests to remove the interim SG alternative inspection criteria that had been previously approved.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that alters the steam generator inspection criteria and the steam generator inspection reporting criteria does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident.

Of the applicable accidents previously evaluated, the limiting transients with consideration to the proposed change to the steam generator tube inspection and repair criteria are the steam generator tube rupture (SGTR) event and the feedline break (FLB)/steam line break (SLB) postulated accidents. Tube rupture in tubes with cracks within the tubesheet is precluded by the constraint provided by the tube-to-tubesheet joint. This constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet, and from the differential pressure between the primary and secondary side. Based on this design, the structural margins against burst, as discussed in Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR Steam Generator Tubes,'' (Reference 10) are maintained for both normal and postulated accident conditions.

The proposed change has no impact on the structural or leakage integrity of the portion of the tube outside of the tubesheet. The proposed change maintains structural integrity of the steam generator tubes and does not affect other systems, structures, components, or operational features. Therefore, the proposed change results in no significant increase in the probability of the occurrence of a SGTR accident.

At normal operating pressures, leakage from primary water stress corrosion cracking below the proposed limited inspection depth is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region. The consequences of an SGTR event are affected by the primary-to secondary leakage flow during the event. However, primary-to-secondary leakage flow through a postulated broken tube is not affected by the proposed changes since the tubesheet enhances the tube integrity in the region of the hydraulic expansion by precluding tube deformation beyond its initial hydraulically expanded outside diameter. Therefore, the proposed changes do not result in a significant increase in the consequences of a SGTR.

The consequences of a SLB/FLB are also not significantly affected by the proposed changes. During a SLB/FLB accident, the reduction in pressure above the tubesheet on the shell side of the steam generator creates an axially uniformly distributed load on the tubesheet due to the reactor coolant system pressure on the underside of the tubesheet. The resulting bending action constrains the tubes in the tubesheet thereby restricting primary-to-secondary leakage below the midplane.

Primary-to-secondary leakage from tube degradation in the tubesheet area during the limiting accident (i.e., a FLB) is limited by flow restrictions. These restrictions result from the crack and tube-to-tubesheet contact pressures that provide a restricted leakage path above the indications and also limit the degree of potential crack face opening as compared to free span indications.

The leakage factor of 2.48 for Vogtle Electric Generating Plant, Units 1 and 2 (VEGP), for a postulated FLB, has been calculated as shown in Revised Table 9–7 of Reference 11. Specifically, for the condition monitoring assessment, the component of leakage from the prior cycle from below the H* distance will be multiplied by a factor of 2.48 and added to the total leakage from any other source and compared to the allowable accident induced leakage limit. For the operational assessment, the difference in the leakage between the allowable leakage and the accident induced leakage from sources other than the tubesheet expansion region will be divided by 2.48 and compared to the observed operational leakage. Feedline break leakage is limited by leakage flow restrictions resulting from the leakage path above potential cracks through the tube-to-tubesheet crevice. The leak rate during postulated accident conditions (including locked rotor) has been shown to remain within the accident analysis assumptions for all axial and or circumferentially orientated cracks occurring 15.2 inches below the top of the tubesheet. The accident induced leak rate limit is 1.0 gpm [gallons per minute]. The TS operational leak rate is 150 gpd [gallons per day] (0.1 gpm) through any one steam generator. Consequently, there is significant margin between accident leakage and

allowable operational leakage. The FLB leak rate ratio is 2.48 resulting in significant margin between the conservatively estimated accident leakage and the allowable accident leakage (1.0 gpm).

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change that alters the steam generator inspection criteria and the steam generator inspection reporting criteria does not introduce any new equipment, create new failure modes for existing equipment, or create any new limiting single failures. Plant operation will not be altered, and all safety functions will continue to perform as previously assumed in accident analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the change involve a significant reduction in a margin of safety?

Response: No.

The proposed change that alters the steam generator inspection criteria and the steam generator inspection reporting criteria maintains the required structural margins of the steam generator tubes for both normal and accident conditions. NEI 97–06, Revision 3, ''Steam Generator Program Guidelines'' (Reference 6) and RG 1.121, are used as the bases in the development of the limited tubesheet inspection depth methodology for determining that steam generator tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC for meeting [10 CFR Part 50, Appendix A, General Design Criteria] GDC 14, ''Reactor Coolant Pressure Boundary,'' GDC 15, ''Reactor Coolant System Design,'' GDC 31, ''Fracture Prevention of Reactor Coolant Pressure Boundary,'' and GDC 32, ''Inspection of Reactor Coolant Pressure Boundary,'' by reducing the probability and consequences of a SGTR. RG 1.121 concludes that, by determining the limiting safe conditions for tube wall degradation, the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, the H* analysis, documented in section 4 of this enclosure, defines a length of degradation free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot and cold leg tubesheet inspection criteria will preclude unacceptable primary-to-secondary leakage during all plant conditions. The methodology for determining leakage provides for large margins between calculated and actual leakage values in the proposed limited tubesheet inspection depth criteria.

Therefore, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received by June 25, 2012 will be considered in making any final determination. You may submit comments using any of the methods discussed in the **ADDRESSES** section of this document.

Normally, the Commission will not issue the amendment until the expiration of
days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination; any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing; Petition for Leave To Intervene

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, ''Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions.'' Interested persons should consult 10 CFR part 2, Section 2.309, which is available at the NRC's PDR, located at O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at 1–800–397–4209 or 301–415–4737). The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.*

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the requestor/petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the requestor or petitioner and specifically explain the reasons why the intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the requestor/petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the requestor/petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must include a concise statement of the alleged facts or expert opinions which support the position of the requestor/petitioner and on which the requestor/petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the requestor/petitioner disputes and the supporting reasons for each dispute, or, if the requestor/petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requestor's/petitioner's belief. Each contention must be one which, if

proven, would entitle the requestor/petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by July 24, 2012. The petition must be filed in accordance with the filing instructions in Section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by July 24, 2012.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they

can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from May 25, 2012. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Attorney for licensee: Arthur H. Domby, Esq., Troutman Sanders, Nations Bank Plaza, 600 Peachtree Street NE., Suite 5200, Birmingham, AL 35201.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *hearing.docket@nrc.gov* and *OGCmailcenter@nrc.gov*, respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing),

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 21st day of May 2012.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

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[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17g–5, SEC File. No. 270–581, OMB Control No. 3235–0649.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17g–5 (17 CFR 240.17g–5) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

The Credit Rating Agency Reform Act of 2006 (Pub. L. 109–291) (''Rating Agency Act''), enacted on September 29, 2006, defines the term ''nationally recognized statistical rating organization,'' or ''NRSRO'' and provides authority for the Commission to implement registration, recordkeeping, financial reporting, and oversight rules with respect to registered credit rating agencies.

In 2009, the Commission adopted amendments to Rule 17g–5. Rule 17g–5, as amended, imposes additional requirements on NRSROs in order to address concerns about the integrity of their credit rating procedures and methodologies in light of the role they played in determining credit ratings for securities collateralized by or linked to subprime residential mortgages.

Rule 17g–5, as amended, requires NRSROs to disclose and manage certain conflicts of interest. The collection of information obligation imposed by Rule 17g–5 is mandatory for credit rating agencies that are applying to register or are registered with the Commission as NRSROs. Registration with the Commission as an NRSRO is voluntary.

The Rating Agency Act added a new Section 15E, ''Registration of Nationally Recognized Statistical Rating Organizations'' (15 U.S.C. 78o–7) to the Exchange Act. Exchange Act Section 15E(h)(2) provides the Commission with authority to prohibit, or require the management and disclosure of, any potential conflict of interest relating to the issuance of credit ratings by an NRSRO (15 U.S.C. 78o–7(h)(2)).

Rule 17g–5, as amended, requires the disclosure and establishment of procedures to manage an additional conflict of interest and prohibits an NRSRO from issuing a rating for a structured finance product unless information about the transaction and the assets underlying the rated security are disclosed to certain persons. The Commission estimates that it will take 10 NRSROs approximately 300 hours to develop a system, as well as the policies and procedures, for the disclosures required by Rule 17g–5, resulting in a total one-time hour burden of 3,000.

Rule 17g–5, as amended, also requires disclosures on a transaction by transaction basis. The Commission estimates that the total number of structured finance ratings issued by all NRSROs in a given year would be 14,880 and that it would take 1 hour per transaction to make the information publicly available resulting in a total aggregate annual burden to the industry of 14,880 hours.

Rule 17g–5, as amended, also requires arrangers to disclose certain information. The Commission estimates that it would take 200 arrangers subject to the rule approximately 300 hours to develop a system, as well as the policies and procedures, for the disclosures required by Rule 17g–5, resulting in a total one-time hour burden of 60,000.

Rule 17g–5, as amended, also requires disclosures by arrangers on a transaction by transaction basis. The Commission estimates that 200 arrangers would arrange approximately 20 new transactions per year and that it would take 1 hour per transaction to make the information publicly available, resulting in a total aggregate annual burden of 4,000 hours.

Rule 17g–5, as amended, also requires disclosure of information by arrangers on an ongoing basis that is used by an NRSRO to undertake credit rating surveillance on the structured finance product. The Commission estimates this disclosure would be required for approximately 125 transactions a month, and it would take each respondent approximately 0.5 hours per transaction to disclose the information. Therefore, the Commission estimates that it would take each respondent approximately 750 hours on an annual basis to disclose such information, for a total aggregate annual burden of 150,000 hours.

Finally, Rule 17g–5, as amended, requires NRSROs to submit an annual certification to the Commission. The Commission estimates that it would take each NRSRO approximately 2 hours to complete the certification, resulting in a total aggregate annual burden of 20 hours.

Accordingly, the total estimated burden associated with Rule 17g–5 is 63,000 hours on a one-time basis (3,000 + 60,000 = 63,000) and 168,900 on an annual basis (14,880 + 150,000 + 4,000 + 20 = 168,900).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 21, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–12724 Filed 5–24–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rules 17h–1T and 17h–2T, SEC File No. 270–359, OMB Control No. 3235–0410.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission

(''Commission'') is soliciting comments on the existing collection of information provided for in Rules 17h–1T and 17h–2T (17 CFR 240.17h–1T and 17 CFR 240.17h–2T), under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq*.). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17h–1T requires a broker-dealer to maintain and preserve records and other information concerning certain entities that are associated with the broker-dealer. This requirement extends to the financial and securities activities of the holding company, affiliates and subsidiaries of the broker-dealer that are reasonably likely to have a material impact on the financial or operational condition of the broker-dealer. Rule 17h–2T requires a broker-dealer to file with the Commission quarterly reports and a cumulative year-end report concerning the information required to be maintained and preserved under Rule 17h–1T.

The collection of information required by Rules 17h–1T and 17h–2T, collectively referred to as the ''risk assessment rules'' is necessary to enable the Commission to monitor the activities of a broker-dealer affiliate whose business activities are reasonably likely to have a material impact on the financial and operational condition of the broker-dealer. Without this information, the Commission would be unable to assess the potentially damaging impact of the affiliate's activities on the broker-dealer.

There are currently 275 respondents that must comply with Rules 17h–1T and 17h–2T. Each of these 275 respondents requires approximately 10 hours per year, or 2.5 hours per quarter, to maintain the records required under Rule 17h–1T, for an aggregate annual burden of 2750 hours (275 respondents × 10 hours). In addition, each of these 275 respondents must make five annual responses under Rule 17h–2T. These five responses require approximately 14 hours per respondent per year, or 3.5 hours per quarter, for an aggregate annual burden of 3,850 hours (275 respondents × 14 hours).

In addition, there are approximately twenty-five new respondents per year that must draft an organizational chart required under Rule 17h–1T and establish a system for complying with the risk assessment rules. The staff estimates that drafting the required organizational chart requires one hour and establishing a system for complying with the risk assessment rules requires three hours, thus requiring an aggregate of 100 hours (25 new respondents × 4 hours). Thus, the total compliance burden per year is approximately 6,700 burden hours (2,750 + 3,850 + 100).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 21, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–12725 Filed 5–24–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–9325; 34–67038 File No. 265–27]

Advisory Committee on Small and Emerging Companies; Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice.

SUMMARY: The Securities and Exchange Commission Advisory Committee on Small and Emerging Companies is providing notice that it will hold a public meeting on Friday, June 8, 2012, in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC. The meeting will begin at 9 a.m. (EDT) and will be open to the public. The meeting will be Web cast on the Commission's Web site at *www.sec.gov*. Persons needing special accommodations to take part because of a disability should notify the contact person listed below. The public is invited to submit written statements to the Committee.

The agenda for the meeting includes discussions of provisions of the Jumpstart Our Business Startups (JOBS) Act and other matters relating to rules and regulations affecting small and emerging companies under the federal securities laws. Notice of this meeting is less than fifteen days prior to the meeting due to an administrative delay.

DATES: The public meeting will be held Friday, June 8, 2012. Written statements should be received on or before June 5, 2012.

ADDRESSES: The meeting will be held in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC.

Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (*http://www.sec.gov/info/smallbus/acsec.shtml*); or
- Send an email message to *rule-comments@sec.gov*. Please include File Number 265–27 on the subject line; or

Paper Statements

- Send paper statements in triplicate to Elizabeth M. Murphy, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. 265–27. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the Advisory Committee's Web site (*http://www.sec.gov./info/smallbus/acsec.shtml*).

Statements also will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Johanna V. Losert, Special Counsel, at (202) 551–3460, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange

Commission, 100 F Street NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.-App. 1, and the regulations thereunder, Meredith B. Cross, Designated Federal Officer of the Committee, has ordered publication of this notice.

By the Commission.
Dated: May 22, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–12800 Filed 5–23–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67033; File No. SR–NYSEArca-2012–42]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31(pp) To Change the Primary After 3:45 Order to a Primary After 3:55 Order

May 21, 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 May 10, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(pp) to change the Primary After 3:45 Order to a Primary After 3:55 Order. 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

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(pp) to change the Primary After 3:45 Order to a Primary After 3:55 Order.

Currently, the Primary After 3:45 Order can be entered for participation on the Exchange until 3:45 p.m. Eastern Time (12:45 p.m. Pacific Time), after which time the order is cancelled on the Exchange and an order is entered for participation on the primary market. These orders can be Day only and may not be designated as GTC or GTD. Any such orders that are routed to the primary market at 3:45 p.m. Eastern Time retail [sic] their original order attributes.

The Exchange proposes to amend the rule to provide that such orders can be entered for participation on the Exchange until 3:55 p.m. Eastern Time (12:55 p.m. Pacific Time) instead of 3:45 p.m. Eastern Time. As proposed the order type would be renamed the ''Primary After 3:55 Order.'' Other than the time change, the Exchange does not propose any changes to the order type.

The Exchange is proposing this time change to [sic] in order to provide greater opportunity for ETP Holders that use this order type to obtain an Exchange execution before it is routed to the primary market. In particular, because the Exchange's rebate is currently higher than those on the primary markets, the Exchange believes that providing a longer opportunity for an execution on the Exchange would benefit ETP Holders, while at the same time continuing to provide an opportunity for such orders to be routed to the primary market in time for the closing auction.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[4] in general, and furthers the objectives of Section 6(b)(5),[5] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed change to the Primary After 3:45 Order meets these requirements because it will provide ETP Holders who use this order type with a longer period that it would be possible to obtain an execution on the Exchange before the order is routed to the primary market.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(6) [7] thereunder.

NYSE Arca has asked the Commission to waive the 30-day operative delay.[8] NYSE Arca believes that implementing the proposed change to the Primary After 3:45 Order type along with other technology changes scheduled for May 28, 2012, will reduce customer confusion as customers will only have to digest a single technology release for

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] 17 CFR 240.19b–4(f)(6)(iii).

Exchange order-type changes, as opposed to a series of technology releases. The Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow NYSE Arca to implement the proposed rule change along with other technology changes, which should facilitate a more seamless transition for members and customers alike. Accordingly, the Commission designates the proposal operative upon filing.[9]

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–NYSEArca-2012–42 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-2012–42. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2012–42 and should be submitted on or before June 15, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–12720 Filed 5–24–12; 8:45 am]

BILLING CODE 8011–01–P

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67035; File No. SR–ISE–2012–37]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Terminate a Pilot Program Related to an Incentive Plan for Certain Foreign Currency Options Traded on the Exchange and To Make a Technical Change to the Schedule of Fees

May 21, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 8, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to terminate a pilot program related to an incentive plan for certain Foreign Currency (''FX'') options traded on the Exchange and to make a technical change to its Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to terminate a pilot program related to an incentive plan for certain FX options traded on the Exchange and to make a technical change to its Schedule of Fees. First, the Exchange currently trades a number of FX options, including options on the New Zealand dollar (''NZD''), the Mexican peso (''PZO''), the Swedish krona (''SKA''), the Brazilian real (''BRB''), the Australian dollar (''AUX''), the British pound (''BPX''), the Canadian dollar (''CDD''), the euro (''EUI''), the Japanese yen (''YUK'') and the Swiss franc (''SFC'').[3] On August 3, 2009, the Exchange adopted an incentive plan applicable to market makers in NZD, PZO and SKA,[4] and on January 19, 2010, added BRB to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission previously approved the trading of options on NZD, PZO, SKA, BRB, AUX, BPX, CDD, EUI, YUK and SFC. *See* Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR–ISE–2006–59).

[4] *See* Securities Exchange Act Release No. 60536 (August 19, 2009), 74 FR 43204 (August 26, 2009) (SR–ISE–2009–59).

incentive plan,[5] and on March 1, 2011, added AUX, BPX, CDD, EUI, YUK and SFC to the incentive plan.[6]

The Exchange adopted the incentive plan to promote trading in NZD, PZO SKA, BRB, AUX, BPX, CDD, EUI, YUK and SFC (''Incentive Plan Symbols''). Pursuant to the incentive plan, the Exchange waives the transaction fees for the Early Adopter[7] FXPMM[8] and all Early Adopter FXCMMs[9] that make a market in the Incentive Plan Symbols for as long as the incentive plan is in effect. Further, pursuant to a revenue sharing agreement entered into between an Early Adopter Market Maker and ISE, the Exchange pays the Early Adopter FXPMM forty percent (40%) of the transaction fees collected on any customer trade in the Incentive Plan Symbols and pays up to ten (10) Early Adopter FXCMMs twenty percent (20%) of the transaction fees collected for trades between a customer and that FXCMM in the Incentive Plan Symbols.

Market makers interested in the [sic] participating in the incentive plan are required to enroll by a certain date. Since the inception of the incentive plan, the Exchange has continuously extended the date by which market makers may join the incentive plan,[10] with the most recent extension expiring on March 30, 2012.[11] The Exchange notes that the incentive plan has not achieved its intended objective of attracting more market makers and therefore, the Exchange has decided to no longer extend the date by which market makers may join the incentive plan. With this proposed rule change, the Exchange is essentially closing the window for market makers to join the incentive plan. The Exchange notes that while market makers will no longer be able to enroll in the incentive plan, those market makers that enrolled in the incentive plan on or before March 30, 2012 will continue to participate in the incentive plan. The Exchange proposes to reflect this change on its Schedule of Fees by amending the text that reflects the incentive plan.

Second, the Exchange recently filed a proposed rule change to amend an existing fee cap program and a related service fee (''Fee Cap Filing'').[12] In the Fee Cap Filing, the Exchange deleted what was previously footnote 2 on page 17 of the Schedule of Fees and renumbered what was previously footnote 3 to be footnote 2. The previous footnote 3, which is now footnote 2, references a discount available to subscribers of the Exchange's various market data products. In the Fee Cap Filing, the Exchange failed to renumber footnote 3 in the body of the Schedule of Fees as footnote 2. The Exchange proposes to make that change with this filing.

2. Statutory Basis

The Exchange believes that its proposal to clarify its Schedule of Fees is consistent with Section 6(b) of the Securities and Exchange Act of 1934 (the ''Exchange Act'')[13] in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act[14] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. In particular, the Exchange believes that because the incentive plan has not achieved its intended objective of attracting more market makers, it is reasonable for ISE to no longer permit market makers to enroll in the incentive plan. The Exchange believes the proposed rule change is also reasonable because it corrects a footnoting error and thereby provides greater transparency to the Exchange's Schedule of Fees. The Exchange notes that the proposed rule change is also equitably allocated and not unfairly discriminatory in that it treats similarly situated market participants in the same manner, i.e., all Exchange market makers are now excluded from enrolling in the incentive plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[15] 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 Exchange 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 Exchange 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–ISE–2012–37 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–ISE–2012–37. This file number should be included on the subject line if email is used. To help the

[5] *See* Securities Exchange Act Release No. 61459 (February 1, 2010), 75 FR 6248 (February 8, 2010) (SR–ISE–2010–07).

[6] *See* Securities Exchange Act Release No. 64012 (March 2, 2011), 76 FR 12778 (March 8, 2011) (SR–ISE–2011–11).

[7] Participants in the incentive plan are known on the Exchange's Schedule of Fees as Early Adopter Market Makers.

[8] A FXPMM is a primary market maker selected by the Exchange that trades and quotes in FX Options only. *See* ISE Rule 2213.

[9] A FXCMM is a competitive market maker selected by the Exchange that trades and quotes in FX Options only. *See* ISE Rule 2213.

[10] *See* Securities Exchange Act Release Nos. 60810 (October 9, 2009), 74 FR 53527 (October 19, 2009) (SR–ISE–2009–80), 61334 (January 12, 2010), 75 FR 2913 (January 19, 2010) (SR–ISE–2009–115), 61851 (April 6, 2010), 75 FR 18565 (April 12, 2010) (SR–ISE–2010–27), 62503 (July 15, 2010), 75 FR 42812 (July 22, 2010) (SR–ISE–2010–71), 36045 (October 5, 2010), 75 FR 62900 (October 13, 2010) (SR–ISE–2010–100), 63639 (January 4, 2011), 76 FR 1488 (January 10, 2011) (SR–ISE–2010–121), 64202 (April 6, 2011), 76 FR 20431 (April 12, 2011) (SR–ISE–2011–16), 64861 (July 12, 2011), 76 FR 42145 (July 18, 2011) (SR–ISE–2011–38); and 65530 (October 11, 2011), 76 FR 64136 (October 17, 2011) (SR–ISE–2011–66).

[11] *See* Securities Exchange Act Release No. 66103 (January 5, 2012), 77 FR 1757 (January 11, 2012) (SR–ISE–2011–85).

[12] *See* Securities Exchange Act Release No. 66793 (April 12, 2012), 77 FR 23313 (April 18, 2012) (SR–ISE–2012–27).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–37 and should be submitted on or before June 15, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–12722 Filed 5–24–12; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67025; File No. SR–BX–2012–032]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rule 4751(f)(7) Concerning the Processing of the Price To Comply Order

May 18, 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 May 9, 2012, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify how the processing of a Price to Comply Order under Rule 4751(f)(7) operates based on the method of entry. The Exchange will implement the change effective May 14, 2012.

The text of the proposed rule change is below. Proposed new language is in *italic*; proposed deletions are in [brackets].

* * * * *

4751. Definitions

The following definitions apply to the Rule 4600 and 4750 Series for the trading of securities listed on Nasdaq or a national securities exchange other than Nasdaq.

(a)–(e)

(f) The term ''Order Type'' shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)–(6) No change.

(7) ''Price to Comply Order'' are orders that, if, at the time of entry, a Price to Comply Order would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers). The displayed and undisplayed prices of a Price to Comply order *entered through an OUCH port* may be adjusted once or multiple times depending upon [the method of order entry and] *the election of the member firm and* changes to the prevailing NBBO. *The displayed and undisplayed prices of a Price to Comply order entered through a RASH port may be adjusted multiple times, depending upon changes to the prevailing NBBO.*

(8)–(14) No change.

(g)–(i) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX is proposing to clarify the effect that the methods of order entry have on the processing of a Price to Comply Order, as described in Rule 4751(f)(7).[3] A Price to Comply Order allows a member firm to quote aggressively and still comply with the locked and crossed markets provisions of Regulation NMS.[4]

As part of its relaunch of an equities market in January 2009, BX adopted substantially similar equities rules to that of its sister exchange The NASDAQ Stock Market LLC (''NASDAQ''), including the Price to Comply Order type under Rule 4751(f)(7).[5] NASDAQ amended its Rule 4751(f)(7) in June 2008.[6] Prior to June 2008, if at the time of entry on NASDAQ a Price to Comply Order would create a violation of SEC Rule 610(d) by locking or crossing the protected quote of an external market or would cause a violation of SEC Rule 611 by trading through such a protected quote, the order was converted by the NASDAQ system to a Non-Displayed Order, as defined in NASDAQ Rule 4751(e)(3),[7] and re-priced to the current low offer (for bids) or to the current best bid (for offers). Thereafter, such a Non-Displayed Order would be cancelled by the NASDAQ system if the market moved through the price of the order after the order was accepted.

The June 2008 amendment changed how the NASDAQ Price to Comply Order operates so that a locking or crossing order is no longer converted to a Non-Displayed Order, but rather is displayed at the most aggressive price

[3] ''Price to Comply Order'' is an order such that, if, at the time of entry, it would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers).

[4] 17 CFR 242.610.

[5] Securities Exchange Act Release No. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48).

[6] Securities Exchange Act Release No. 57910 (June 3, 2008), 73 FR 32776 (June 10, 2008) (SR–NASDAQ–2008–049).

[7] ''Non-Displayed Order'' is a limit order that is not displayed in the NASDAQ system, but nevertheless remains available for potential execution against all incoming orders until executed in full or cancelled. BX's definition under Rule 4751(e)(3) mirrors that of NASDAQ's.

possible, one minimum price increment worse than the locking price. NASDAQ also added language to the rule, subsequently mirrored in BX Rule 4751(f)(7), which noted that NASDAQ may adjust the displayed and undisplayed prices of a Price to Comply Order once or multiple times, depending on the method of order entry and changes to the National Best Bid and Offer (''NBBO''). In the discussion of the rule change, NASDAQ explained that the displayed and undisplayed price of an individual order may be modified one or more times depending upon the manner of order entry into the system. In particular, if a member chooses to enter a Price to Comply Order via NASDAQ's RASH protocol, the order is priced upon entry and may be adjusted multiple times in response to changes in the prevailing NBBO to move the displayed price closer to the original entered price and display the best possible price consistent with the provisions of Regulation NMS. In addition, each time the displayed price is adjusted, the order will receive a new timestamp for purposes of determining its price/time priority according to NASDAQ's existing processing rules. If a Price to Comply Order is entered via NASDAQ's OUCH protocol, however, the order will be repriced only upon entry and the order is not repriced in the event the prevailing NBBO changes. The BX Price to Comply Order operates in the same manner as the NASDAQ Price to Comply Order.

BX is proposing to amend Rule 4751(f)(7) to clarify the effect that the method of order entry has on the processing of the Price to Comply Order. As noted above, the method of entry of a Price to Comply Order determines whether the order is repriced once or multiple times. This will continue to be the case under the amended rule; however, an OUCH subscriber will be afforded the choice to have its Price to Comply Order be subject to repricing *either* only once *or* multiple times. Member firms will designate each OUCH protocol order port to use either the single or multiple repricing functionality for any Price to Comply Order entered via that port.[8] A RASH subscriber will continue to have the Price to Comply Order repriced multiple times, when appropriate. The methodology for repricing the Price to Comply Order will not vary based on how the order is entered. Like a RASH-entered Price to Comply Order, each time the OUCH-entered order is repriced it will receive a new timestamp for purposes of determining its price/time priority. As such, a repriced Price to Comply Order is treated as a new order in terms of priority and, as such, there is no guarantee that the OUCH-entered Price to Comply Order will receive priority when it becomes actionable after repricing.

BX believes that the new functionality and related rule change will serve to reduce the order traffic received using the OUCH protocol. BX notes that, in certain cases, a member will submit a Price to Comply Order at an aggressive price that it anticipates will be at the NBBO. Often such an order is not submitted at the NBBO and is not executed after repricing because the market does not move to the adjusted order price. In these cases, the member firm will typically submit additional aggressive orders, which likewise are not executed. Because the OUCH protocol is used by member firms that are able to submit a large volume of orders, BX believes that offering such firms the ability to have BX reprice the Price to Comply Order multiple times will serve to reduce the excessive volume of orders entered into the System which are ultimately canceled.

As noted, BX will continue to offer OUCH subscribers an alternative to the multiple repricing functionality so that such member firms may elect to have a locked or crossed Price to Comply Order repriced only once, consistent with the current process. BX believes that this will accommodate member firms that seek the certainty of repricing at most once or whose trading systems depend on the existing repricing mechanism.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Section 6(b)(5) of the Act [10] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. BX believes this proposal is consistent with the Exchange Act and, specifically, Rules 610 and 611 of Regulation NMS in that it is designed to prevent orders from locking and crossing market or trading through protected quotes, while also promoting a more efficient market. In this regard, BX believes that the proposed rule change will promote the efficient use of the Exchange by reducing the number of orders entered into the market and ultimately canceled. The proposed rule change will accomplish this by providing the member firms that tend to enter the greatest number of such orders an option to have the Exchange reprice a single order multiple times. BX also believes that permitting a high volume user the option to continue to have the Exchange reprice its Price to Comply Order only upon order entry, when appropriate, will ensure member firms with internal systems that act in reliance of this function will continue to operate without disruption.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief

[8] In the absence of designation from a member firm, BX will default the member's OUCH port(s) to single repricing.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(6).

description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2012–032 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–032. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2012–032 and should be submitted on or before June 15, 2012

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–12793 Filed 5–24–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67037; File No. SR–NYSEAmex-2012–32]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Certificate of Formation, Amended and Restated Operating Agreement, Company Guide, and Rules To Change the Name of the Exchange to NYSE MKT LLC

May 21, 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 May 14, 2012, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Certificate of Formation, Amended and Restated Operating Agreement (''Operating Agreement''), Company Guide, and Rules to change the name of the Exchange to NYSE MKT LLC. The text of the proposed rule change is available at the Exchange, *www.nyse.com,* and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex proposes to amend its Certificate of Formation, Operating Agreement, Company Guide, and Rules to change the name of the Exchange to NYSE MKT LLC.

At the time of the acquisition of the American Stock Exchange LLC (''Amex'') by NYSE Euronext on October 1, 2008, the name of the Exchange, as the successor entity to Amex, was initially established as ''NYSE Alternext US LLC.''[3] On March 3, 2009, the name of the Exchange was changed to ''NYSE Amex LLC.''[4] The Exchange has now determined that for marketing purposes it would be desirable to change the name of the Exchange to ''NYSE MKT LLC.''

Specifically, the Certificate of Formation of the Exchange would be amended to remove the reference to ''NYSE Amex LLC'' and replace it with ''NYSE MKT LLC.'' The Operating Agreement of NYSE Amex LLC also would be amended and restated to become the Second Amended and Restated Operating Agreement of NYSE MKT LLC, with the word ''Company'' to be redefined to mean ''NYSE MKT LLC.'' Article 1, Section 1.01 of the Operating Agreement would be revised to state the name of the limited liability company as ''NYSE MKT LLC,'' and in Article 3, Section 2.03 the ''NYSE Amex DCRC'' would be renamed the ''NYSE MKT DCRC.''

In the Exchange's Rules and its Company Guide, references to ''NYSE Amex,'' ''Amex,'' ''NYSE Amex LLC,'' ''Alternext,'' and ''American Stock Exchange'' would be changed to ''NYSE MKT'' or ''the Exchange'' or deleted, as appropriate. The Exchange proposes to add a new definition to the General and Floor Rules to define the term ''Company Guide'' to mean the NYSE MKT LLC Company Guide and conform references in the Exchange's rules accordingly. The Exchange does not propose to rename the NYSE Amex options business; therefore, references to ''Amex Trading Permit,'' ''ATP

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–Amex-2008–62).

[4] *See* Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24).

Holder,'' and ''NYSE Amex Options'' would not be changed. The Exchange proposes to update the Exchange's address in Sections 332 and 350 of the Company Guide and Rule 341A. In addition, the Exchange proposes to simplify cross-references within the Exchange's rules. References to ''Exchange Rule'' or ''NYSE Amex Rule'' would be shortened to ''Rule'' and references to ''NYSE Amex Equities'' would be shorted to ''Equities'' (e.g., Rule 0—NYSE Amex Equities would become Rule 0—Equities).

None of the foregoing changes are substantive.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[6] in general, and Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange proposes to change its name for marketing purposes, and the proposed rule change is intended to accurately reflect the name change in the Exchange's rules and governing documents. In addition, the Exchange is proposing certain changes that would make the rule text simpler and more uniform so that it will be easier for market participants to use, which is in the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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.

[5] The Exchange will submit subsequent rule filings as necessary to make any technical corrections to proposed rule changes that are pending as of the date of submission of this filing and approved by the Commission thereafter.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is concerned solely with the administration of the Exchange pursuant to Section 19(b)(3)(A)(iii) [8] of the Act and Rule 19b-4(f)(3) [9] thereunder. Accordingly, the proposal will take effect upon filing with the Commission. 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–NYSEAmex-2012–32 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-2012–32. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex-2012–32 and should be submitted on or before June 15, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–12794 Filed 5–24–12; 8:45 am]

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[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b-4(f)(3).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67036; File No. SR–CME–2012–18]

Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify a Fee Program Related to Its OTC Interest Rate Swap Clearing Offering

May 21, 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 May 9, 2011, Chicago Mercantile Exchange, Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which items have been prepared primarily by CME. CME filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) [3] of the Act and Rule 19b–4(f)(2) [4] thereunder, so that the proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[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).

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

CME is proposing to make certain fee-related changes that would apply to its OTC Interest Rate Swap clearing offering.[5] The text of the proposed changes is listed below. Additions are in italics, deletions in brackets.

* * * * *

CME Incentive Program for Over-The-Counter Interest Rate Swaps

Program Purpose

The purpose of the Program is to incentivize participants to increase the volume in CME over-the-counter (''OTC'') interest rate swaps which will improve market liquidity. The resulting addition of liquidity for these Products (as defined below) benefits all participants in the market.

Product Scope

CME OTC Interest Rate Swaps cleared by the Clearing House (''Products'').

Eligible Participants

CME may designate up to [five (5)] *six (6)* participants in the Program based on their level of expertise and experience with the Products. Participants may be CME members and/or non-members. CME will also take potential participants' experience in the Products and historical volume in the Products with the Clearing House when making its selections.

Program Term

Non-Asset Managers
Qualification Period: January 6, 2012 through December 31, 2012
Earned Incentive Period: January 1, 2013 through December 31, 2016
Asset Managers
Qualification Period: January 6, 2012 through December 31, 2012
Earned Incentive Period: January 1, 2013 through December 31, 2021

Hours

N/A

Obligations

Participants must provide designated accounts to CME in order for the account to receive consideration for the incentives described below.

Incentives

1. Fee Discounts. Once accepted into the Program, participants will be eligible to receive predetermined discounts for transaction fees and maintenance fees in the Products during the Term.

2. Volume Discount Incentives. Additionally, once accepted into the Program, participants may qualify for predetermined fee discounts based on the overall fees charged for transactions in the Products submitted to the Clearing House during the Qualification Period.

Monitoring and Termination of Status

The Clearing House shall monitor participants' activity and performance and shall retain the right to revoke Program participant status if they conclude from review that a Program participant no longer meets the eligibility requirements of the Program.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CME has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[6]

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

CME currently offers clearing for certain OTC Interest Rate Swap products. CME has certain fee programs that apply to its OTC Interest Rate Swap (''IRS'') clearing offering. The proposed changes that are the subject of this filing modify one of its existing fee programs. The proposed changes are related to the fees CME charges for clearing and therefore will become effective upon filing. However, the Program will become operative on May 23, 2012.

The proposed changes modify a current volume incentive program that is designed to incentivize participants to increase their volume in CME OTC IRS through predetermined fee discounts for transaction fees and maintenance fees (''Program''). The Program currently may include up to five participants (including CME members and/or non-members) designated by CME based on factors including potential participants' experience in IRS activities and historical volumes in IRS with CME. The change proposed by this filing would simply increase the number of eligible participants from five to six.

Pursuant to Commodity Futures Trading Commission (''CFTC'') regulations, the Program has been interpreted by CME as an incentive program subject to CFTC Regulation 40.6(d), requiring a self-certification filing to the CFTC, although no change to text of the CME rulebook is required. CME notes that it has already certified the proposed changes that are the subject of this filing to its primary regulator, the CFTC, in CME Submission No. 12–136. The text of the CME proposed changes is above. The proposed changes establish or change a member due, fee or other charge imposed by CME under Section 19(b)(3)(A)(ii) of the Securities Exchange Act of 1934 and Rule 19b–4(f)(2) thereunder. CME believes that the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, to 17A(b)(3)(D),[7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among participants. CME notes that it operates in a highly competitive market in which market participants can readily direct business to competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change was filed pursuant to Section 19(b)(3)(A)(ii)[8] of the Act and Rule 19b–4(f)(2)[9] thereunder and thus became effective upon filing because it establishes or changes a due, fee, or other charge applicable to a member. At any time within sixty days of the filing of such rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission

[5] CME previously established the fee program in another rule filing. *See* Exchange Act Release No. 34–66102 (January 5, 2012), 77 FR 1775 (January 11, 2012) [CME–2011–22].

[6] The Commission has modified the text of the summaries prepared by CME.

[7] 15 U.S.C. 78q–1(b)(3)(D).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

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 may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an email to *rule-comments@sec.gov*. Please include File No. SR–CME–2012–18 on the subject line.
- Paper comments should be sent 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–CME–2012–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CME–2012–18 and should be submitted on or before June 15, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–12723 Filed 5–24–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67034; File No. SR–NYSEArca–2012–26]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To List and Trade Option Contracts Overlying 10 Shares of a Security (''Mini-Options Contracts'') and Implement Rule Text Necessary To Distinguish Mini-Options Contracts From Option Contracts Overlying 100 Shares of a Security (''Standard Contracts'')

May 21, 2012.

On March 23, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade option contracts overlying 10 shares of a security (''mini-options contracts'') and implement rule text necessary to distinguish mini-options contracts from option contracts overlying 100 shares of a security (''standard contracts''). The proposed rule change was published for comment in the **Federal Register** on April 9, 2012.[3] The Commission received five comment letters on the proposal.[4]

Section 19(b)(2) of the Act[5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is May 24, 2012. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, the comment letters received, and any response to the comment letters submitted by NYSE Arca.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates July 8, 2012 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2012–26).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–12721 Filed 5–24–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67023; File No. SR–C2–2012–013]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

May 18, 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 May 14, 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66725 (April 3, 2012), 77 FR 21120.

[4] *See* email from Danon Robinson, Founding Partner, Toro Trading, LLC, dated April 5, 2012; letter from Joan C. Conley, Senior Vice President and Corporate Secretary, The NASDAQ OMX Group, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated April 30, 2012; letter from Manisha Kimmel, Executive Director, Financial Information Forum, to Elizabeth M. Murphy, Secretary, Commission, dated April 30, 2012; letter from Christopher Nagy, Managing Director Order Routing and Market Data Strategy, TD Ameritrade, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated April 30, 2012; and letter from Edward T. Tilly, President and Chief Operating Officer, Chicago Board Options Exchange, Incorporated, to Elizabeth M. Murphy, Secretary, Commission, dated April 30, 2012.

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 2, 2011, the Commission approved a proposed rule change filed by the Exchange to permit on a pilot basis the listing and trading on C2 of Standard & Poor's 500 Index (''S&P 500'') options with third-Friday-of-the-month (''Expiration Friday'') expiration dates for which the exercise settlement value will be based on the index value derived from the closing prices of component securities (''SPXPM'').[3] On September 28, 2011, the Exchange filed an immediately-effective rule change to adopt fees associated with the anticipated trading of SPXPM (the ''Initial SPXPM Fees Filing'').[4] In the Initial SPXPM Fees Filing, the Exchange adopted an SPXPM Tier Appointment Fee of $4,000 which would be charged to any Market-Maker Permit holder that has an appointment (registration) in SPXPM at any time during a calendar month, but the Exchange also waived that fee through November 30, 2011. On November 23, the Exchange extended that waiver through December 31, 2011.[5] The Exchange then extended that waiver once again through February 29, 2012[6] and May 31, 2012.[7] The Exchange hereby proposes continuing that waiver for three months through August 31, 2012. The purpose of this waiver extension is to allow more time for the SPXPM market to develop and allow and encourage Market-Makers to join in and elect for an SPXPM Tier Appointment.

The proposed rule change is to take effect on June 1, 2012.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4)[9] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among C2 Trading Permit Holders and other persons using Exchange facilities. Continuing the waiver of the SPXPM Tier Appointment Fee is reasonable because it will allow Market-Makers with an SPXPM Tier Appointment to avoid paying the Tier Appointment Fee for another 3-month period, and is equitable and not unfairly discriminatory because all Market-Makers with an SPXPM Tier Appointment will be able to avoid paying the SPXPM Tier Appointment Fee through August 31, 2012.

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 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–C2–2012–013 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–C2–2012–013. 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

[3] *See* Securities Exchange Act Release No. 34–65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR–C2–2011–008).

[4] *See* Securities Exchange Act Release No. 34–65471 (October 3, 2011), 76 FR 62491 (October 7, 2011) (SR–C2–2011–026).

[5] *See* Securities Exchange Act Release No. 34–65874 (December 2, 2011), 76 FR 76785 (December 8, 2011) (SR–C2–2011–037).

[6] *See* Securities Exchange Act Release No. 34–66140 (January 12, 2012), 77 FR 2772 (January 19, 2012) (SR–C2–2012–002).

[7] *See* Securities Exchange Act Release No. 34–66472 (February 27, 2012), 77 FR 12898 (March 2, 2012) (SR–C2–2012–008).

[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).

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–C2–2012–013 and should be submitted on or before June 15, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–12719 Filed 5–24–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Savoy Resources Corp., SNRG Corp., Standard Mobile, Inc., and VTEX Energy, Inc.; Order of Suspension of Trading

May 23, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Savoy Resources Corp. because it has not filed any periodic reports since the period ended March 31, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SNRG Corp. because it has not filed any periodic reports since the period ended June 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Standard Mobile, Inc. because it has not filed any periodic reports since the period ended March 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of VTEX Energy, Inc. because it has not filed any periodic reports since the period ended July 31, 2006.

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. EDT on May 23, 2012, through 11:59 p.m. EDT on June 6, 2012.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012–12899 Filed 5–23–12; 11:15 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Advisory Committee on Veterans Business Affairs

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal Advisory Committee Meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Advisory Committee on Veterans Business Affairs. The meeting will be open to the public.

DATES: June 4, 2012 from 9 a.m. to 5 p.m. in the Eisenhower Conference room, side B, located on the 2nd floor.

ADDRESSES: U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs. The Advisory Committee on Veterans Business Affairs serves as an independent source of advice and policy recommendation to the Administrator of the U.S. Small Business Administration. The purpose of this meeting is to focus on framing the discussion for policy and programs that encompasses government support of veterans' entrepreneurship. For information regarding our veterans' resources and partners, please visit our Web site at *www.sba.gov/vets*.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public. Anyone wishing to attend this meeting or to make a presentation to the Advisory Committee on Veterans Business Affairs, advance notice is requested. Please contact Cheryl Simms, Program Liaison, at the U.S. Small Business Administration, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416; Telephone number: (202) 619–1697; Fax number (202) 481–6085 or by email at *cheryl.simms@sba.gov*.

If you require accommodations because of a disability, please contact the Office of Veterans Business Development at (202) 205–6773 at least two weeks in advance.

Dated: May 16, 2012.

Dan S. Jones,

SBA Committee Management Officer.

[FR Doc. 2012–12695 Filed 5–24–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 7895]

Culturally Significant Objects Imported for Exhibition

Determinations: ''Alighiero Boetti: Game Plan''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Alighiero Boetti: Game Plan'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art, New York, NY, from on or about July 1, 2012, until on or about October 1, 2012; and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: May 18, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–12831 Filed 5–24–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7896]

Culturally Significant Objects Imported for Exhibition Determinations: ''Portrait of Helena de Kay''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition ''Portrait of Helena de Kay,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Virginia Museum of Fine Arts, Richmond, VA, from on or about June 1, 2012, until on or about November 30, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including an art object list, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: May 18, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–12834 Filed 5–24–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending May 12, 2012

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2012–0075.

Date Filed: May 11, 2012.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 1, 2012.

Description: Application of Norwegian Air Shuttle ASA requesting exemption authority and a foreign air carrier permit to enable it to conduct (1) foreign scheduled and charter air transportation of persons, property and mail between points behind Norway, via Norway and intermediate points, and any point or points in the United States and beyond; and (2) foreign scheduled and charter air transportation of persons, property and mail to the full extent permitted under the U.S.-EU (EU-Iceland, Norway) Air Transport Agreement.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2012–12753 Filed 5–24–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending May 12, 2012

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2012–0070

Date Filed: May 9, 2012

Parties: Members of the International Air Transport Association

Subject: TC31—Mail Vote 711 Special Passenger Amending Resolution 010r from Myanmar to North, Central Pacific (Memo 0535) Intended Effective Date: 4 May 2012

Docket Number: DOT–OST–2012–0071

Date Filed: May 9, 2012

Parties: Members of the International Air Transport Association

Subject TC31—Mail Vote 709 TC123 Special Passenger Amending Resolution 010p Special Passenger Amending Resolution from Myanmar to TC123 (Memo 0486) Intended Effective Date: 4 May 2012

Docket Number: DOT–OST–2012–0072

Date Filed: May 9, 2012

Parties: Members of the International Air Transport Association

Subject: TC23—Mail Vote 710TC23 Special Passenger Amending Resolution 010q from Myanmar to TC23 Middle East/Africa (Memos 0462/0467) Intended Effective Date: 4 May 2012

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2012–12754 Filed 5–24–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Meeting: RTCA Program Management Committee

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

ACTION: Notice of RTCA Program Management Committee Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held June 13, 2012, from 8:30 a.m.–1:30 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Program Management Committee. The agenda will include the following: June 13, 2012.

- WELCOME AND INTRODUCTIONS
- REVIEW/APPROVE Meeting Summary
- March 21, 2012, RTCA Paper No. 060–12/PMC–979

- PUBLICATION CONSIDERATION/ APPROVAL
- Final Draft, New Document—*Minimum Aviation System Performance Standards for ADS–B Traffic Surveillance Systems and Applications (ATSSA),* RTCA Paper No. 094–12/PMC–985, prepared by SC–186
- Final Draft, New Document, *Aircraft Derived Meteorological Data via Data Link for Wake Vortex, Air Traffic Management and Weather Applications—Operational Services and Environmental Definition (OSED),* RTCA Paper No. 095–12/ PMC–986, prepared by SC–206
- INTEGRATION and COORDINATION COMMITTEE (ICC)—Report
- MASPS, SPR Guidance—Status Update
- Installation Guidance Documents—Possible Guidelines—Discussion
- ACTION ITEM REVIEW
  - PMC Ad Hoc—Status—Discussion—SC–206—Aeronautical Information Services (AIS) Data Link—Support and Recommendations
  - SC–203—Unmanned Aircraft Systems—Discussion—Committee Status and Review/Approve Revised Terms of Reference
  - SC–214—Standards for Air Traffic Data Communication Services—Discussion—References to ICAO Documents
  - European/EUROCAE Coordination—Discussion—Overview of Activities
  - SC–217—Terrain and Airport Databases—Discussion—Possible Future Activity to Revise RTCA DO–200A and DO–201A
- DISCUSSION
  - SC–213—Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS)—Discussion—Status and Review/Approve Revised Terms of Reference
  - SC–216—Aeronautical Systems Security—Discussion—Status and Review/Approve Revised Terms of Reference
  - SC–217—Terrain and Airport Databases—Discussion—Review/ Approve Revised Terms of Reference
  - SC–225—Small and Medium Sized Rechargeable Lithium Batteries & Battery Systems—Discussion—Status Update
  - SC–227—Standards of Navigation—Discussion—Status and Review/ Approve Revised Terms of Reference
  - NAC Update
  - FAA Actions Taken on Previously Published Documents
  - Special Committees—Chairmen's Reports
- OTHER BUSINESS
- SCHEDULE for COMMITTEE DELIVERABLES and NEXT MEETING DATE
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 17, 2012.

John Raper,

Manager, Business Operations Branch, Federal Aviation Administration.

[FR Doc. 2012–12689 Filed 5–24–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0032]

Commercial Driver's License (CDL) Standards; Daimler Trucks North America (Daimler) Exemption Application

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; granting of application for exemption.

SUMMARY: FMCSA announces its decision to grant Daimler Trucks North America's (Daimler) application for an exemption for two Daimler drivers to drive commercial motor vehicles (CMVs) in the United States without possessing the requisite commercial driver's license (CDL) issued by one of the States. George Weiberg and Klaus-Dieter Holloh are field test engineers who will be test-driving Daimler vehicles on U.S. roads in order to meet future vehicle safety and environmental regulatory requirements and to promote the development of technology advancements in vehicle safety systems and emissions reductions. Each of these drivers holds a valid German CDL but lacks the U.S. residency necessary to obtain a CDL issued by one of the States. FMCSA believes that the process for obtaining a German-issued CDL is comparable to or is as effective as the U.S. CDL requirements and ensures that these drivers will likely achieve a level of safety that is equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

DATES: This exemption is effective April 17, 2012, and expires on April 17, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, MC–PSD, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from certain Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR part 350 *et seq.*) for up to 2 years. The Agency must find that the exemption will allow the applicant to implement more effective or efficient operations and ''would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption'' (49 CFR 381.305 (a)). Exemptions are renewable for 2-year periods.

Daimler Application for Exemption

Daimler applied for an exemption for drivers Georg Weiberg and Klaus-Dieter Holloh from 49 CFR 383.23 of the CDL rules, requiring drivers operating CMVs to have a CDL issued by one of the States. A copy of the request for exemption is in the docket identified at the beginning of this notice. The exemption allows these two drivers to operate CMVs to support Daimler field tests to meet future vehicle safety and environmental regulatory requirements and to promote the development of technology and advancements in vehicle safety systems and emissions reductions. These Daimler drivers will typically drive for no more than 6 hours per day for 2 consecutive days, and 10 percent of the test driving will be on two-lane state highways, while 90 percent will be on interstate highways. The driving for each driver will consist of no more than 200 miles per day for a total of 400 miles during a two-day period on a quarterly basis.

49 CFR 383.21 requires CMV drivers in the United States to have a CDL issued by a State. Weiberg and Holloh are citizens and residents of Germany. Only residents of a State can apply for a CDL.[1] Without the exemption,

[1] Although 49 CFR 383.23 indicates that these drivers could obtain a nondomiciled CDL, few

Weiberg and Holloh would not be able to test-drive Daimler prototype CMVs on U.S. roads.

Weiberg and Holloh each hold German CDLs and are experienced operators of CMVs. In their application for exemption, Daimler also submitted documentation showing the German safe driving records of both Weiberg and Holloh.

Method to Ensure an Equivalent or Greater Level of Safety

According to Daimler, the requirements for a German-issued CDL ensure that the same level of safety is met or exceeded as if these drivers had CDLs issued by one of the States. Daimler's drivers are very familiar with the operation of CMVs worldwide and these drivers will be accompanied at all times by a U.S.-issued CDL holder who is familiar with the routes to be traveled. FMCSA has determined the process for obtaining a CDL in Germany is comparable to that for obtaining a CDL issued by one the States and adequately assesses each driver's ability to safely operate CMVs in the United States.

Comments

No comments were received in response to the FMCSA notice of this application and request for comments, published on March 7, 2012 (77 FR 13684).

FMCSA Decision

Based upon the merits of this application, including the extensive driving experience and safety records of Georg Weiberg and Klaus-Dieter Holloh, and the fact that both individuals have each successfully completed the requisite training and testing to obtain a German CDL, FMCSA concluded that the exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption, in accordance with 381.305(a).

Terms and Conditions for the Exemption

FMCSA grants Daimler an exemption from the CDL requirement in 49 CFR 383.23 to allow Weiberg and Holloh to drive CMVs in the United States, subject to the following terms and conditions:

(1) The drivers and carrier must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR parts 350–399), (2) the drivers must be in possession of the exemption document and a valid German CDL, (3) the drivers must be employed by, and operating the CMV within the scope of their duties for, Daimler, (4) Daimler must notify FMCSA in writing of any accident, as defined in 49 CFR 390.5, involving one or both of these drivers, and (5) Daimler must notify FMCSA in writing if either driver is convicted of a disqualifying offense under section 383.51 or section 391.15 of the FMCSRs.

In accordance with 49 U.S.C. 31315 and 31136(e), the exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) An exempted driver fails to comply with the terms and conditions of the exemption; (2) the exemption results in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would be inconsistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

Issued on: May 21, 2012.

Anne S. Ferro,

Administrator.

[FR Doc. 2012–12833 Filed 5–24–12; 8:45 am]

BILLING CODE 4910–EX–P

States if any are currently issuing nondomiciled CDLs.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0154]

Qualification of Drivers; Application for Exemptions; National Association of the Deaf

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces that the National Association of the Deaf (NAD) has applied for exemptions on behalf of 45 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). In accordance with the statutory requirements concerning applications for exemptions, FMCSA requests public comments on NAD's request. The statute and implementing regulations concerning exemptions require that exemptions must provide an equivalent or greater level of safety than if they were not granted. If the Agency determines the exemptions would satisfy the statutory requirements and decides to grant the NAD's request after reviewing the public comments submitted in response to this notice, the exemptions would enable these 45 individuals to qualify as drivers of CMVs in interstate commerce without meeting the Federal hearing standard.

DATES: Comments must be received on or before June 25, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0154 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–

224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Federal Motor Carrier Safety Administration has authority to grant exemptions from many of the Federal Motor Carrier Safety Regulations (FMCSRs) under 49 U.S.C. 31315 and 31136(e), as amended by Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, June 9, 1998, 112 Stat. 107, 401). FMCSA has published in 49 CFR part 381, subpart C final rules implementing the statutory changes in its exemption procedures made by section 4007, 69 FR 51589 (August 20, 2004).[1] Under the rules in part 381, subpart C, FMCSA must publish a notice of each exemption request in the **Federal Register.** The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted and any research reports, technical papers and other publications referenced in the application. The Agency must also provide an opportunity to submit public comment on the applications for exemption.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved without the exemption. The decision of the Agency must be published in the **Federal Register.** If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed.

The current provisions of the FMCSRs concerning hearing state that a person is physically qualified to drive a CMV if that person

First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

49 CFR 391.41(b)(11). This standard was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

FMCSA also issues instructions for completing the medical examination report and includes advisory criteria on the report itself to provide guidance for medical examiners in applying the hearing standard. See 49 CFR 391.43(f). The current advisory criteria for the hearing standard include a reference to a report entitled ''Hearing Disorders and Commercial Motor Vehicle Drivers'' prepared for the Federal Highway Administration, FMCSA's predecessor, in 1993.[2]

National Association of the Deaf Application for Exemptions

On July 28, 2011, the National Association of the Deaf (NAD), wrote FMCSA asking for exemptions for a number of drivers from the hearing requirements in 49 CFR 391.41(b)(11).[3] In support of these applications for exemption, the NAD cited and relied on a study requested by FMCSA and presented to the Agency in 2008. The evidence report was prepared for the purpose of providing information regarding the current state of knowledge on hearing and CMV driver safety.[4] The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) No studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, according to NAD, ''The same report also questioned the validity of the DOT's 'forced whisper test' concluding that the 'forced whisper test' has a high sensitivity, but low specificity, meaning that some people with normal hearing fail the forced whisper test.''

The NAD maintains that communication in trucking is no longer hampered by hearing loss because drivers increasingly rely on smartphones and other technology to communicate with dispatch. The NAD conducted over 100 hours of interviews with individuals who are deaf and hard of hearing and reports that deaf drivers face fewer distractions behind the wheel.

FMCSA Requests Comments on the Exemption Applications

FMCSA requests comments from all interested parties on whether a driver who cannot meet the hearing standard should be permitted to operate a CMV in interstate commerce. Further, the Agency asks for comments on whether a driver who cannot meet the hearing standard should be limited to operating only certain types of vehicles in interstate commerce, for example, vehicles without air brakes. The statute and implementing regulations concerning exemptions require that the Agency request public comments on all applications for exemptions. The Agency is also required to make a determination that an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption before granting any such requests. 49 U.S.C. 31315(b)(1). See also 49 CFR 381.305(a).

Individual Applicants for Exemptions

The NAD has applied for an exemption for each of the 45 individuals listed in this notice from the hearing requirement in 49 CFR 391.41(b)(11), which applies to drivers of CMVs in interstate commerce. The NAD states that each of these drivers has ''a proven track record of safe driving'' and ''can satisfy all of the Physical Qualification Standards, with the exception of the hearing test contained in § 391.41(b)(11).'' Accordingly, after receiving public comment on the requests for exemption and the impacts on safety, the Agency will evaluate each application for an exemption to determine whether granting an

[1] This action adopted as final rules the interim final rules issued by FMCSA's predecessor in 1998 (63 FR 67600 (Dec. 8, 2008)), and adopted by FMCSA in 2001 (66 FR 49867 (Oct. 1, 2001)).

[2] This report is available on the FMCSA Web site at *http://www.fmcsa.dot.gov/facts-research/research-technology/publications/medreport_archives.htm.*

[3] Vargas, Mary C., National Association of the Deaf, to Larry Minor, Associate Administrator, FMCSA, July 28, 2011, ''Re: Exemption from 49 CFR 391.41 (b)(11).'' See the docket for this notice. Initially, the request was for exemptions for 21 drivers, and NAD later submitted information for 24 additional drivers requesting exemptions, for a total of 45 included in this notice.

[4] Price, N., Tiller, M, Reston, J., & Tregear, S., ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety,'' presented to FMCSA on August 26, 2008. Retrieved April 27, 2012, from: *http://www.fmcsa.dot.gov/rules-regulations/TOPICS/mep/report/Hearing-Evidence-Report-Final-Executive-Summary-prot.pdf.* See the docket for this notice. The full text of the Evidence Report is available through a link at *http://ntl.bts.gov/lib/30000/30400/30459/Hearing_DOT-FMCSA_-_FINAL_8-29-08.pdf.* The evidence report also reviewed vestibular disorders, which are not included in these exemption applications.

exemption will achieve the required level of safety mandated by statute.

Information on Individual Applicants

David W. Bateman

Mr. Bateman holds a class A commercial drivers license (CDL) from the state of Minnesota. He has driven intrastate for the past 14 years, including driving dump trucks and tractor trailer trucks. He would like to drive tractor trailer trucks in interstate commerce, if he is granted an exemption.

William B. Britt, Jr.

Mr. Britt holds a class D drivers license from the state of Tennessee. Class D has a for-hire endorsement that allows a person to drive vehicles such as limousines and taxis. He operates his personal vehicle in his job as a repairman. He would like to obtain a CDL and drive passenger buses, if granted an exemption.

Alan T. Brown

Mr. Brown holds a class B CDL from the state of New Jersey. He currently drives a pick-up truck for a gas company and operates in intrastate commerce. He would like to apply for work as a CMV driver in interstate commerce, if granted an exemption.

David W. Brown

Mr. Brown holds a class A CDL from the state of Maine but is limited to intrastate operations. He has driven trucks since 1983 in intrastate commerce and has operated a number of different types of trucks, including vehicles with airbrakes. He would like to operate a CMV in interstate commerce, if granted an exemption.

Ernest W. Brown

Mr. Brown holds a class D driver's license from the state of Kentucky. He would like to obtain a CDL and drive CMVs greater than 26,001 pounds in interstate commerce, if granted an exemption.

Cody J. Campbell

Mr. Campbell holds a class D driver's license from Louisiana. He currently is a ''light duty driver,'' driving a tractor. He would like to obtain a CDL and drive heavy equipment such as a dump truck, or rig truck with a trailer, if granted an exemption.

Tyjuan M. Davis

Mr. Davis holds a class D driver's license from the state of Florida. His family is in the trucking business and he would like to obtain a class A CDL and drive tractor trailers in interstate commerce, if granted an exemption.

Randall R. Doane

Mr. Doane holds a class AM CDL from the state of Texas. He has logged over 250,000 miles driving trucks in interstate commerce prior to failing his hearing test recently. He has experience driving double/triple trailers, tankers and hazardous material transport. He is currently permitted to drive a CMV in intrastate commerce. He would like to return to driving CMVs in interstate commerce, if granted an exemption.

Allen W. Estes

Mr. Estes holds a class B CDL from the state of Louisiana. He has driven a bus transporting students to and from school since 1990. He would like to obtain a CDL so that he can transport students to events outside of Louisiana, if granted an exemption.

Leslie A. Fairbanks

Mr. Fairbanks held a class A CDL driver's license from the state of Minnesota from 2001 until 2010, when he failed his hearing test. During that time he drove a variety of tractor trailer trucks in interstate commerce. He would like to obtain a CDL and return to driving tractor trailer trucks, if he is granted an exemption.

Edward T. Geariety

Mr. Geariety held a class A CDL from the state of Minnesota from 1996 until 2011, when he failed his hearing test. During that time he drove large trucks carrying stone from a quarry to customers. He would like to return to driving CMVs in interstate commerce, if granted an exemption.

Donald W. Gordon

Mr. Gordon holds a class CM driver's license from the state of Pennsylvania. He operates a mini-van as an independent contractor picking up and delivering materials. He would like to obtain a CDL and drive CMVs for a national carrier, if granted an exemption.

William Edward Haab

Mr. Haab holds a class D driver's license from the state of Louisiana. He is interested in obtaining a CDL and pursuing a career in commercial trucking, if granted an exemption.

Charles L. Harper

Mr. Harper holds a driver's license from the state of Washington. He has driven rental vehicles and a12-seat van for a group home. He would like to obtain a CDL and have the opportunity to drive CMVs in interstate commerce, if granted an exemption.

Cornelio Hernandez

Mr. Hernandez holds a driver's license from the state of California. He has enrolled in a driving course for a class B CDL, but was unable to complete it as he did not pass the hearing test. He would like to obtain a class A or B CDL to pursue work driving CMVs in interstate commercial driver, if granted an exemption.

David Hoffman

Mr. Hoffman has experience operating commercial motor vehicles in intrastate commerce. This includes experience driving heavy equipment, dump trucks and public works trucks with trailers while living in the state of Tennessee. He relocated to South Dakota, but is unable to obtain a class A CDL because he could not pass the hearing test. He would like to obtain a CDL to drive trucks in interstate commerce, if granted an exemption.

Alvin L. Johnson

Mr. Johnson holds a class CM driver's license from the state of Georgia. He would like to attend driving school to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Jerry D. Jones

Mr. Jones holds a class C CDL from the state of Texas. He has 7 years experience driving a variety of forklifts for a construction company. He would like to pursue opportunities driving CMVs in interstate commerce, if granted an exemption.

James E. Karr

Mr. Karr holds a class DM driver's license from the state of Kentucky. He would like to obtain a CDL and seek employment opportunities driving CMVs in interstate commerce, if granted an exemption.

Lorin W. King

Mr. King holds a class D driver's license from the state of Oklahoma. The class D license permits one to drive regular automobiles and trucks. He has experience driving single trailer vehicles with airbrakes. He would like to obtain a CDL and seek employment opportunities driving CMVs in interstate commerce, if granted an exemption.

Christopher Kuller

Mr. Kuller holds a class M driver's license from the state of Indiana. In the past, he held a CDL and hazmat license, and drove in interstate commerce for 14

years, until he was unable to pass the DOT hearing test. He would like to obtain a CDL and return to driving CMVs in interstate commerce, if granted an exemption.

Julio Cesar Medrano

Mr. Medrano holds a driver's license from the state of Washington. He is currently a student majoring in diesel technology, graduating in May 2012. Most job descriptions for diesel engine technicians include a requirement that he hold a CDL, due to the need to pick up and drive trucks back to the shop for repair. He would like to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Hal A. Miller

Mr. Miller holds a class C driver's license from the state of Iowa. A class C allows the operation of vehicles under 26,000 pounds. He has experience operating a Ryder rental truck and personal farm tractors. He would like to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Kathy K. Miller

Ms. Miller holds a class C driver's license from the state of Iowa. She has experience driving students to and from local activities. She is limited at work due to her not being able to pass the hearing test and obtain a DOT medical card. She would like to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption. She is interested in career opportunities with package delivery companies.

Brian J. Minch

Mr. Minch holds a driver's license from the state of New Hampshire. He currently drives super duty pick-up trucks for landscape and construction companies. He would like to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Larry J. Moss

Mr. Moss holds a driver's license from the state of California. He currently works for a delivery and hauling service, driving trucks and often pulling a trailer. He would like to attend trucking school, obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Leslie R. O'Rorke

Mr. O'Rorke holds a class D driver's license from the state of Illinois. He has experience driving super duty pick-up trucks with a trailer and dump trucks for a tree service company. He would like to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Timothy A. Parker

Mr. Parker holds a class C driver's license from the state of California. The class C license in California allows one to operate a traditional two-axle vehicle. He has experience operating 18-wheel trucks as well as forklifts. He would like to obtain a CDL so he can drive the tractor trailer trucks in interstate commerce, if granted an exemption.

Gregory M. Potter

Mr. Potter holds a class C driver's license from the state of Texas. He has experience driving a company van and rental trucks towing a trailer. He would like to obtain a class A CDL to drive tanker trucks in interstate commerce, if granted an exemption.

Gerson P. Rameriez

Mr. Rameriez holds a class D driver's license from the state of Montana. He has experience driving a dump truck towing a trailer. He also drove a truck for five years while working as a painter. He would like to obtain a class A CDL and attend a trucking school in Montana, if granted an exemption.

Jeremy Reams

Mr. Reams holds a class D driver's license from the state of Kentucky. The class D is valid for any single motor vehicle, and a trailer with weights not greater than 26,000 pounds. He has experience driving 24-foot moving trucks, fifth wheel vehicles and has hauled ATV's for personal use. He would like to obtain a CDL to drive CMVs in interstate commerce, if granted an exemption.

Noel A. Rodriguez

Mr. Rodriguez holds a driver's license from the state of Connecticut. He has experience towing rental trailers and as a delivery driver for a dental lab. He would like to obtain a class A or B CDL and drive tractor trailer combination vehicles in interstate commerce, if granted an exemption.

Robert R. Rotondi

Mr. Rotondi holds a driver's license from the state of South Carolina. He has experience driving rental trucks and forklifts. He currently owns a 12-foot trailer he uses to tow his motorcycle. He would like to obtain a class A or B CDL and drive CMVs in interstate commerce, if granted an exemption.

Daniel Schoultz

Mr. Schoultz holds a class C driver's license from the state of Pennsylvania. He has 25 years experience driving trucks, but he is currently not able to pass the DOT hearing test. He would like to obtain a CDL again and drive CMVs in interstate commerce, if granted an exemption.

Stanley W. Shields

Mr. Shields holds a class D driver's license from the state of Kentucky. He would like to obtain a CDL and to seek employment opportunities as a CMV driver, if granted an exemption.

James M. Skinner

Mr. Skinner holds a driver's license from the state of Florida that allows him to drive any non-commercial vehicle less than 26,001 pounds. He has experience driving rental trucks and towing rental trailers. He would like to obtain a class A CDL and drive an interstate tractor trailer weighing over 26,001 pounds with airbrakes, if granted an exemption.

Ronald J. Taylor

Mr. Taylor holds a class C driver's license from the state of Texas. He is currently a student, but would like to seek opportunities in driving. He would like to obtain a CDL to drive CMVs in interstate commerce, if granted an exemption.

Morris W. Townsend

Mr. Townsend holds a class A CDL from the state of North Carolina, allowing him to drive CMV's in intrastate commerce. He has owned a towing company for nine years and has experience driving a roll back truck with which he can carry two cars. He would like to be able to expand his business. He would like to obtain a CDL allowing him to drive CMVs in interstate commerce, if granted an exemption.

Justin J. Trethewey

Mr. Trethewey holds a class C chauffeur license from the state of Michigan. He is starting his own transit business after working as a chauffeur. He would like to obtain a CDL and tow a gooseneck trailer to transport cars, recreational vehicles or small trailers, if granted an exemption.

Gilbert J. Valdez

Mr. Valdez holds a driver's license from the state of Rhode Island. He currently works part-time and would like to obtain a CDL to seek employment opportunities driving CMVs in interstate commerce, if granted an exemption.

Mark L. Valimont

Mr. Valimont holds a class C driver's license from the state of Texas. He is

currently a package handler. He has 13 years experience driving dump trucks and three years experience driving a tractor. He would like to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Billy J. Warnock

Mr. Warnock holds a class M driver's license from the state of Indiana. He has 14 years experience driving CMV's in interstate commerce and has logged more than three million miles crossing 48 states. He recently was unable to pass the DOT hearing test and is no longer able to operate CMV's in interstate commerce. He would like to return to driving CMVs and possibly start his own business, if granted an exemption.

Kevin C. Willis

Mr. Willis holds a class C driver's license from the state of California. He has held a FAA Private Pilot Certificate since 2006 and flies private planes that weigh up to 12,500 pounds. He would like to obtain a CDL and pursue employment opportunities in the commercial transportation business, if granted an exemption.

James R. Wilson

Mr. Wilson holds a class C driver's license from the state of Georgia. He has experience driving forklifts and a super duty pickup truck for a private employer. He would like to obtain a CDL and drive CMV's in interstate commerce, if granted an exemption.

Holly Cameron Wright, Jr.

Mr. Wright holds a class C driver's license from the state of North Carolina. He has experience driving forklifts and commercial vehicles at his family-owned business site. He would like to obtain a CDL and drive CMVs in interstate commerce, if granted an exemption.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business June 25, 2012. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: May 16, 2012.

Anne S. Ferro,

Administrator.

[FR Doc. 2012–12636 Filed 5–24–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0039]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt thirteen individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective May 25, 2012. The exemptions expire on May 25, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202)–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

Background

On April 6, 2012, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (77 FR 20879). That notice listed thirteen applicants' case histories. The thirteen individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the thirteen applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive

safely. The thirteen exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, detached retina, complete loss of vision, esotropia, keratoconus and prosthesis. In most cases, their eye conditions were not recently developed. Ten of the applicants were either born with their vision impairments or have had them since childhood. The three individuals that sustained their vision conditions as adults have had them for a period of 10 to 30 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these thirteen drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 42 years. In the past 3 years, one of the drivers was involved in a crash, and one was convicted of a moving violation in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the April 6, 2012 notice (77 FR 20879).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the thirteen applicants, one of the drivers was involved in a crash and one was convicted of a moving violation in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the thirteen applicants listed in the notice of April 6, 2012 (77 FR 20879).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will

impose requirements on the thirteen individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received one comment in this proceeding. The Pennsylvania Department of Transportation has reviewed the driving histories for David L. Schachle, Richard D. Sparkman, and Joshua A. Wheaton and is in favor of granting Federal vision exemptions to them.

Conclusion

Based upon its evaluation of the thirteen exemption applications, FMCSA exempts Juan Castanon (NM), Donald F. Erke (MI), Ronald D. Flanery (KY), Mark G. Kleinheider (MO), Joseph C. Powell (VA), David L. Schachle (PA), Michael E. See (NY), James A. Settlemyre (IN), Steven K. Simone (KS), Mark J. Sobczyk (WI), Richard D. Sparkman (PA), Joshua A. Wheaton (PA) and John K. Wright (MT) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: May 16, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–12763 Filed 5–24–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0046]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with Part 235 of Title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated February 23, 2012, the Elgin, Joliet and Eastern Railway (EJ&E) has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2012–0046.

Applicant: Elgin, Joliet and Eastern Railway Company, Mr. Thomas W. Hilliard, Senior Manager S&C Construction, 17641 South Ashland Avenue, Homewood, Illinois 60430.

EJ&E seeks approval of the proposed discontinuance of an automatic block signal (ABS) system and a traffic control signal (TCS) system on the Lakefront Subdivision in Gary, IN. The discontinuance consists of the removal of the ABS from Milepost (MP) 9.8 (approach to Michigan Avenue) to MP 11.1 (Stockton 1); the removal of the TCS from MP 11.1 (Stockton 1) to MP 12.2 (Kirk Yard Junction), including removal of the Stockton 1 control point; and the removal of the TCS on the Stockton Lead at MP 12.2 to Kirk Yard Junction and Clark Road Lead at MP 11.9.

The reason given for the proposed changes is that, due to the lack of traffic on the Lakefront Line, the cost of maintenance on the signal systems is no longer feasible.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by July 9, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on May 21, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–12785 Filed 5–24–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0032]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has

received a request for a waiver of compliance from certain requirements of its safety standards. The South Carolina Railroad Museum (SCRM) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR Part 213. FRA assigned the petition Docket Number FRA–2012–0032.

In its waiver request, SCRM petitioned FRA for a waiver from 49 CFR Section 213.233(c), which requires twice-weekly track inspections with at least 1 calendar day interval between inspections if the track carries passenger trains or more than 10 million gross tons of traffic during the preceding calendar year.

The petitioner is a volunteer, nonprofit 501(c)(3) Class III railroad museum that is located in Fairfield County near Winnsboro, SC, and is listed on the National Register of Historic Places. SCRM operates passenger trains on approximately 5 miles of the 11½-mile former Rockton and Rion Railroad. The passenger trains operate from the Norfolk Southern junction, generally westward from Rockton, SC, through the community of Rion, SC, to the Anderson Quarry. SCRM states that it schedules two passenger excursions each Saturday from Memorial Day through Labor Day; for a total of 30 roundtrips. Additionally, SCRM states that it charters passenger trains on an as-needed basis; usually, no more than three passenger trains are operated overall per week. The petitioner seeks relief from the twice weekly track inspections and requests to conduct one track inspection each week. SCRM states, ''* * * one track inspection each week would allow the museum to insure the safety of the track for the average of 3 trips or less that are operated during our summer and fall operating seasons.''

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by July 9, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on May 21, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–12784 Filed 5–24–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0043]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated April 13, 2012, the Massachusetts Bay Commuter Railroad (MBCR) and Massachusetts Bay Transit Authority (MBTA) jointly petitioned the Federal Railroad Administration (FRA) for a temporary waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 236. FRA assigned the petition Docket Number FRA–2012–0043.

MBCR and MBTA seek relief from the requirements of 49 CFR 236.301, *Where signals shall be provided.* Relief is sought at two interlockings located on drawbridges on the Gloucester Branch. The Manchester Draw, Milepost (MP) 25.30 in Manchester-by-the-Sea; and the Gloucester Draw, MP 31.0, in Gloucester, Essex County, MA. The Gloucester Branch is a line of railroad owned by MBTA and operated and maintained by MBCR. There are two main tracks over both bridges, with the trackage through the subject area signaled with the current of traffic (in only one direction on either track). Currently, signals at both bridges that govern movements against the current of traffic are set to display ''stop'' aspects only. The signal control wires for those signals are disconnected. Only the light wires are active, keeping the subject signals displaying a red aspect and constantly lit. Relief is requested until such time as the signals at the Manchester Draw and Gloucester Draw are upgraded in conjunction with Positive Train Control (PTC) implementation pursuant to the *MBTA PTC Implementation Plan (Revision 3)* (September 2010), filed at FRA–2010–0030 as Document Number 0003 (filed on November 17, 2010).

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov/.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by July 9, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on May 18, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–12716 Filed 5–24–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2000–7094]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated April 19, 2012, Pioneer Valley Railroad (PVRR) has petitioned the Federal Railroad Administration (FRA) for an extension of its waiver of compliance from a provision of the Federal hours of service laws contained at 49 U.S.C. 21103(a), as authorized by 49 U.S.C. 21102(b). FRA assigned the petition docket number FRA–2000–7094.

In its petition, PVRR seeks relief from 49 U.S.C. 21103(a)(2), which prohibits a train employee from remaining or going on duty for a period in excess of 12 consecutive hours. Title 49 U.S.C. 21102(b) allows railroads with 15 or fewer employees to petition for exemption from the restriction outlined at 49 U.S.C. 21103(a)(2), but the exemption may not authorize a carrier to require or allow its employees to be on duty more than a total of 16 hours in a 24-hour period. In support of the request, PVRR explained that its safety record is excellent and that an allowance for a train employee to exceed 12 hours of time on duty would only be used during emergencies and not as part of normal operations.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov/.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received by July 9, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on May 18, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–12690 Filed 5–24–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0049]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated May 4, 2012, Union Pacific Railroad (UP) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 235. FRA assigned the petition Docket Number FRA–2012–0049.

UP seeks relief from the requirements of 49 CFR 235.5 to expedite successful installation of Positive Train Control (PTC), mandated by the Rail Safety Improvement Act of 2008. UP will be updating first-generation, nonmicroprocessor-based coded track circuitry; eliminating certain searchlight signal mechanisms; and relocating some signals or making other changes that may require submission of an application and that have not been previously addressed. In requesting this waiver, UP proposes to perform minimal modifications to existing signal systems, while maintaining compliance with 49 CFR part 236, in the same manner and process as provided for under 49 CFR 235.7(c)(24)(vi). This relief will allow for expedited beneficial modification of existing signal systems in preparation for the installation of PTC, and it would reduce the administrative workload for both FRA and UP. Additionally, this relief would reduce the approval delay, while still providing FRA review and oversight of the proposed changes in the same manner as pole line elimination projects.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they

should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by July 9, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on May 18, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–12717 Filed 5–24–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0062]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PASSION; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before June 25, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0062. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PASSION is:

Intended Commercial Use of Vessel: ''Bareboat chartering, sailing classes.''

Geographic Region: ''Washington.''

The complete application is given in DOT docket MARAD–2012–0062 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: May 17, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–12694 Filed 5–24–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

[Docket 23343]

Agency Information Collection; Activity Under OMB Review; Report of Extension of Credit to Political Candidates

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. 3501 et seq.) this notice announces that the Information Collection Request, abstracted below, is being forwarded to the Office of Management and Budget for extension of currently approved reporting requirement. Earlier, a **Federal Register** Notice with a 60-day comment period was published on March 19, 2012 (77 FR 16116). The agency did not receive any comments to its previous notice.

DATES: Written comments should be submitted by June 25, 2012.

FOR FURTHER INFORMATION CONTACT: Jeff Gorham, Office of Airline Information, RTS–42, Room E34, RITA, BTS, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, Telephone Number (202) 366–4406, Fax Number (202) 366–3383 or EMAIL *jeff.gorham@dot.gov.*

Comments: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 715–17th Street NW., Washington, DC 20503, Attention RITA Desk Officer.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2138–0016.

Title: Report of Extension of Credit to Political Candidates.

Form No.: 183.

Type of Review: Extension of a currently approved reporting requirement.

Respondents: Certificated air carriers.

Number of Respondents: 2 (Monthly Average).

Number of Responses: 24.

Estimated Time per Response: 1 hour.

Total Annual Burden: 24 hours.

Needs and Uses: The Department uses this form as the means to fulfill its obligation under the Federal Election Campaign Act of 1971 (the Act). The Act's legislative history indicates that one of its statutory goals is to prevent candidates for Federal political office from incurring large amounts of unsecured debt with regulated transportation companies (e.g. airlines). This information collection allows the Department to monitor and disclose the amount of unsecured credit extended by airlines to candidates for Federal office. All certificated air carriers are required to submit this information.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Comments are invited on whether the proposed retention of records is necessary for the proper performance of the functions of the Department of Transportation.

Issued in Washington, DC, on May 21, 2012.

Joy Sharp,

Acting Deputy Director, Bureau of Transportation Statistics, Research and Innovative Technology Administration.

[FR Doc. 2012–12752 Filed 5–24–12; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 22, 2012.

The Department of the Treasury will submit 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, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before June 25, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or on-line at *www.PRAComment.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–1191.

Type of Review: Extension without change of a currently approved collection.

Title: INTL–868–89 (TD 8353) Information with Respect to Certain Foreign-Owned Corporations.

Abstract: The regulations require record maintenance, annual information filing, and the authorization of the U.S. corporation to act as an agent for IRS summons purposes. These requirements allow IRS International examiners to better audit the returns of U.S. corporations engaged in cross-border transactions with a related party.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 630,000.

OMB Number: 1545–1428.

Type of Review: Extension without change of a currently approved collection.

Title: Elections Under Section 338 for Corporations Making Qualified Stock Purchases.

Form: 8023.

Abstract: Form 8023 is used by corporations that acquire the stock of another corporation to elect to treat the purchase of stock as a purchase of the other corporation's assets. The IRS uses Form 8023 to determine if the purchasing corporation reports the sale of its assets on its income tax return and to determine if the purchasing corporation has properly made the election.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 2,559.

OMB Number: 1545–1960.

Type of Review: Extension without change of a currently approved collection.

Title: Information Referral.

Form: 3949–A.

Abstract: This form is voluntary and the information requested helps us determine if there has been a violation of Income Tax Law. We need the taxpayer identification numbers, Social Security Number (SSN) or Employer Identification Number (EIN), in order to fully process. Failure to provide this information may lead to suspension of processing this form.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 53,750.

OMB Number: 1545–2146.

Type of Review: Extension without change of a currently approved collection.

Title: REG–120476–07 (TD 9457 (Final)), Employer Comparable Contributions to Health Savings Accounts and Requirement of a Return for Filing of the Excise Taxes under Sections 4980B, 4980D, 4980E and 4980G.

Abstract: The information results from the requirement to file a return for the payment of the excise taxes under section 4980B, 4980D, 4980E, and 4980G of the code.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 2,500.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–12729 Filed 5–24–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 22, 2012.

The Department of the Treasury will submit 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, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before June 25, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory

Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Bureau of the Public Debt (BPD)

OMB Number: 1535–0012.

Type of Review: Extension without change of a currently approved collection.

Title: Request by Fiduciary for Reissue of United States Savings Bonds.

Form: PD F 1455.

Abstract: Used by fiduciary to request distribution of U.S. Savings Bonds to the person(s) entitled.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 8,850.

OMB Number: 1535–0013.

Type of Review: Revision of a currently approved collection.

Title: Claim for Lost, Stolen or Destroyed U.S. Savings Bonds and Supplemental Statement For U.S. Securities.

Form: PD F 1048; PD F 2243.

Abstract: Used by owner or others having knowledge to request substitutes securities or payment of lost, stolen or destroyed securities.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 24,000.

OMB Number: 1535–0136.

Type of Review: Revision of a currently approved collection.

Title: Application for Refund of Purchase Price of United States Savings Bonds for Organizations.

Form: PD F 5410.

Abstract: Used by an organization to request refund of purchase price of United States Savings Bonds.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 50.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–12776 Filed 5–24–12; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Finding That JSC CredexBank Is a Financial Institution of Primary Money Laundering Concern

AGENCY: The Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice of finding.

SUMMARY: Pursuant to the authority contained in 31 U.S.C. 5318A, the Secretary of the Treasury, through his delegate, the Director of FinCEN, finds that reasonable grounds exist for concluding that JSC CredexBank is a financial institution of primary money laundering concern.

DATES: The finding made in this notice is effective as of May 25, 2012.

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, FinCEN, (800) 949–2732.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required To Intercept and Obstruct Terrorism Act of 2001 (the ''USA PATRIOT Act''), Public Law 107–56. Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act (''BSA''), codified at 12 U.S.C. 1829b and 1951–1959, and 31 U.S.C. 5311–5314 and 5316–5332, to promote prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury (''the Secretary'') to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.[1]

Section 311 of the USA PATRIOT Act (''section 311'') added 31 U.S.C. section 5318A to the BSA, granting the Secretary the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transactions, or type of account is of ''primary money laundering concern,'' to require domestic financial institutions and financial agencies to take certain ''special measures'' against the primary money laundering concern. Section 311 identifies factors for the Secretary to consider and Federal agencies to consult before the Secretary may conclude that a jurisdiction, institution, class of transaction, or type of account is of primary money laundering concern. The statute also provides similar procedures, *i.e.,* factors and consultation requirements, for selecting the specific special measures to be imposed against the primary money laundering concern.

Taken as a whole, section 311 provides the Secretary with a range of options that can be adapted to target specific money laundering and terrorist financing concerns most effectively. Through the imposition of various special measures, the Secretary can gain more information about the jurisdictions, institutions, transactions, or accounts of concern; can more effectively monitor the respective jurisdictions, institutions, transactions, or accounts; or can prohibit U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern.

Before making a finding that reasonable grounds exist for concluding that a financial institution is of primary money laundering concern, the Secretary is required to consult with both the Secretary of State and the Attorney General. The Secretary is also required by section 311, as amended, to consider ''such information as the Secretary determines to be relevant, including the following potentially relevant factors:''[2]

- The extent to which such financial institutions, transactions, or types of accounts are used to facilitate or promote money laundering in or through the jurisdiction, including any money laundering activity by organized criminal groups, international terrorists, or entities involved in the proliferation of weapons of mass destruction or missiles;
- The extent to which such institutions, transactions, or types of accounts are used for legitimate business purposes in the jurisdiction; and
- The extent to which such action is sufficient to ensure, with respect to transactions involving the jurisdiction and institutions operating in the jurisdiction, that the purposes of this subchapter continue to be fulfilled, and to guard against international money laundering and other financial crimes.[3]

If the Secretary determines that reasonable grounds exist for concluding that a financial institution is of primary

[1] Therefore, references to the authority of the Secretary of the Treasury under section 311 of the USA PATRIOT Act apply equally to the Director of FinCEN.

[2] 31 U.S.C. 5318A(c)(2).

[3] See Section II,D below for an additional factor relevant to this action.

money laundering concern, the Secretary is authorized to impose one or more of the special measures in section 311 to address the specific money laundering risks. Section 311 provides a range of special measures that can be imposed individually, jointly, in any combination, and in any sequence.[4] Before imposing special measures, the statute requires the Secretary to consult with appropriate federal agencies and other interested parties [5] and to consider the following specific factors:

- Whether similar action has been or is being taken by other nations or multilateral groups;
- Whether the imposition of any particular special measures would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;
- The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction; and
- The effect of the action on the United States national security and foreign policy.

B. JSC (''Joint Stock Company'') CredexBank

JSC CredexBank (''Credex'') is a depository institution located and licensed in the Republic of Belarus that primarily services corporate entities.[6] Originally established on September 27, 2001, as Nordic Investment Bank Corporation by Ximex Executive Limited (''Ximex''),[7] [8] the bank changed its name to Northern Investment Bank on April 5, 2006, and then to the current name of JSC CredexBank on February 12, 2007. Credex is 96.82% owned by Vicpart Holding SA, based in Fribourg, Switzerland.[9] With 169 employees [10] and a total capitalization of approximately $19 million,[11] the bank currently ranks as the 22nd largest in total assets among 31 commercial banks in Belarus.[12] Credex has six domestic branches and one representative office in the Czech Republic.[13] While the majority of its correspondent banking relationships are with domestic banks, Credex maintains numerous correspondent relationships with Russian banks, and also single correspondent relationships in Latvia, Germany, and Austria.[14] According to available public information, Credex does not have any direct U.S. correspondent relationships.[15]

C. Belarus

The concentration of power in the hands of the Presidency and the lack of a system of checks and balances among the various branches of government are the greatest hindrances to the rule of law and transparency of governance in Belarus.[16] In particular, economic decision-making is highly concentrated within the top levels of government, and financial institutions have little autonomy.[17]

Under Belarusian law, most government transactions and those sanctioned by the President are exempt from reporting requirements.[18] This is particularly worrisome given well-documented cases of public corruption in Belarus,[19] which has led the United States Government (''USG'') in recent years to take action to protect the U.S. financial system from abuse by the Belarusian government. In 2006, the President signed Executive Order (''E.O.'') 13405, which blocks the property and interests in property of Belarusian President Alexander Lukashenko and nine other individuals listed in the Annex, as well as authorizing subsequent designations of other individuals and entities determined to be responsible for or to have participated in public corruption, human rights abuses, or political oppression.[20] Pursuant to this E.O., the U.S. Department of the Treasury (''Treasury'') in November 2007 designated the state petrochemical conglomerate, Belneftekhim, for being controlled by President Lukashenko.[21] Separately, Treasury in April 2006 issued an advisory highlighting abuse and theft of public resources by senior Belarusian regime elements, including senior executives in state-owned enterprises.[22] Furthermore, in April 2004, Treasury identified Infobank, Minsk (later renamed PJSC Trustbank) as a primary money laundering concern under section 311 for laundering funds for the former Iraqi regime of Saddam Hussein.[23] At the time of that action,

[4] Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C. 5318A(b)(1)–(5).

[5] Section 5318A(a)(4)(A) requires the Secretary to consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission (''SEC''), the Commodity Futures Trading Commission (''CFTC''), the National Credit Union Administration (''NCUA''), and, in the sole discretion of the Secretary, ''such other agencies and interested parties as the Secretary may find to be appropriate.'' The consultation process must also include the Attorney General if the Secretary is considering prohibiting or imposing conditions on domestic financial institutions opening or maintaining correspondent account relationships with the targeted entity.

[6] Bankers Almanac (2012).

[7] ''Belarus on a Roll,'' Business New Europe, July 22, 2009 (*http://www.bne.eu/story1701/Belarus_on_a_roll*).

[8] Bankers Almanac (2012).

[9] *Id.* CredexBank's Web site lists Vipcart's ownership as 98.82%. *See* ''Business Card,'' CredexBank Web site (*http://en.credexbank.by/bank/general/businesscard/*).

[10] Bankers Almanac (2012).

[11] *Id.*

[12] National Bank of the Republic of Belarus, Information on Banks Functioning in the Republic of Belarus and Their Branches, as of January 20, 2012 (*http:www.nbrb.by/engl/system/banks.asp*).

[13] *Id.*

[14] *Id. See also* ''International settlements,'' CredexBank (*http://www.en.credexbank.by/entities/settlements/*).

[15] *Id.*

[16] ''2011 International Narcotics Control Strategy Report (INCSR)—Volume II Money Laundering and Financial Crimes Country Database,'' May 20, 2011. (*http://www.state.gov/documents/organization/164239.pdf*), pp. 45–47.

[17] *Id.*

[18] ''2010 and 2011 International Narcotics Control Strategy Reports (INCSR)—Volume II Money Laundering and Financial Crimes Country Database,'' March 1, 2010 and May 2011, respectively. (*http://www.state.gov/documents/organization/141643.pdf*), p. 48.

[19] *Id.* For other example of public corruption in Belarus, *see also* Transparency International's 2011 Corruption Perception Index (*http://archive.transparency.org/content/download/64426/1030807*). Belarus ranked 143 out of 182 countries, with 1 being least corrupt.

[20] ''Treasury Targets Lukashenko-controlled Petrochemical Conglomerate,'' U.S. Department of the Treasury, 11/13/2007 (*http://www.treasury.gov/press-center/press-releases/pages/hp676.aspx*.); INCSR (2011), p. 46. In June 2006, President Bush issued Executive Order 13405, ''Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus'' (*http://www.gpo.gov/fdsys/pkg/FR-2006-06-20/pdf/06-5592.pdf*). E.O. 13405 blocks the property and interests in property of the ten individuals listed in the Annex to the E.O. and individuals or entities determined, *inter alia,* to be responsible for, or to have participated in, actions or policies that undermine democratic processes or institutions in Belarus; to be responsible for, or have participated in, human rights abuses related to political oppression in Belarus; to be senior-level officials, family members of such officials, or persons closely linked to such officials, who are responsible for, or have engaged in public corruption related to Belarus. To date, there are 16 individuals and 9 entities listed on OFAC's Specially Designated Nationals and Blocked Persons (SDN) List as blocked under the Belarus sanctions program.

[21] *Id.*

[22] ''FinCEN Advisory: Guidance to Financial Institutions on the Provision of Financial Services to Belarusian Senior Regime Elements Engaged in Illicit Activities,'' April 10, 2006 (*http://www.fincen.gov/statutes_regs/guidance/pdf/advisory_belarus040706.pdf*).

[23] ''Imposition of Special Measure Against Infobank as a Financial Institution of Primary Money Laundering Concern, Notice of Proposed Rulemaking,'' **Federal Register**/Vol. 69, No. 163, August 24, 2004. Moreover, a publicly available

Continued

Infobank was widely reported to be a bank specializing in financial transactions related to arms exports, including procuring and financing weapons and military equipment for several nations deemed by the United States to be State Sponsors of Terrorism.[24]

Since January 2011, in response to the repression of democratic activists following fraudulent presidential elections in Belarus, the European Union (''EU'') has imposed a series of increasingly stiff sanctions against Belarus, including a travel ban and assets freeze extending to some 200 Belarusian officials and an assets freeze of three companies closely associated with President Lukashenko.[25] Most recently, on March 23, 2012, the EU reinforced restrictive measures against the Belarusian government by adding 12 individuals and 29 entities to the sanctions list for their role in supporting the regime.[26]

II. Analysis of Factors

Based upon a review and analysis of the administrative record in this matter, consultations with relevant Federal agencies and departments, and after consideration of the factors enumerated in section 311, the Director of FinCEN has determined that reasonable grounds exist for concluding that Credex is a financial institution of primary money laundering concern. In addition to the bank's location in a high risk jurisdiction, FinCEN has reason to believe that Credex (1) has engaged in high volumes of transactions that are indicative of money laundering on behalf of shell corporations; and (2) has a history of ownership by shell corporations[27] whose own lack of transparency contributes to considerable uncertainty surrounding Credex's beneficial ownership. Taken as a whole, the lack of transparency associated with Credex indicates a high degree of money laundering risk and vulnerability to other financial crimes. The factors relevant to this finding are detailed below:

A. The Extent to Which Credex Has Been Used To Facilitate or Promote Money Laundering in or Through the Jurisdiction

Information made available to the USG shows that since 2006, Credex has engaged in highly questionable patterns of financial transactions that are indicative of money laundering. Such activity includes: high volumes of transactions involving foreign shell corporations incorporated and operating in high risk jurisdictions; disproportionate and evasive transactional behavior; and nested account[28] activity.

The facts surrounding these transactions are consistent with typical ''red flags'' regarding shell company activity identified in most banking standards, including wire transfer volumes that are extremely large in proportion to the asset size of the bank; transacting businesses sharing the same address, providing only a registered agent's address, or having other address inconsistencies; and frequent involvement of multiple jurisdictions or beneficiaries located in higher-risk offshore financial centers.[29]

For example, large-dollar transactions originated from multiple shell corporations located at shared formation addresses were subsequently transferred through Credex to suspected shell corporations that also shared the same formation addresses in various jurisdictions. Specifically, between June and July 2007, two shell corporations located at known company formation addresses in the United Kingdom (''UK'') and the British Virgin Islands (''BVI'') made multiple payments totaling millions of U.S. dollars by utilizing accounts at Credex and another foreign financial institution for the benefit of a separate BVI company. Overall, numerous suspicious transactions (1) occurred in spurts for a brief period, in repetitive patterns, and then ceased without explanation, (2) were for unrelated goods and services that did not correspond to an apparent business relationship between the transacting parties, and (3) were remitted through multiple foreign banks with U.S. correspondent accounts with vague payment details. These patterns strongly suggest a failure of anti-money laundering/countering the financing of terrorism (AML/CFT) controls at Credex and/or willfulness by the bank in carrying out transactions on behalf of shell corporations.

Furthermore, Credex has engaged in high volumes of transactions that are significantly disproportionate to the bank's level of capitalization. For example, from January to March 2010, information made available to the USG shows that Credex transferred nearly $1 billion to shell corporations in multiple jurisdictions—a substantial amount of wire activity for a bank of Credex's size. From 2007 to 2009, Credex averaged approximately $10 million in capitalization.[30] In addition, Credex wire transaction customers during this period were mostly parties sending money from Credex accounts. However, there were no observable corresponding inflows, which one would expect at a legitimate commercial bank.

Information made available to the USG also shows that Credex engages in evasive conduct in a significant portion of its financial transactions. In some instances, critical information identifying Credex as the originating financial institution was omitted from the wire transaction details, or the stated purpose of the transaction involving Credex accountholders was inconsistent with the expected business profile of those companies. Such disproportionate volumes of activity compared to the bank's size, coupled with evasive behaviors, strongly suggest that Credex is vulnerable to money laundering and other financial crimes.

source indicates that Trustbank and Credex maintain a correspondent relationship.

[24] *Id.*

[25] ''Council Conclusions on Belarus,'' January 31, 2011, (*http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/119038.pdf*).

[26] Press Release: ''Council Reinforces Restrictive Measures against Belarusian Regime,'' Council of The European Union, March 23, 2012, (*http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/129230.pdf*). Since 2004, the EU has imposed sanctions against Belarus that include a travel ban and asset freeze on President Alexander Lukashenko and other Belarusian officials. For details on EU's restrictive measures against the Belarusian regime, *see* ''Factsheet: The European Union and Belarus'', March 23, 2012, (*http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/129232.pdf*).

[27] The term ''shell corporation,'' as used herein, refers to non-publicly traded corporations, limited liability companies (LLCs), and trusts that typically have no physical presence (other than a mailing address) and generate little to no independent economic value. As noted in the 2005 U.S. Money Laundering Threat Assessment, shell corporations have become common tools for money laundering and other financial crimes, primarily because they are easy and inexpensive to form and operate. Additionally, ownership and transactional information on these entities can be concealed from regulatory and law enforcement authorities. *See* ''U.S. Money Laundering Threat Assessment'' U.S. Money Laundering Threat Assessment Working Group, December 2005 (*http://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/mlta.pdf*), pp. 47–49.

[28] Nested accounts occur when a foreign financial institution gains access to the U.S. financial system by operating through a U.S. correspondent account belonging to another foreign financial institution. Thus, these third-party financial institutions can effectively gain anonymous access to the U.S. financial system. *See* ''Correspondent Accounts (Foreign)—Overview,'' Federal Financial Institutions Examination Council Bank Secrecy Act Anti-Money Laundering Examination Manual,'' (''FFIEC Manual'') (*http://www.ffiec.gov/bsa_aml_infobase/pages_manual/OLM_047.htm*).

[29] *See* ''Money Laundering Red Flags: Wire Transfers,'' Federal Financial Institutions Examination Council (*http://www.ffiec.gov/bsa_aml_infobase/documents/red_flags/Wire_Trans.pdf*) and ''Appendix F: Money Laundering and Terrorist Financing 'Red Flags,' '' FFIEC Manual (*http://www.ffiec.gov/bsa_aml_infobase/pages_manual/OLM_106.htm*). *See also* ''FinCEN Guidance: Potential Money Laundering Risks Related to Shell Companies,'' November 9, 2006. FIN–2006–G–14.

[30] Bankers Almanac (2012).

Credex maintains a total of 66 correspondent accounts,[31] including more than 20 U.S. dollar accounts, almost exclusively with Russian and Belarusian financial institutions.[32] This number of correspondent accounts is highly disproportionate relative to Credex's size—the bank's total assets were approximately $46 million as of the end of 2010.[33] For example, the largest bank in Belarus—whose assets number more than $14 billion—only has a total of 18 correspondent accounts.[34] This indicates the intent to obfuscate the movement of funds; there is no logical explanation or purpose for maintaining so many correspondent accounts while incurring the operational costs and fees associated with them.

According to available public information, Credex does not have direct correspondent relationships with U.S. financial institutions.[35] However, information made available to the USG indicates that transactions involving U.S. dollars are conducted via multiple ''nested accounts'' with European banks and money service businesses[36] that allowed indirect access to the U.S. financial system. For example, of 91 wires totaling approximately $10 million conducted through Credex, 69 wires totaling $9 million involved apparent nesting activity via U.S. correspondent accounts, and the remaining 22 wire transfers totaling over $1 million were sent by order of, or for the benefit of, shell-like entities, some of which were also involved in the 69 nested wires.

Given this evasive conduct, U.S. financial institutions remain particularly at risk of indirectly providing Credex with anonymous access to the U.S. financial system.

B. The Extent to Which Credex Is Used for Legitimate Business Purposes in the Jurisdiction

The lack of transparency—regarding the jurisdiction, beneficial ownership of the bank (discussed in Section II (D), below), and transactional activity with shell corporations—makes it difficult to assess the extent to which Credex is engaged in legitimate business. Thus, any legitimate use of Credex is significantly outweighed by the apparent use of Credex to facilitate or promote money laundering and other financial crimes.

C. The Extent to Which Such Action Is Sufficient To Ensure, With Respect to Transactions Involving Credex, That the Purposes of the BSA Continue To Be Fulfilled, and To Guard Against International Money Laundering and Other Financial Crimes

As detailed above, FinCEN has reasonable grounds to conclude that Credex is being used to promote or facilitate international money laundering, and is therefore an institution of primary money laundering concern. Currently, there are no protective measures that specifically target Credex. Thus, finding Credex to be a financial institution of primary money laundering concern, which would allow consideration by the Secretary of special measures to be imposed on the institution under section 311, is a necessary first step to prevent Credex from facilitating money laundering or other financial crime through the U.S. financial system. The finding of primary money laundering concern will bring any criminal conduct occurring at or through Credex to the attention of the international financial community and will further limit the bank's ability to be used for money laundering or for other criminal purposes.

D. Other Relevant Factor: Lack of Transparency

As outlined above, the pervasive lack of transparency surrounding Credex's business activities—including its high volume of suspicious transactions with shell corporations, the substantial uncertainty surrounding the transacting parties and purposes involved in those transactions, the bank's evasive conduct, and its operation in a high risk jurisdiction—makes it virtually impossible to discern the extent to which the bank is engaged in legitimate business, and most importantly, to evaluate its capacity to identify and mitigate risk and illicit finance. This situation is exacerbated by a similar lack of transparency in the bank's ownership, which has passed from one shell corporation to another, creating considerable uncertainty as to the identity of the true beneficial owner(s).

Credex's original registered owner, Ximex,[37] displays numerous characteristics of a shell corporation. Listed at 12–16 Clerkenwell Rd, London, United Kingdom,[38] Ximex shares the same mailing address as another firm—whose primary activities are formation and servicing of international business companies, as well as tax and financial planning.[39] Ximex is owned by ''Imex Executive, Limited,'' a company registered to the address of a BVI company formation agent.[40] Additionally, Ximex is listed by the UK's Financial Services Authority (''FSA'') among firms and/or individuals who are not authorized to conduct regulated investment activities.[41] The FSA is an independent body that regulates the financial services industry in the UK.[42] [43]

Since October 2009, Credex has been owned by Vicpart Holding SA (''Vicpart''), based in Fribourg, Switzerland.[44] Publicly available information about Vicpart reveals significant inconsistencies and gaps that raise concerns about the true nature and purpose of the company. Vicpart shares the same address with more than 200 other companies, some of which are in liquidation.[45] These companies in liquidation merit particular scrutiny because at least one Financial Action Task Force (''FATF'') study has identified the practice of dissolving companies rapidly after creation as a risk factor signaling the potential misuse of corporate vehicles.[46] The Vicpart Web site is currently inaccessible to the public. Prior to its shutdown, the Web site stated that the purpose of the company is the management of

[31] These appear to be ''nostro'' accounts, which are commonly used for currency settlement.

[32] Bankers Almanac (2012).

[33] *Id.*

[34] *Id.*

[35] Bankers Almanac (2012).

[36] Additionally, according to Credex's Web site, the bank performs transfers through international money transfer services (Anelik, Leader, Western Union, and Moneygram) without opening an account. *See* ''General Information,'' CredexBank Web site (*http://www.en.credexbank.by/bank/general*).

[37] ''Belarus on a Roll,'' Business New Europe, July 22, 2009 (*http://www.bne.eu/story1701/Belarus_on_a_roll*).

[38] *See* ''Ximex Executive Limited,'' (*http://www.biz-info.co.uk/ximex+executive+limited_04605867.html*).

[39] *See* ''Carrington Accountancy,'' (*http://www.freeindex.co.uk/profile(carrington-accountancy)_277286.htm*). *See also* ''Carrington Corporate Services Limited,'' (*http://www.biz-info.co.uk/carrington+corporate+services+limited_03160163.html*).

[40] Dun & Bradstreet, Global Reference Solution (2011) (*www.dnb.com*).

[41] ''Unauthorized firms/individuals,'' Financial Services Authority, November 4, 2010 (*http://www.fsa.gov.uk/pages/Doing/Regulated/Law/Alerts/unauthorised.shtml*).

[42] ''What We Do,'' Financial Services Authority (*http://www.fsa.gov.uk/pages/about/what/index.shtml*).

[43] ''Warnings & alerts,'' Financial Services Authority, November 4, 2010 (*http://www.fsa.gov.uk/Pages/Doing/Regulated/Law/Alerts/index.shtml).*

[44] Bankers Almanac (2012).

[45] Analyst Search of Dun & Bradstreet, Global Reference Solution (2012). (*www.dnb.com*) (search for ''Rue St Pierre 18 Fribourg Switzerland'').

[46] ''The Misuse of Corporate Vehicles, Including Trust and Company Service Providers,'' FATF (*http://www.fatf-gafi.org/media/fatf/documents/reports/Misuse%20of%20Corporate%20Vehicles%20including%20Trusts%20and%20Company%20Services%20Providers.pdf*), p. 33.

financial, industrial, and commercial participation, as well as real estate operation.[47] Separately, a global business registry indicates that Vicpart is registered as a joint stock company whose primary line of business is investment management.[48] However, Credex is listed as its only holding.[49]

Adding to these concerns are allegations of criminal involvement by Vicpart's management. According to information made available to the USG, two former Vicpart board members were charged with criminal activity, including document forgery. These individuals may have used companies registered to Vicpart's current address as part of their alleged criminal activity. Meanwhile, aside from the listing of a single individual as both a Vicpart director and the sole authorized signatory for the company, there is no other publicly available information on the current composition of Vicpart's board of directors.[50]

Although the Credex Web site currently states that the single individual listed as a Vicpart director is also the ''beneficial owner'' of the company,[51] the USG has concerns about the accuracy of this information. According to publicly available information, the individual named as Vicpart's beneficial owner has also been identified by global business registries as being involved with at least 30 different companies, many of which are in liquidation and list the individual's personal residence as their address.[52] This involvement with a large number of companies, many of which are in liquidation and/or share the same address, raises concerns that the individual may function purely as a formation agent or nominal owner whose identification as a company's owner in public sources may be intended to shield the true beneficial owners from scrutiny.

The ambiguity surrounding Vicpart's ownership is particularly concerning because the company also exhibits several indicators of typical shell corporation activity, and owns a bank that has been engaged in highly questionable patterns of transactions that are indicative of money laundering. For example, while Vicpart's Web site states that the company was incorporated in 1999,[53] it does not appear to have been active until June 2009—four months prior to acquiring Credex from another shell corporation, Ximex in October 2009.[54] This long period of dormancy followed by involvement in a major transaction bears the hallmark of Vicpart being a ''shelf company.''[55] Additionally, Vicpart's financial statements at the time of acquisition showed no balance sheet assets except for 100,000 Swiss Francs (estimated $108,000) in share capital.[56]

III. Finding

Based on the foregoing factors, the Director of FinCEN hereby finds that Credex is a financial institution of primary money laundering concern.

Dated: May 22, 2012.

Peter S. Alvarado,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2012–12742 Filed 5–24–12; 8:45 am]

BILLING CODE 4810–02–P

[47] *See* Vicpart Web site (*http://vicpart.ch/en/about*) (accessed 1/19/12, but no longer accessible as of 5/21/12).

[48] Dun & Bradstreet, Global Reference Solution (2011) (*www.dnb.com*).

[49] *See* Vicpart Web site (*http://vicpart.ch/en/about*) (accessed 1/19/12, but no longer accessible as of 5/21/12).

[50] Dun & Bradstreet, Global Reference Solution (2012) (*http://www.dnb.com*).

[51] ''Business Card,'' CredexBank Web site (*http://www.en.credexbank.by/bank/general/businesscard*). *See also* Dun & Bradstreet, European Report (2012) (*http://www.dnb.com*), which does not provide any indication that the single individual is the company's beneficial owner but indicates that he has been the sole authorized signatory since June 2009.

[52] Dun & Bradstreet, Global Reference Solution (2012) (*http://www.dnb.com*). *See also* ''Moneyhouse'' (*http://www.moneyhouse.ch/en*).

[53] *See* Vicpart Web site (*http://vicpart.ch/en/about*) (accessed 1/19/12, but no longer accessible as of 5/21/12).

[54] *Id.*

[55] The term ''shelf company'' is typically applied to a company which, among other things, has inactive shareholders, directors, and secretary; and is left dormant—that is, sitting ''on a shelf''—for the purpose of being sold. *See* ''Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It,'' The World Bank and UNODC, 2011, p. 37. (*www.worldbank.org*).

[56] *See* Vicpart Web site (*http://vicpart.ch/en/about*) (accessed 1/19/12, but no longer accessible as of 5/21/12).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Submission for OMB Review

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Registration of Mortgage Loan Originators.'' The OCC is also giving notice that it has sent this collection to OMB for review.

DATES: Comments must be received by June 25, 2012.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0243, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0243, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is requesting extension of OMB approval for this collection. There have been no changes to the requirements of the regulations, however, they have been transferred to the Bureau of Consumer Financial Protection (CFPB) pursuant to title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1990, July 21, 2010 (Dodd-Frank Act), and republished as CFPB regulations (76 FR 78483 (December 19, 2011)). The burden estimates have been revised to remove the burden for OCC-regulated institutions with over $10 billion in assets, now carried by CFPB pursuant to section 1025 of the Dodd-

Frank Act, and to remove the initial start-up burden. The OCC retains enforcement authority for its institutions with $10 billion in assets or less.

Title: Registration of Mortgage Loan Originators.

OMB Number: 1557–0243.

Description: The S.A.F.E. Act requires an employee of a bank, savings association, or credit union and their subsidiaries regulated by a Federal banking agency or an employee of an institution regulated by the FCA (Agency-regulated institutions) who engages in the business of a residential mortgage loan originator (MLO) to register with the Nationwide Mortgage Licensing System and Registry (Registry) and obtain a unique identifier. Agency-regulated institutions must require their employees who act as residential MLOs to comply with the Act's requirements to register and obtain a unique identifier and also adopt and follow written policies and procedures to assure compliance with these requirements.

The Registry is intended to aggregate and improve the flow of information to and between regulators; provide increased accountability and tracking of mortgage loan originators; enhance consumer protections; reduce fraud in the residential mortgage loan origination process; and provide consumers with easily accessible information at no charge regarding the employment history of, and the publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators.

The Agencies jointly developed and maintain a system for registering MLOs employed by Agency-regulated institutions with the Registry. The Agencies, at a minimum, must furnish or cause to be furnished to the Registry information concerning the MLOs identity, including: (1) Fingerprints for submission to the Federal Bureau of Investigations and any other relevant governmental agency for a State and national criminal background check; and (2) personal history and experience, including authorization for the Registry to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

MLO Reporting Requirements

Unless the de minimis exception or a different implementation period applies, 12 CFR 1007.103(a) requires an employee of a institution who is engaged in the business of a MLO to register with the Registry, maintain such registration, and obtain a unique identifier. Under § 1007.103(b), an institution must require each such registration to be renewed annually and updated within 30 days of the occurrence of specified events. Section 1007.103(d) sets forth the categories of information that an employee, or the employing institution in the employee's behalf, must submit to the Registry, along with the employee's attestation as to the correctness of the information supplied, and an authorization to obtain further information.

MLO Disclosure Requirement

Section 1007.105 (b) requires the MLO to provide the unique identifier to a consumer upon request.

Financial Institution Reporting Requirements

Section 1007.103(e) specifies the institution and employee information that an institution must submit to the Registry in connection with the initial registration of one or more MLOs, and thereafter update.

Financial Institution Disclosure Requirements

Section 1007.105(a) requires the institution to make the unique identifier of MLO employees available to consumers in a manner and method practicable to the institution.

Financial Institution Recordkeeping Requirements

- Section 1007.103(d)(1)(xii) requires the collection of MLO employee fingerprints.
- Section 1007.104 requires that a institution employing MLOs to:
  - Adopt and follow written policies and procedures, at a minimum addressing certain specified areas, but otherwise appropriate to the nature, size and complexity of their mortgage lending activities.
  - Establish reasonable procedures and tracking systems for monitoring registration compliance.
  - Establish a process for, and maintain records related to, employee criminal history background reports and actions taken with respect thereto.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 36,003.

Estimated Total Annual Burden: 31,053 hours.

On March 15, 2012, the OCC issued a 60-day **Federal Register** notice regarding renewal of the collection. 77 FR 15456. No comments were received. Comments continue to be requested on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the 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 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: May 21, 2012.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2012–12749 Filed 5–24–12; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003.''

DATES: Comments must be received by July 24, 2012.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0237, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274 or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 250 E Street SW.,

Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0237, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: There have been no changes to the requirements of the regulations; however, a portion of the regulations have been transferred to the Bureau of Consumer Financial Protection (CFPB) pursuant to title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1955, July 21, 2010 (Dodd-Frank Act), and republished as CFPB regulations (76 FR 79308 (December 21, 2011)). The transferred regulations, which relate to address discrepancies, were found at 12 CFR 41.82, and have now been moved to 12 CFR 1022.82. The burden estimates for this portion of the collection have been revised to remove the burden attributable to OCC-regulated institutions with over $10 billion in total assets, now carried by CFPB pursuant to section 1025 of the Dodd-Frank Act. The OCC retains enforcement authority for its institutions with total assets of $10 billion or less.

Title: Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003.

OMB Control No.: 1557–0237.

Description: Section 114 of the FACT Act amended section 615 of the Fair Credit Reporting Act (FCRA) to require the Agencies [1] to issue jointly:

- Guidelines for financial institutions and creditors regarding identity theft with respect to their account holders and customers. In developing the guidelines, the Agencies were required to identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. The guidelines must be updated as often as necessary, and cannot be inconsistent with the policies and procedures required under section 326 of the USA PATRIOT Act, 31 U.S.C. 5318(l).
- Regulations requiring each financial institution and each creditor to establish reasonable policies and procedures for implementing the guidelines to identify possible risks to account holders or customers or to the safety and soundness of the institution or creditor.
- Regulations generally requiring credit and debit card issuers to assess the validity of change of address requests under certain circumstances.

Section 315 of the FACT Act amended section 605 of the FCRA to require the Agencies to issue regulations [2] providing guidance regarding reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a consumer reporting agency (CRA). These regulations were required to describe reasonable policies and procedures for users of consumer reports to:

- Enable a user to form a reasonable belief that it knows the identity of the person for whom it has obtained a consumer report, and
- Reconcile the address of the consumer with the CRA, if the user establishes a continuing relationship with the consumer and regularly and in the ordinary course of business furnishes information to the CRA.

As required by section 114 of the FACT Act, appendix J to 12 CFR part 41 contains guidelines for financial institutions and creditors to use in identifying patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. In addition, 12 CFR 41.90 requires each financial institution or creditor that is a national bank, Federal branch or agency of a foreign bank, and any of their operating subsidiaries that are not functionally regulated (bank), to establish reasonable policies and procedures to address the risk of identity theft that incorporate the guidelines. Pursuant to § 41.91, credit card and debit card issuers must implement reasonable policies and procedures to assess the validity of a request for a change of address under certain circumstances.

Section 41.90 requires each OCC regulated financial institution or creditor that offers or maintains one or more covered accounts to develop and implement a written Identity Theft Prevention Program (Program). In developing the Program, financial institutions and creditors are required to consider the guidelines in appendix J and include those that are appropriate. The initial Program must be approved by the board of directors or an appropriate committee thereof. The board, an appropriate committee thereof, or a designated employee at the level of senior management must be involved in the oversight of the Program. In addition, staff members must be trained to carry out the Program. Pursuant to § 41.91, each credit and debit card issuer is required to establish and implement policies and procedures to assess the validity of a change of address request under certain circumstances. Before issuing an additional or replacement card, the card issuer must notify the cardholder or use another means to assess the validity of the change of address.

As required by section 315 of the FACT Act, § 1022.82 requires users of consumer reports to have reasonable policies and procedures that must be followed when a user receives a notice of address discrepancy from a credit reporting agency (CRA).

Section 1022.82 requires each user of consumer reports to develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it requested the report when it receives a notice of address discrepancy from a CRA. A user of consumer reports also must develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed to be accurate to the CRA from which it receives a notice of address discrepancy when the user can: (1) Form a reasonable belief that the consumer report relates to the consumer about whom the user has requested the report; (2) establish a continuing relationship with the consumer and; (3) establish that it regularly and in the ordinary course of business furnishes information to the CRA from which it received the notice of address discrepancy.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

[1] Section 114 required regulations to be issued jointly by the Federal banking agencies, the National Credit Union Administration and the Federal Trade Commission. Therefore, for purposes of this filing, ''Agencies'' refers to these entities. It is important to note that Section 1088(a)(8) of the Dodd-Frank Act further amended section 615 of FCRA to also require the Securities and Exchange Commission and the Commodity Futures Trading Commission to issue Red Flags Rules.

[2] As noted above, these regulations have been transferred to the CFPB.

Estimated Number of Respondents: 2,010.

Estimated Total Annual Burden: 223,860 hours.

Comments submitted in response to this notice will be summarized, included in the request for OMB approval, and become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the 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 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: May 21, 2012.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2012–12757 Filed 5–24–12; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Proposed Collection of Information: States Where Licensed for Surety

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form ''States Where Licensed for Surety.''

DATES: Written comments should be received on or before July 24, 2012.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Branch, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Rose Miller, Manager, Surety Bond Branch, Room 632F, 3700 East West Highway, Hyattsville, MD 20782, (202) 874–6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: States Where Licensed for Surety.

OMB Number: 1510–0013.

Form Number: FMS 2208.

Abstract: Information is collected from insurance companies in order to provide Federal bond approving officers with this information. The listing of states, by company, appears in Treasury's Circular 570, ''Surety Companies Acceptable on Federal Bonds.''

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 318.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 318.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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: May 16, 2012.

Patricia M. Greiner,

Assistant Commissioner, Management, CFO.

[FR Doc. 2012–12559 Filed 5–24–12; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting for the Electronic Tax Administration Advisory Committee (ETAAC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting.

SUMMARY: In 1998 the Internal Revenue Service established the Electronic Tax Administration Advisory Committee (ETAAC).The primary purpose of ETAAC is to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. The ETAAC members convey the public's perceptions of the IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements. The ETAAC will share their recommendations and discuss the Annual Report to Congress.

Summarized Agenda

8:30 a.m.—Meet and Greet
9:00 a.m.—Meeting Opens
11:00 a.m.—Meeting Adjourns

The topics for discussion include:

(1) Filing Season Status Update
(2) ETAAC Recommendations

Note: Last-minute changes to these topics are possible and could prevent advance notice.

DATES: There will be a meeting of the ETAAC on Wednesday, June 20, 2012. You must register in advance to be put on a guest list to attend the meeting. This meeting will be open to the public, and will be in a room that accommodates approximately 40 people, including members of ETAAC and IRS officials.

Seats are available to members of the public on a first-come, first-served basis. Escorts will be provided. Attendees are encouraged to arrive 30 minutes before the meeting begins. Members of the public may file written statements sharing ideas for electronic tax administration. Send written statements to *etaac@irs.gov.*

ADDRESSES: The meeting will be held at the Internal Revenue Service Building, 1111 Constitution Avenue NW., Room 2140, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: You must provide your name in advance for the guest list and be able to show your

state-issued picture identification on the day of the meeting. Otherwise, you will not be able to attend the meeting as this is a secured building. To receive a copy of the agenda or general information about the ETAAC, please contact Cassandra Daniels on 202–283–2178 or at *etaac@irs.gov* by Friday, June 15, 2012. Notification of intent should include your name, organization and telephone number. Please spell out all names if you leave a voice message.

SUPPLEMENTARY INFORMATION: ETAAC reports to the Director, Return Preparer Office. The ETAAC's duties are to research, analyze, consider, and make recommendations on a wide range of electronic tax administrative issues and to provide input into the development and implementation of the strategic plan for electronic tax administration. ETAAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend public meetings and working sessions each year.

Dated: May 18, 2012.

Diane L. Fox,

Director, Relationship Management Branch.

[FR Doc. 2012–12575 Filed 5–24–12; 8:45 am]

BILLING CODE 4830–01–M

FEDERAL REGISTER

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Part II

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products (Standby Mode and Off Mode); Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2010–BT–TP–0039]

RIN 1904–AC01

Energy Conservation Program: Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products (Standby Mode and Off Mode)

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

ACTION: Supplemental notice of proposed rulemaking (SNOPR).

SUMMARY: The U.S. Department of Energy (DOE) proposes to amend its test procedures for residential dishwashers, dehumidifiers, and conventional cooking products (which includes cooktops, ovens, and ranges) to address the measurement of active mode fan-only energy use. This SNOPR also addresses energy and water use associated with dishwasher water softeners, the energy test cycle for dishwashers with a separate soil-sensing cycle, and the normal cycle definition, power supply and detergent dosing for dishwashers. The proposal would also update the industry test method specified in the dehumidifier test procedure, eliminate measurement of gas pilot light energy use in the cooking products test procedure, and remove an obsolete energy efficiency metric in the dishwasher test procedure.

DATES: DOE will accept comments, data, and information regarding this SNOPR submitted no later than June 25, 2012. See section V, ''Public Participation,'' for details.

ADDRESSES: Any comments submitted must identify the SNOPR for Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products, and provide docket number EERE–2010–BT–TP–0039 and/or Regulatory Information Number (RIN) 1904-AC01. 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: Res-DW–Dehumid-CookingProd-2010–TP–0039@ee.doe.gov*. Include docket number EERE–2010–BT–TP–0039 and/or RIN 1904–AC27 in the subject line of the message.

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

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to *cwhiteman@omb.eop.gov*.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

Docket: The docket is available for review at www.regulations.gov, including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov index.* Not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket web page can be found at: *www.regulations.gov/#!docketDetail;rpp=10;po=0;D=EERE–2010–BT–TP–0039*. This web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Wes Anderson, 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) 586–7335. Email: *Wes.Anderson@ee.doe.gov*.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov*.

For further 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*.

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VI. Approval of the Office of the Secretary

I. Authority and Background

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances.[2] These include residential dishwashers, conventional cooking products,[3] and dehumidifiers, the subject of today's notice. (42 U.S.C. 6292(a)(6) and (10); 6295(cc))

Under the Act, this program consists essentially of four parts: (1) Testing, (2) labeling, (3) establishing Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use: (1) as the basis for certifying to DOE that their products comply with applicable energy conservation standards adopted pursuant to EPCA, and (2) for making representations about the efficiency of those products. (42 U.S.C. 6293(c); 6295(s)) Similarly, DOE must use these test procedures in any enforcement action to determine whether the products comply with these energy conservation standards. (42 U.S.C. 6295(s))

A. General Test Procedure Rulemaking Process

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by DOE, and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2))

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

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

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

Any such amendment must consider the most current versions of IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' and IEC Standard 62087, ''Methods of measurement for the power consumption of audio, video, and related equipment.''[4] *Id.*

1. Dishwashers

DOE's test procedure for dishwashers is found in the Code of Federal Regulations (CFR) at 10 CFR part 430, subpart B, appendix C. DOE originally established its test procedure for dishwashers in 1977. 42 FR 39964 (August 8, 1977). Since that time, the dishwasher test procedure has undergone a number of amendments, as discussed below. In 1983, DOE amended the test procedure to revise the representative average-use cycles to more accurately reflect consumer use and to address dishwashers that use 120 °F inlet water. 48 FR 9202 (March 3, 1983). DOE amended the test procedure again in 1984 to redefine the term ''water heating dishwasher.'' 49 FR 46533 (Nov. 27, 1984). In 1987, DOE amended the test procedure to address models that use 50 °F inlet water. 52 FR 47549 (Dec. 15, 1987). In 2001, DOE revised the test procedure's testing specifications to improve testing repeatability, changed the definitions of ''compact dishwasher'' and ''standard dishwasher,'' and reduced the average number of use cycles per year from 322 to 264. 66 FR 65091, 65095–97 (Dec. 18, 2001). In 2003, DOE again revised the test procedure to more accurately measure dishwasher efficiency, energy use, and water use. The 2003 dishwasher test procedure amendments included the following revisions: (1) The addition of a method to rate the efficiency of soil-sensing products; (2) the addition of a method to measure standby power; and (3) a reduction in the average-use cycles per year from 264 to 215. 68 FR 51887, 51899–903 (August 29, 2003). The current version of the test procedure includes provisions for determining estimated annual energy use (EAEU), estimated annual operating cost (EAOC), energy factor (EF) expressed in cycles per kilowatt-hour (kWh), and water consumption expressed in gallons per cycle. 10 CFR 430.23(c).

2. Dehumidifiers

The DOE test procedure for dehumidifiers is found at 10 CFR part 430, subpart B, appendix X. EPCA specifies that the U.S. Environmental Protection Agency's (EPA) test criteria used under the ENERGY STAR [5] program must serve as the basis for the test procedure for dehumidifiers. (42 U.S.C. 6293(b)(13)) The ENERGY STAR test criteria effective in January 2001 require that American National Standards Institute (ANSI)/Association of Home Appliance Manufacturers (AHAM) Standard DH–1, ''Dehumidifiers,'' be used to measure capacity and that the Canadian Standards Association (CAN/CSA) standard CAN/CSA–C749–1994 (R2005), ''Performance of Dehumidifiers,'' be used to calculate EF. DOE adopted those test criteria, along with related definitions and tolerances, as its test procedure for dehumidifiers. 71 FR 71340, 71347, 71366–68 (Dec. 8, 2006). The DOE test procedure provides methods for determining the EF for dehumidifiers, which is expressed in liters (l) of water condensed per kWh.

3. Conventional Cooking Products

DOE's test procedures for conventional ranges, cooktops, and ovens (including microwave ovens) are

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this rulemaking refer to the statute as amended through the Energy Independence and Security Act of 2007, Public Law 110–140.

[3] The term ''conventional cooking products,'' as used in this notice, refers to residential electric and gas kitchen ovens, ranges, and cooktops (other than microwave ovens).

[4] EISA 2007 directs DOE to also consider IEC Standard 62087 when amending its test procedures to include standby mode and off mode energy consumption. *See* 42 U.S.C. 6295(gg)(2)(A). IEC Standard 62087 addresses the methods of measuring the power consumption of audio, video, and related equipment and is therefore not applicable to the products at issue in this rulemaking.

[5] For more information on the ENERGY STAR program, see: *www.energystar.gov.*

found at 10 CFR part 430, subpart B, appendix I. DOE first established the test procedures included in appendix I in a final rule published in the **Federal Register** on May 10, 1978. 43 FR 20108, 20120–28. DOE revised its test procedure for cooking products to more accurately measure their efficiency and energy use, and published the revisions as a final rule in 1997. 62 FR 51976 (Oct. 3, 1997). These test procedure amendments included: (1) A reduction in the annual useful cooking energy; (2) a reduction in the number of self-cleaning oven cycles per year; and (3) incorporation of portions of IEC Standard 705–1988, ''Methods for measuring the performance of microwave ovens for household and similar purposes,'' and Amendment 2–1993 for the testing of microwave ovens. *Id.* The test procedure for conventional cooking products establishes provisions for determining EAOC, cooking efficiency (defined as the ratio of cooking energy output to cooking energy input), and EF (defined as the ratio of annual useful cooking energy output to total annual energy input). 10 CFR 430.23(i); 10 CFR part 430 subpart B, appendix I. There is currently no EnergyGuide [6] labeling program for cooking products.

In today's SNOPR, DOE proposes amendments to its cooking products test procedure for only conventional cooking products. DOE has initiated a separate test procedure rulemaking to address standby mode and off mode power consumption for microwave ovens. The microwaves rulemaking was initiated in response to comments from interested parties on the advance notice of proposed rulemaking (ANOPR) for an earlier rulemaking concerning energy conservation standards for residential dishwashers, dehumidifiers, cooking products, and commercial clothes washers published on November 15, 2007 (hereafter referred to as the November 2007 ANOPR) (72 FR 64432). As discussed in the subsequent notice of proposed rulemaking (NOPR) for that standards rulemaking, interested parties stated generally that DOE should amend the test procedures for all types of cooking products to allow for measurement of standby mode energy use in order to implement a standby power energy conservation standard. 73 FR 62034, 62043–44 (Oct. 17, 2008). DOE published a NOPR proposing amendments to the microwave oven test procedure for standby mode and off mode in the **Federal Register** on October 17, 2008. 73 FR 62134. DOE subsequently published a supplemental notice of proposed rulemaking (SNOPR) in the **Federal Register** on this topic on July 22, 2010 (75 FR 42612), and an interim final rule on March 9, 2011 (hereafter referred to as the March 2011 Interim Final Rule) (76 FR 12825). DOE sought comment on a newly issued version of IEC Standard 62301 (which is discussed in more detail in the following section) for measuring standby mode and off mode energy use, the previous version of which was incorporated by reference in the microwave oven test procedure. In response to comments received on the interim final rule, DOE proposed to incorporate by reference the newly issued version of IEC Standard 62301 in an SNOPR published in the **Federal Register** on November 23, 2011. 76 FR 72332.

B. Standby Mode and Off Mode

EPCA requires DOE to amend the test procedures for covered products to address standby mode and off mode energy consumption. Specifically, the amendments require DOE to integrate standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor for that product unless the current test procedures already fully account for such consumption. If integration is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) Any such amendment must consider the most current versions of IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' and IEC Standard 62087, ''Methods of measurement for the power consumption of audio, video, and related equipment.'' *Id.*

C. The December 2010 NOPR

On December 2, 2010, DOE published a NOPR (hereafter called the December 2010 NOPR) in which it proposed to incorporate by reference into the test procedures for dishwashers, dehumidifiers, and conventional cooking products specific provisions from IEC Standard 62301 ''Household electrical appliances—Measurement of standby power,'' First Edition 2005–06 (IEC Standard 62301 (First Edition) or ''First Edition'') regarding test conditions and test procedures for measuring standby mode and off mode power consumption. 75 FR 75290, 75295–97. DOE also proposed to incorporate into each test procedure definitions of ''active mode,'' ''standby mode,'' and ''off mode'' based on the definitions for those terms provided in the most current draft of an updated version of IEC Standard 62301. *Id.* at 75297–300. Further, DOE proposed to include in each test procedure additional language that would clarify the application of clauses from IEC Standard 62301 (First Edition) for measuring standby mode and off mode power consumption.[7] *Id.* at 75300–04. DOE held a public meeting on December 17, 2010, to receive comments on the December 2010 NOPR, and accepted written comments, data, and information until February 15, 2011. Commenters to the December 2010 NOPR suggested that the draft updated version of IEC Standard 62301 would provide practical improvement to the mode definitions and testing methodology for the test procedures that are the subject of this rulemaking.

D. The September 2011 SNOPR

Based upon the public comment received on the December 2010 NOPR, DOE further analyzed the draft materials associated with IEC Standard 62301 (Second Edition), which were in an advanced stage of development. Shortly thereafter, the IEC adopted and published IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' Edition 2.0 2011–01 (IEC Standard 62301 (Second Edition) or ''Second Edition'') on January 27, 2011. Consistent with its statutory mandate, DOE reviewed this latest version of the IEC standard and agreed that it improves some measurements of standby mode and off mode energy use. Accordingly, DOE proposed in an SNOPR published in the **Federal Register** on September 20, 2011 (76 FR 58346) (hereafter called the September 2011 SNOPR), to incorporate certain provisions of the IEC Standard 62301 (Second Edition), along with clarifying language, into the DOE test procedures for residential dishwashers, dehumidifiers, and conventional cooking products. Other than the specific amendments newly proposed in the September 2011 SNOPR, DOE continued to propose the test procedure amendments originally included in the December 2010 NOPR.

[6] For more information on the EnergyGuide labeling program, see: *www.access.gpo.gov/nara/cfr/waisidx_00/16cfr305_00.html.*

[7] EISA 2007 directs DOE to also consider IEC Standard 62087 when amending its test procedure to include standby mode and off mode energy consumption. See 42 U.S.C. 6295(gg)(2)(A). DOE considered IEC Standard 62087 and determined that the standard addresses the methods of measuring the power consumption of audio, video, and related equipment and is therefore not applicable to the products addressed in today's proposal.

II. Summary of the Supplemental Notice of Proposed Rulemaking

Upon further review of the public comment received on its proposals, DOE decided to further analyze the energy use of an air-circulating fan during a portion of cycle finished mode for dishwashers and conventional cooking products. DOE's analysis suggests that measurement of the energy use during this ''fan-only'' mode (considered part of the active mode) could improve the measurement of dishwasher and conventional cooking product energy use. Accordingly, DOE proposes in today's SNOPR to amend the DOE test procedures for residential dishwashers and conventional cooking products to incorporate the measurement of energy use in fan-only mode in the energy efficiency metrics.

DOE also proposes amendments to the dishwasher test procedure to measure the annual energy and water use associated with periodic water softener system regeneration for those dishwashers equipped with such systems. DOE's proposal in today's SNOPR considers: (1) the data on this subject accompanying petitions for waiver from the dishwasher test procedure for water-softening dishwashers, submitted by manufacturers; the methodology for addressing water softener system regeneration that was provided in waivers that were subsequently granted to manufacturers; and additional research and analysis that DOE conducted for today's SNOPR.

DOE also proposes in today's SNOPR to clarify in the dishwasher test procedure: (1) The normal cycle definition; (2) power supply requirements during testing; (3) energy test cycle requirements for dishwashers with a separate soil-sensing cycle; (4) test load specifications and soiling requirements; and (5) detergent dosing specifications.

The proposal would also update the industry test method specified in the dehumidifier test procedure. As noted above, EPCA specifies that the EPA's test criteria used under the ENERGY STAR program must serve as the basis for the test procedure for dehumidifiers. (42 U.S.C. 6293(b)(13)) The ENERGY STAR test criteria effective in January 2001 require that ANSI/AHAM Standard DH–1, ''Dehumidifiers,'' be used to measure energy use. Because the version of the DH–1 standard was not specified in the ENERGY STAR test criteria, DOE proposes to incorporate the most current version of the DH–1 standard (2008) into the test procedure for dehumidifiers.

Today's proposal would also eliminate measures of pilot light energy consumption from the cooking products test procedure. In a final rule published April 8, 2009, DOE established standards that prohibit constant burning pilot lights in gas cooking products manufactured on or after April 9, 2012. 74 FR 16040. DOE also proposes in today's SNOPR to remove the calculation of an obsolete energy efficiency metric, EF, from the dishwasher test procedure because the current dishwasher energy conservation standards no longer require it for compliance or representations.

Other than the specific amendments newly proposed in today's SNOPR, DOE continues to propose the test procedure amendments originally included in the December 2010 NOPR and the September 2011 SNOPR. For the reader's convenience, DOE has reproduced in this SNOPR the entire body of proposed regulatory text from the December 2010 NOPR and September 2011 SNOPR, further amended as appropriate according to today's proposals. DOE's supporting analysis and discussion for the portions of the proposed regulatory text not affected by this SNOPR may be found in the December 2010 NOPR (75 FR 75290 (Dec. 2, 2010)) and the September 2011 SNOPR (76 FR 58346 (Sept. 20, 2011)).

III. Discussion

A. Fan-Only Mode

In the December 2010 NOPR, DOE proposed to include the measurement of energy use in ''cycle finished'' mode for dishwashers and conventional cooking products, defined as ''a mode that provides continuous status display following operation in active mode.'' 75 FR 75290, 75298–99 (Dec. 2, 2010). DOE maintained this proposed definition in the September 2011 SNOPR. 76 FR 58346 (Sept. 20, 2011).

DOE received comments on the December 2010 NOPR and September 2011 SNOPR which noted that certain components in addition to a continuous status display could be energized for at least a portion of cycle finished mode in these products. Appliance Standards Awareness Project (ASAP) asked whether DOE had identified other energy-consuming sources not covered in by the definition of cycle finished mode, such as fans used in conventional ovens. Southern California Edison (SCE), Southern California Gas Company (SCG), and San Diego Gas and Electric Company (SDG&E), jointly (hereafter referred to as ''California Utilities''); ASAP, American Council for Energy Efficient Economy (ACEEE), National Consumer Law Center (NCLC), and Natural Resources Defense Council (NRDC), jointly (hereafter referred to as the ''NOPR Joint Comment''); and Pacific Gas and Electric (PG&E) commented that some models of dishwashers and conventional cooking products currently on the market contain fans or other components that continue to run after the active cycles are finished and that may consume significantly more power than a continuous display. ASAP, ACEEE, and NCLC, jointly (hereafter referred to as the ''SNOPR Joint Comment''), ASAP individually, the California Utilities, the NOPR Joint Comment, and PG&E stated that DOE should expand the definition of cycle finished mode for dishwashers and conventional cooking products to include any energy-consuming features following operation in active mode. (ASAP, Public Meeting Transcript, No. 10 at pp. 60–61; [8] California Utilities, No. 16 at p. 2; NOPR Joint Comment, No. 13 at pp. 1–2; PG&E, No. 17 at p. 2 [9]; SNOPR Joint Comment, No. 22 at p. 1) Northwest Energy Efficiency Alliance (NEEA) stated that many electronically controlled conventional cooking products have a fan-powered cooling function built into the active cooking mode (to protect the electronic controls from excessive heating) that persists beyond the functions listed in DOE's proposed definition of active mode. According to NEEA, because the period in which the fan operates occurs after the active mode functions end, and the duration of fan operation depends on the temperature at which the main cooking function(s) were conducted, fan-only mode would not meet DOE's proposed definition of inactive (standby) mode. NEEA commented that the inactive mode for a cooking product

[8] A notation in the form ''ASAP, Public Meeting Transcript, No. 10 at pp. 60–61'' identifies an oral comment that DOE received during the December 17, 2010, NOPR public meeting, was recorded in the public meeting transcript in the docket for the residential dishwasher, dehumidifier, and conventional cooking products test procedures rulemaking (Docket No. EERE–2010–BT–TP–0039), and is available for review at www.regulations.gov. This particular notation refers to a comment (1) Made by the Appliance Standards Awareness Project during the public meeting; (2) recorded in document number 10, which is the public meeting transcript that is filed in the docket of the residential dishwasher, dehumidifier, and conventional cooking products test procedures rulemaking; and (3) which appears on pages 60–61 of document number 10.

[9] A notation in the form ''PG&E, No. 17 at p. 2'' identifies a written comment: (1) Made by Pacific Gas & Electric; (2) recorded in document number 17 that is filed in the docket of the residential dishwasher, dehumidifier, and conventional cooking products test procedures rulemaking (Docket No. EERE–2010–BT–TP–0039) and available for review at www.regulations.gov; and (3) which appears on page 2 of document number 17.

begins after the cooling fan stops, and therefore the cooling function is part of active mode. For dishwashers, NEEA requested clarification as to whether such functions as a fan operating during the drying cycle are part of the active washing and drying cycle, or are part of cycle finished mode. NEEA commented that this cooling function in dishwashers should be considered as part of active mode. (NEEA, No. 11 at pp. 2–4) The NOPR Joint Comment stated that DOE should measure the duration of cycle finished mode in the absence of user interaction and estimate typical consumer use. According to the NOPR Joint Comment, the current proposal of 1.1 hours per cycle may be low, given that several dishwashers have cooling fans that continue to run for several hours following completion of the active cycle. The NOPR Joint Comment also noted that certain ovens and ranges include a cooling fan that can run up to 2 hours after the end of the active cycle. The NOPR Joint Comment suggested, therefore, that cycle finished mode likely continues on average for much longer than the proposed 5 minutes. The NOPR Joint Comment expressed concern about DOE's use of the use of European data for estimating the duration of cycle finished mode, and suggested that DOE make its own measurements or obtain data from manufacturers. (NOPR Joint Comment, No. 13 at pp. 4–5)

In considering these comments, DOE researched the functions, average power consumption, and duration of operation of air circulation fans in both dishwashers and conventional cooking products at the completion of the active cycle. The following sections discuss the results of these analyses separately for the two product types.

1. Dishwashers

Certain dishwashers incorporate an air circulation fan to transfer moisture from the dishware and out of the unit through an open vent more effectively than natural convection through the vent, The air circulation fan may remain energized for a period after the drying portion of an active cycle is complete, during which time the continuous status display indicates to the consumer that the cycle has finished. DOE research suggests that such fans typically require approximately 12 to 20 watts (W) of additional input power, and run 10 minutes to 4 hours after completion of the active cycle, depending on the type of drying cycle setting selected by the user. Based on this information, DOE calculated the range of annual energy consumption associated with an air circulation fan operating after the end of the active cycle as (12 to 20 W) × (10 minutes to 4 hours) × (215 estimated number of dishwashing cycles according to the DOE test procedure) = 0.4 to 17 kWh. The higher end of the range is greater than 5 percent of the maximum allowable annual energy consumption for a standard dishwasher (355 kWh). DOE proposes to measure the energy consumption associated with an air circulation fan operating at the end of the active cycle as described in section III.C.

In the December 2010 NOPR, DOE proposed to define ''standby mode'' as any mode where the product is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time: (a) to facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer; or (b) continuous functions, including information or status displays (including clocks) or sensor-based functions. As noted previously, cycle finished mode was proposed in the December 2010 NOPR as a mode that provides continuous status display following operation in active mode, which would classify cycle finished mode as a standby mode. 75 FR 75290, 75298–99 (Dec. 2, 2010). DOE maintained these proposed definitions in the September 2011 SNOPR. 76 FR 58346, 58349–50 (Sept. 20, 2011). DOE recognizes that the operation of an air circulation fan for a limited duration following the active cycle would preclude such a ''fan-only'' mode from consideration as cycle finished mode and, more generally, a standby mode under the proposed definitions. Therefore, DOE considers fan-only mode to be an active mode uniquely associated with the active cycle. DOE proposes in today's SNOPR to define fan-only mode as ''an active mode in which a fan circulates air for a finite period of time after the end of the cycle, as indicated to the consumer.''

2. Conventional Cooking Products

Conventional ovens operate at cavity temperatures typically greater than 300 degrees Fahrenheit (°F) during an active cooking cycle. To maintain safe temperatures of the surrounding surfaces during the active cycle and to cool internal oven components after completion of the cycle, conventional ovens and ranges often incorporate an air circulation fan. DOE research indicates that the air circulation fan may be activated at the end of the active cooking cycle based on some combination of the oven cavity internal temperature and cooking function (*e.g.,* ''bake'', ''broil''), or may be programmed to run for a fixed time. For conventional ovens and ranges which operate the air circulation fan according to the oven cavity temperature, DOE observed in the sample that it reviewed that the threshold temperature at which the fan would be activated ranged from 100°F to 360°F. For those conventional ovens and ranges with time-controlled fan operation, the duration of the ''fan-only'' mode in the sample that DOE identified ranged from 10 minutes to 3.5 hours after completion of the active mode cycle. DOE found no conventional cooktops with air circulation fans.

DOE research suggests that the air circulation fans in conventional ovens and ranges typically require approximately 16 to 50 W of input power. To estimate the number of annual cooking cycles for each conventional oven and range, DOE reviewed available consumer usage data. DOE's Energy Information Agency (EIA) conducts a Residential Energy Consumption Survey (RECS) that collects energy-related data for occupied primary housing units in the United States. The 2009 RECS collected data from 12,083 housing units representing over 113 million households.[10] The RECS indicates which households in the survey use electric and gas ranges and ovens. With regard to electric cooking products, 2332 household records have standard ovens and 5258 household records have self-cleaning ovens. With regard to gas cooking products, 2075 household records have standard ovens, and 2315 household records have self-cleaning ovens. The above totals represent ovens in households as either a stand-alone unit or as part of a range. Table III.1 presents the weighted-average cooking frequency values of each product class. DOE calculated the range of annual energy consumption associated with an air circulation fan operating after the end of the active cooking cycle as (16 to 50 W) × (10 minutes to 3.5 hours) × (weighted average cooking frequency per day) × (365 days per year). Table III.1 also shows this range of calculated annual energy consumption associated with air circulation fans for each product class, along with the annual energy consumption in other active modes of a baseline product.[11] The higher end of

[10] *Residential Energy Consumption Survey, 2009 Survey Data.* Available online at: *http://38.96.246.204/consumption/residential/data/2009/.*

[11] This active mode energy use, derived from the *Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Residential Dishwashers, Dehumidifiers, and Cooking Products and*

the range for each class is greater than 11 percent of the baseline annual energy use. DOE proposes to measure the energy consumption associated with an air circulation fan operating at the end of the active cycle as described in section III.C.

TABLE III.1—DOE ESTIMATE OF ANNUAL ENERGY USE FOR CONVENTIONAL OVEN AND RANGE FAN-ONLY MODE

	Weighted-average cooking frequency (*cycles per day*)	Annual active mode energy consumption	Annual fan-only mode energy consumption
Standard Electric Ovens	0.60	166.5 kWh	0.6 to 38.3 kWh.
Self-Cleaning Electric Ovens	0.56	171.0 kWh	0.5 to 35.8 kWh.
Standard Gas Ovens	0.50	0.92 MMBtu (269 kWh)	0.5 to 31.9 kWh.
Self-Cleaning Gas Ovens	0.54	1.04 MMBtu (305 kWh)	0.5 to 34.5 kWh.

As with dishwashers, DOE also tentatively concludes that operation of the fan after the end of the active cycle, *i.e.,* in fan-only mode, would classify this mode as part of active mode rather than cycle finished mode or, more generally, standby mode. DOE proposes for conventional cooking products to define fan-only mode as ''an active mode in which a fan circulates air internally or externally to the cooking product for a finite period of time after the end of the heating function, as indicated to the consumer.''

B. Dishwasher Water Softener Regeneration

The current dishwasher test procedure does not account specifically for the regeneration operation of the water softener in its measurement of energy and water use. Manufacturers have filed petitions for waiver from the test procedure applicable to dishwashers for units that contain a built-in water softener regeneration system, asserting that: (1) The amount of water consumed by the regeneration operation of a water softener in a dishwasher is very small, but varies significantly depending on the adjustment of the softener; (2) the regeneration operation takes place infrequently and is related to the level of water hardness; and (3) including this water use in the measurement of water consumption during an individual energy test cycle could overstate water and energy use.

These manufacturers estimated through in-house measurements that the water softener regeneration occurs once every six active mode cycles, and that the system consumes approximately 23 gallons of water and 4 kWh of electricity per year, assuming an average U.S. water hardness of 217 milligrams per liter (mg/L). One manufacturer also estimated that the system consumes 4.97 L of water per regeneration cycle, and that approximately 50 percent of U.S. households that have hard water have their entire water supply softened. The manufacturers requested approval to measure the water consumption of dishwashers having water softeners without including the water consumed by the dishwasher during softener regeneration, as outlined in European Standard EN 50242, ''Electric Dishwashers for Household Use—Methods for Measuring the Performance.''

DOE granted waivers to these manufacturers that provided an alternate means to account for the water and energy used during water softener regeneration. The waivers permitted these manufacturers to measure water and energy consumption of the specified dishwasher models that have water softener regeneration systems according to the following methodology:

(a) The DOE test is initiated on a cycle immediately following a regeneration cycle.

(b) Water and energy consumption shall be measured according to the DOE test procedure in 10 CFR part 430, subpart B, appendix C, ensuring that regeneration does not take place during the test.

(c) Constant values of 23 gallons/year of water and 4 kWh/year of energy, representing the water and energy consumption associated with water softener regeneration, shall be added to the estimated annual energy and water use.

(d) Should regeneration happen during the DOE test, the water consumed during water softener regeneration can be disregarded for the per cycle water and energy consumption measurement, provided constant values are added to the estimated annual energy and water use. The constant values in the waivers were specified as 23 gallons/year of water and 4 kWh/year of energy and 47.6 gallons/year of water and 8 kWh/year of energy, respectively. (DOE did not find evidence that 50 percent of U.S. households with hard water have their entire water supply softened.)

(e) Representations about the energy use of water-softening dishwashers that are the subject of such waivers for compliance, marketing, or other purposes may be made only to the extent that such products have been testing according to this methodology.

In response to the December 2010 NOPR and September 2011 SNOPR, DOE received comments regarding the measurement of energy and water use for dishwasher water softener regeneration. BSH Home Appliances Corporation (BSH) and Earthjustice noted the waiver granted to Whirlpool Corporation (Whirlpool), and BSH suggested that DOE consider for this rulemaking the same approach of adding the incremental energy use associated with the regeneration process. Earthjustice requested that DOE inform the public of its plans to amend the dishwasher test procedure accordingly. (BSH, Public Meeting Transcript, No. 10 at p. 37; Earthjustice, No. 15 at p. 1) BSH commented that recent interpretations have considered water softener regeneration to be part of active mode, and that DOE treats it differently than the IEC does. According to BSH, the IEC does not consider regeneration as active mode, but as a secondary process separate from washing the dishware. BSH further commented that there are limited data in the United States regarding how many dishwashers have the regeneration function, and how often this function is activated. BSH stated

Commercial Clothes Washers, March 2009, includes clock power. The technical support document is available online at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/cooking_products_final_rule_tsd.html.*

that water softening systems are typically on very high-end products, and that it believes that homes in which these dishwashers are installed typically have home water softening systems, so that the frequency of use could be very low. (BSH, Public Meeting Transcript, No. 10 at pp. 37–39).

In response to these comments, DOE conducted analysis for today's SNOPR in support of potential dishwasher test procedure amendments to address water softener regeneration.

Based on review of the data submitted by manufacturers in their petitions for waiver, product database research, and manufacturer interviews, DOE observed that some areas in the United States have hard municipal or locally supplied water, defined as having calcium ion concentrations higher than 180 parts per million (ppm). Hard water prevents soaps and detergents from properly sudsing, resulting in unsatisfactory cleaning performance. To address this issue, some residential dishwashers have a built-in water softening system to minimize excess use of detergent and re-cleaning of the dishware due to unsatisfactory washing. The water softener system may consist of a resin bed which provides an ion exchange to remove calcium and magnesium ions from the water, by swapping sodium ions bonded to the resin with the calcium and magnesium ions. Over time, the calcium and magnesium replace all the sodium in the resin bed, which therefore must be periodically recharged with sodium by flushing a saline solution over it, a process which is referred to as regeneration. During a cycle which includes a regeneration process, additional water is mixed with sodium chloride (salt) supplied by the consumer in a compartment separate from the detergent compartment to create the saline solution, and this incremental water consumption requires energy to heat it to the same temperature as is used for the active cycle.

The frequency of the water softener regeneration is dependent on the following:

(a) Amount of water consumed in a normal cycle;

(b) Hardness of the water at the inlet to the dishwasher; and

(c) Hardness level set by the user on the unit as per manufacturer's instructions. Typically, the user is asked to determine the hardness of the water (in ppm) and to set the level in the dishwasher accordingly. If the hardness level in the unit is set to 0, the water softening system will not be used and thus a regeneration process will take place infrequently or never.

As noted previously, according to manufacturer data, the average water hardness in U.S. households is 217 ppm (12.6 grains per gallon), and that at this level, the regeneration process will take place in their dishwashers equipped with built-in water softening systems approximately once every six active cycles, or 36 times per year. DOE does not have additional information regarding whether this frequency is representative of other dishwashers with built-in water softening systems, the prevalence of home water softening systems, and consumer usage habits. Therefore, DOE is proposing to retain the value of 36 regeneration events per year, but seeks comment and information on a representative frequency.

DOE then examined the electrical and water heating energy consumption, along with water consumption, to determine appropriate test procedure amendments for representative dishwashers with built-in water softening systems. Machine electrical energy consumption associated with the regeneration process primarily consists of the energy consumed to activate a dedicated solenoid valve to the water softening system and additional activation of the drain pump to circulate and flush the saline solution, as well as any electrical energy needed to heat the water internally. Because the regeneration process takes place over approximately 20 seconds, and because the electrical power associated with the water handling components is estimated by DOE based on its research to be less than 100 W, the maximum electrical energy use per regeneration process for the water handling components is 0.0005 kWh. Assuming 36 regeneration events occur per year, the annual electrical energy use associated with water softener regeneration would be only 0.02 kWh, or less than 0.01 percent of the maximum allowable annual energy use in active mode and standby mode for standard dishwashers. (DOE is not aware of any compact dishwashers with built-in water softening systems.) Therefore, the primary machine electrical energy use during water softener regeneration is associated with internal water heating.

According to the data submitted by manufacturers in their petitions for waiver, the volume of water consumed for a water softener regeneration process ranges between 2.4 and 5 L (0.63 to 1.32 gallons) per active cycle that includes regeneration. Since regeneration is estimated to occur once every six active cycles, this would correspond to an average allocation of 0.1 to 0.2 gallons per active cycle for the regeneration process. These average water consumption values should be adjusted to account for the percentage of homes with hard water that use home water softening systems instead of the dishwasher built-in system, but DOE lacks data to assign a value to this percentage, and for the purposes of today's SNOPR is proposing to assume that all dishwashers with built-in water softeners perform the periodic regeneration. The current residential dishwasher energy conservation standards allow for a maximum water consumption of 6.5 gallons per cycle for standard dishwashers, so that water softener water consumption would represent at least 2 percent of the allowable water consumption. DOE proposes to measure the water consumption associated with regeneration for dishwashers with built-in water softening systems. DOE requests data and information on this percentage, as well as the incremental water consumption associated with built-in water softener regeneration.

Similarly, DOE examined the water-heating energy consumption for water softener regeneration, based on the allocation of 0.1 to 0.2 gallons of additional water consumption per active cycle. The water-heating energy use was calculated as (0.1 to 0.2 gallons per active cycle) × (the nominal temperature rise of 90 °F from the nominal cold water temperature of 50 °F to the nominal hot water temperature in the dishwasher of 140 °F) × (specific heat of water, 0.0024 kWh per gallon per °F) × (1 − percentage of households with home water softening systems) × (215 active cycles per year). This would be calculated as 4.6 to 9.2 kWh per year if all households with hard water were assumed to require the use of the dishwasher water softening system, which represents at least 1 percent of the maximum allowable annual energy use of 355 kWh for standard dishwashers. Because the water heating may take place internally in the dishwasher or externally in the home water heater, DOE proposes to measure the machine electrical energy consumption as well as the water consumption associated with water softener regeneration. As discussed previously, DOE does not have information regarding the percentage of households with hard water that use home water softening systems and is therefore proposing in today's SNOPR to assign a value of zero to this percentage. DOE seeks comment on this percentage and the inclusion of water-heating energy use associated with water softener regeneration in the proposed

amendments to the dishwasher test procedure.

C. Calculation of Energy Consumption in Active, Standby, and Off Modes

In the December 2010 NOPR, DOE proposed two possible approaches for measuring energy consumption in modes other than active washing mode for dishwashers and active cooking mode for conventional cooking products; *i.e.,* inactive (standby) mode and off mode, as well as delay start mode and cycle finished mode.[12] These modes are collectively referred to as low-power modes in this proposal. For the first approach, DOE proposed allocating specific annual hours to each of the active, standby, and off mode hours. Using this approach, the annual energy use associated with inactive, off, delay start, and cycle finished modes would be calculated by (1) Calculating the product of wattage and allocated hours for all possible inactive, off, delay start and cycle finished modes; (2) summing the results; and (3) dividing the sum by 1,000 to convert from Wh to kWh. For the per-cycle energy use metrics, this value would be divided by the proposed annual active use cycles per year.

As an alternate approach, DOE proposed measuring power consumption for only off and inactive modes for the purpose of calculating the total energy consumed in all low-power modes. Using this approach, energy use in delay start and cycle finished mode would be accounted for by allocating all the hours not associated with active washing or cooking mode to the inactive (standby) and off modes and then measuring standby or off mode power. DOE retained these proposals in the September 2011 SNOPR.

DOE received multiple comments in response to the December 2010 NOPR regarding the proposed approaches for measuring energy use in low-power modes as well as the allocation of hours associated with each low-power mode. ASAP and the NOPR Joint Comment stated that, although currently the annual energy consumption in certain non-active modes may represent a small fraction of total annual energy consumption, DOE should establish test procedures that include measurements of energy consumption in each non-active mode to incentivize manufacturers to reduce power consumption in these modes. ASAP commented that DOE should consider not just those products that are currently on the market, but those that may be introduced in the next 5 or 7 years as well. ASAP and the NOPR Joint Comment stated that if the test procedures do not measure power consumption in each non-active mode, the energy consumption of any new features in these modes that are introduced to products will not be captured. (ASAP, Public Meeting Transcript, No. 10 at pp. 87–88, 109; NOPR Joint Comment, No. 13 at pp. 5–6) The SNOPR Joint Comment supported the approach of measuring delay start and all non-active modes separately. (SNOPR Joint Comment, No. 22 at pp. 1–2) NEEA commented that if DOE defines cycle finished mode as an inactive mode, then the energy consumption in all standby and off modes must be measured as part of the test procedure, and the hours spent in each component of the inactive mode must be based on at least some data from the testing of actual products in the field. (NEEA, No. 11 at p. 5).

Whirlpool supports using the proposed alternate approach, which would specify hours for the off and inactive modes when calculating energy use. According to Whirlpool, delay start and cycle finished modes should not be separately measured because they represent a *de minimus* amount of annual energy use. (Whirlpool, No. 12 at p. 5). Whirlpool commented that under the original proposal, testing burden is increased by adding requirements to measure cycle finished mode, inactive mode, and off mode. Whirlpool estimated the time required for the measurement of standby mode and off mode power under the alternate approach as 10 minutes per product, as compared to 45 minutes if each standby mode and off mode were measured separately. According to Whirlpool, multiplying the added 35 minutes by the 100 tests it conducts each year results in an increase in test burden of 7–8 man-days per year, which is a 3-percent productivity loss for the company. Whirlpool stated that the cost and complexity of measuring cycle finished and off/inactive modes individually greatly exceeds the value of such an approach. (Whirlpool, No. 21 at pp. 2–3) AHAM stated that, although it objected to the annual hours allocated to the various modes, it believes that the alternative approach is preferable to the measurement of power consumption in each mode for dishwashers and conventional cooking products. (AHAM, No. 14 at pp. 9, 12).

Today's SNOPR does not propose to include provisions to measure delay start mode or cycle finished mode separately from the active washing or cooking mode. Instead, today's SNOPR proposes the alternate approach, in which all low-power modes are allocated to the inactive and off modes, depending on which of these modes is present. DOE believes that its assumption set forth in the December 2010 NOPR that the power consumption in each of these low-power modes is similar remains valid, and that in such a case, measuring power consumption of each mode separately would introduce significant test burden without a corresponding improvement in a representative measure of annual energy use.

DOE is, however, proposing to require separate measurement of fan-only mode. The power consumption and duration of this mode may vary significantly from product to product, and the energy use associated with this mode may in some cases represent a larger percentage of annual energy consumption than the energy use in the low-power modes. For the dishwasher test procedure, DOE is proposing to require the measurement of the energy consumption and duration of fan-only mode for each cycle run as part of the test procedure, averaging these values when multiple cycles are required (*i.e.,* for soil-sensing dishwashers). This energy consumption would be required to be included in the annual energy consumption metric upon the compliance date of any updated dishwasher energy conservation standards addressing standby mode and off mode energy use. For conventional ovens, DOE is proposing to require measuring the energy consumption and duration of fan-only mode at the end of the active mode heating cycle. This energy consumption would be included in the integrated energy factor and integrated annual energy consumption metrics.

DOE is also proposing provisions in the amended dishwasher test procedure that would include the machine energy consumption, water consumption, and water-heating energy consumption associated with the active mode function of water softener regeneration. DOE analysis suggests that the water consumption for an active cycle including water softener regeneration is typically more than 10 percent higher than the water consumption for an

[12] Active washing mode for dishwashers includes washing, rinsing, and drying, and active cooking mode for conventional cooking products includes oven self-clean functions. DOE also proposed that delay start mode for both dishwashers and conventional cooking products are part of active mode, along with cycle finished mode for conventional cooking products. Cycle finished mode for cooking products would be considered a part of active mode because it would not persist indefinitely after a cooking cycle. Cycle finished mode for dishwashers was proposed as a standby mode because it could persist indefinitely after an active washing cycle.

active cycle without regeneration. Therefore, for machines with built-in water softening systems, one of the proposed methods to measure this additional energy and water consumption would require that two normal cycles be run with no dishware load and with the water softening system set to the setting corresponding to a water hardness of 217 mg/L and with salt provided to the system per the manufacturer's instructions. The resulting water consumption for the two cycles would then be compared. If the water consumption for either cycle is greater than the other by more than 10 percent, then the cycle with the higher water consumption would be deemed to have a regeneration process, and the difference in water consumption between the two cycles would be determined to be the incremental water consumption associated with regeneration, and the incremental machine energy consumption for regeneration would be the difference in machine energy consumption for the two cycles. If neither cycle consumed an amount of water that is 10 percent higher than for the other cycle, additional cycles would be run until the water consumption for a cycle is 10 percent higher than the average of the water use for the previous cycles, with the incremental regeneration water consumption determined to be the highest water consumption minus the average water consumption from the previous cycles. The incremental machine energy consumption would be the machine energy consumption for cycle with the highest water consumption minus the average machine consumption from the previous cycles. The incremental regeneration machine and water consumption would be apportioned to each active mode cycle, to be considered as part of the energy conservation standard metrics, by multiplying by the number of annual regeneration processes (36) and dividing by the annual use cycles (215). These products should also be multiplied by (1—percentage of households with home water softening systems), but as noted in section III.B, DOE does not have information on such a percentage and thus is not including this factor in the calculations proposed in today's SNOPR. If a total of 10 cycles are run without meeting the threshold criterion, the dishwasher would be deemed not to be a water-softening dishwasher for the purposes of the dishwasher test procedure. In either case, the DOE test procedure would be conducted immediately following this portion of the test, with the water softener system set to its lowest water hardness setting.

The water-heating energy associated with water-softening dishwashers that operate at a nominal 120 °F or 140 °F inlet temperature would be calculated as (regeneration water consumption per active cycle) × (the temperature rise from the nominal cold water temperature of 50 °F to the nominal inlet water temperature) × (specific heat of water, 0.0024 kWh per gallon per °F) for electric water heaters. For gas-heated or oil-heated water, the water-heating energy would be calculated as (regeneration water consumption per active cycle) × (the temperature rise from the nominal cold water temperature of 50 °F to the nominal inlet water temperature) × (specific heat of water, 8.2 Btus per gallon per °F)/(the nominal heat recovery efficiency of a gas or oil water heater, 0.75).

DOE also proposes an alternate method to account for the machine energy consumption, water consumption, and water heating consumption associated with water softener regeneration. Under the alternate approach, for those units with built-in water softening systems, manufacturers would add constant values for these amounts. Based on manufacturer data, these amounts can range from 23 gallons/year—47.6 gallons/year and 4 kWh/year—8 kWh/year. DOE seeks comments and data on appropriate constant values, as well as whether the constant values should vary based on certain criteria.

D. Dishwasher Test Procedure Clarifications

During recent implementation of the dishwasher test procedure in third-party labs, interested parties raised questions regarding the appropriate interpretation of certain provisions. DOE is proposing clarifications to these provisions in order to ensure that the procedure is uniformly applied during testing. The proposed amendments discussed in this section would apply to all dishwasher testing upon the effective date of the amended test procedure (*i.e.,* 30 days after the date of publication of the test procedure final rule in the **Federal Register**).

1. Normal Cycle Definition

The DOE dishwasher current defines the normal cycle as ''the cycle type recommended by the manufacturer for completely washing a full load of normally soiled dishes including the power-dry feature.'' (Section 1.6 of 10 CFR part 430, subpart B, appendix C) DOE is aware that certain dishwashers have multiple wash and/or drying temperature options for the cycle setting required under the normal cycle definition. For these dishwashers, DOE clarifies in the definition that the normal cycle shall include the wash and drying temperature options recommended by the manufacturer for completely washing a full load of normally soiled dishes including the power-dry feature. DOE seeks comment on the wash and drying temperature options to be selected in the case that the cycle setting required under the normal cycle definition has multiple wash and/or drying temperature options but the manufacturer does not provide such a recommendation.

2. Power Supply Requirements

The current DOE dishwasher test procedure defines a soil-sensing dishwasher as ''a dishwasher that has the ability to adjust any energy consuming aspect of a wash cycle based on the soil load of the dishes.'' (Section 1.12 of appendix C) For certain soil-sensing dishwashers, DOE is aware that the turbidity sensor may lose its calibration during a power supply interruption. DOE observed, for example, during its energy testing of a limited sample of soil-sensing dishwashers that the first cycle after a power supply interruption consumed as much as 30-percent higher energy and 50-percent higher water than subsequent cycles. As a result, removing the power supply to these units in between energy test cycles may lead to unrepresentative results. DOE also recognizes that, for soil-sensing units, any turbidity sensor calibration must be completed prior to conducting the water softening regeneration test and active mode cycle according to newly proposed sections 4.1 and 4.2 of appendix C, respectively. Therefore, DOE proposes that, for soil-sensing dishwashers: (1) the cycle setting for the active mode cycle (in which the soil sensor is active) be selected for the preconditioning cycle described in newly proposed section 2.9 of appendix C, and (2) the power supply to the unit be continuously maintained throughout testing, including after the preconditioning cycle and in between all energy test cycles.

3. Energy Test Cycle Selection

DOE is aware of certain soil-sensing dishwasher models that contain a soil-sensing cycle selection separate from a non-soil-sensing normal cycle. Such a cycle, if selected as the test cycle, may lead to lower water and energy use, as the unit would be unable to differentiate between the loads for sensor heavy, sensor medium, and sensor light

response as specified in current sections 1.9, 1.10, and 1.11 of appendix C. As a result, testing such units using an energy test cycle without soil-sensing may lead to unrepresentative results. Therefore, DOE proposes that soil-sensing dishwashers be tested on the normal cycle under section 2.6.3 of appendix C if soil-sensing is available as an option in the normal cycle. If soil-sensing is not available for the normal cycle, DOE proposes that the dishwasher be tested by selecting the cycle type that uses the soil-sensing system, and contains all the elements of a normal cycle including the power-dry feature (if such a feature is provided).

4. Test Load Specifications and Soiling Requirements

For soil-sensing dishwashers, the current dishwasher test procedure provides instructions in section 2.6.3 of appendix C on the preparation of the test loads for the sensor heavy, sensor medium, and sensor light response. In each case, the test load is defined as a number of place settings plus serving pieces, as specified in section 2.7 of appendix C, and a subset of those place settings must be soiled according to ANSI/AHAM DW–1–1992, ''Household Electric Dishwashers'' (DW–1–1992), while the remaining place settings, serving pieces, and all flatware are not soiled. DOE recognizes that while individual dishware, glassware, and flatware items are specified in section 2.7 of appendix C, the test procedure does not define which items a ''place setting'' comprises. Although not referenced specifically in appendix C, DW–1–1992 defines a place setting as the dishware, glasses, and flatware associated with a table serving for one person, which consists of one cup, one saucer, one dinner plate, one bread and butter plate, one fruit bowl, one glass, one dinner fork, one salad fork, one knife, and two teaspoons. DW–1–1992 also defines ''serving pieces'' as the dishware and flatware used on the table, which include one platter, two serving bowls, two serving spoons, and one serving fork. Because DW–1–1992 includes flatware items in a place setting, DOE believes that the instructions in section 2.6.3 of appendix C to soil a certain number of place settings may be interpreted to conflict with the additional requirement that all flatware items remain unsoiled. Therefore, DOE proposes to amend section 2.7 of appendix C to specify the individual items in a place setting and identify the serving pieces, as well as to clarify in section 2.6.3 of appendix C that the flatware that is part of a soiled place setting is to remain unsoiled.

DOE notes that certain items specified for the test load in section 2.7 of appendix C may be obsolete and, thus, may not be obtained for use in the dishwasher test procedure. In particular, DOE believes that the cup and saucer, salad fork, serving fork and serving spoon are no longer available as currently specified. AHAM submitted information to DOE regarding alternative specifications for all flatware and serving pieces, which AHAM considers acceptable for use in its current dishwasher test method, DW–1–2009. AHAM provides specific pattern names and product numbers for each of the flatware and serving piece items. (AHAM, No. 24 at pp. 1–2) DOE believes that AHAM's specifications represent the most reasonable alternative for the obsolete test load flatware and serving pieces, and proposes in today's SNOPR to amend the test load specifications in section 2.7 of appendix C accordingly. DOE also seeks comment on alternative specifications for other test load items which may be obsolete, including the cup and saucer, and will consider additional amendments to the test load specifications in appendix C if it receives such information.

5. Detergent Dosing Specifications

The current DOE dishwasher test procedure requires the use of half the quantity of detergent specified by DW–1–1992. Section 4.1 of ANSI/AHAM DW–1–1992 requires the use of 0.5-percent concentration by weight of Cascade powder national formula dishwasher detergent in the prewash and main wash cup. Thus, appendix C requires 0.25-percent detergent concentration by weight in the prewash and main wash cup, but it does not specify what water usage should be used as the basis for calculating the concentrations and how the actual detergent weights would be determined.

Therefore, DOE proposes to calculate the required detergent amounts by measuring the volume of water (in gallons) used during the prewash and the main wash portions of the cycle when running the preconditioning cycle as specified in appendix C. To ensure representative water volumes, DOE proposes requiring that the preconditioning cycle be run using the cycle setting for the active mode cycle. The amount of detergent in grams (g) required for the prewash would then be calculated as (volume of water used during the prewash portion) × (water density in pounds (lb)/gallon, which is a function of the nominal inlet water temperature) × (453.6 g/lb, the conversion factor from lb to g) × (0.0025, the conversion factor to obtain 0.25-percent mass concentration). The amount of detergent in grams required for the main wash would be calculated as (volume of water used during the main wash portion) × (water density in lb/gallon, which is a function of the inlet water temperature) × (453.6 g/lb, which is the conversion factor from lb to g) × (0.0025, the conversion factor to obtain 0.25-percent mass concentration).

DOE is also aware that the detergent specified in section 4.1 of ANSI/AHAM DW–1–1992, ''Cascade powder national formula,'' is not a currently-marketed formulation. Thus, DOE proposes amending the dishwasher test procedure to specify the use of ''Cascade with the Grease Fighting Power of Dawn'' powder detergent, which it believes to be the most representative Cascade power national formulation available at this time on the market.

E. Incorporation by Reference of an Updated AHAM Dehumidifier Test Procedure

On July 22, 2011, DOE received a request for guidance from AHAM on interpreting the appropriate version of AHAM's dehumidifier test method, DH–1, ''Dehumidifiers'' (DH–1), to be used in the DOE dehumidifier test procedure found at 10 CFR part 430, subpart B, appendix X (appendix X). According to AHAM, it is ambiguous as to whether the appropriate version of DH–1 is the one that was in effect at the time that the current DOE test procedure was published (AHAM DH–1–1992 (DH–1–1992)) or the current version that was issued in 2008 (ANSI/AHAM DH–1–2008 (DH–1–2008)). AHAM recommended that the DOE test procedure be interpreted to require the use of DH–1–2008 because it contains technical improvements and clarifications as compared to the earlier version. (AHAM, No. 23 at pp. 1–2).

Currently, section 4 of appendix X requires that dehumidifier capacity and EF be evaluated by means of the ENERGY STAR qualification criteria that were in effect as of January 1, 2001. Those criteria (denoted as version 1.0) in turn require that capacity be measured according to DH–1, with no version specified, and EF be measured according to CAN/CSA–C749–1994 (R2005), ''Performance of Dehumidifiers'' (CAN/CSA–C749). DOE agrees that the required test method for capacity measurement could be interpreted as either the version of DH–1 that was in effect as of January 1, 2001 (DH–1–1992), or the version that is currently effective (DH–1–2008).

DOE, therefore, evaluated both the 1992 and 2008 editions of DH–1 to

compare results from the 2008 version with results from the 1992 version. A review of each edition reveals that the updated provisions that could affect the capacity measurement refer to measurement equipment accuracy, test room specifications, and data recording frequency. Other changes, including the addition of EF measurement methodology equivalent to that in CAN/CSA–C749, do not impact the capacity measurement. Each of the substantive changes is detailed in the following sections.

1. Temperature Measurement Accuracy

DH–1–1992 requires thermometers measuring wet-bulb and dry-bulb temperatures to be accurate to 0.1 °F, with graduated intervals of no more than 0.2 °F. DH–1–2008 maintains those accuracies for analog temperature measurement devices, but requires a precision of 0.05 °F for digital equipment. DOE believes that many test labs are already using thermocouples and data acquisition systems, and thus achieving the more accurate temperature measurements. In any event, this requirement would maintain or improve the determination of ambient conditions, leading to maintaining or improving test repeatability and reproducibility.

2. Weight Measurement Accuracy

DH–1–2008 allows the use of less accurate weight measurement equipment for measuring the amount of condensate that is collected during the test. This newer version requires a maximum of 0.5 percent variation among individual readings, rather than the 0.2 percent specified in DH–1–1992. Because this allowable variation directly translates to a 0.5-percent uncertainty in the capacity rating, the effect of this change would be to allow the capacity ratings to range from 15 ± .08 pints/day for the smallest unit in DOE's compliance certification database [13] to 150 ± .75 pints/day for the largest unit. While a 0.2-percent uncertainty allows enough variation to produce a change in the significant digits of the metric used for capacity classification, *i.e.,* two digits after the decimal point, this greater allowable uncertainty could result in any dehumidifiers being rated at a lower capacity than they would by using DH–1–1992.

[13] DOE's Compliance Certification Database is available online at: *www.regulations.doe.gov/certification-data/Category.html.*

3. Barometric Pressure Measurement Accuracy

DH–1–2008 adds a new requirement that the barometric pressure measuring instrument must be accurate to 0.3 percent. DOE is not aware of the type of pressure instruments that have been or are currently being used by test labs, so it is not known whether this new requirement would have any impact on nominal performance measurements. DOE believes in general, however, that providing such a specification would help ensure test repeatability and reproducibility by aiding in maintaining ambient conditions closely.

4. Test Room Requirements

In DH–1–2008, AHAM increased the minimum distance between any room surface and the discharge side of the dehumidifier from 3 feet to 6 feet. This version of DH–1 also adds a requirement that the test room conditioning equipment handle air at a rate of not less than two times the dehumidifier air flow, and that the air flow approaching the dehumidifier be uniform in velocity. Further, DH–1–2008 newly specifies the orientation of the dehumidifier with respect to the air flow within the test room and the position of an air sampling tree in relation to the inlet face of the test unit. DOE interprets that the purpose of these new requirements is to ensure that testing conditions are as stable and uniform as possible, and does not believe that the different requirements would measurably affect the nominal performance of a test unit.

5. Data Recording Intervals

Measurements of the energy use, supply power, and wet- and dry-bulb temperatures are required to be recorded at 30-minute intervals in DH–1–1992. The intervals were shortened to 10 minutes in the 2008 version. This change would not cause a change in the nominal capacity measurement because the final condensate measurement would remain the same. The greater recording frequency helps to ensure that proper test conditions are maintained throughout the test. There is, however, an accompanying increase in test burden, as the new test procedure requires recording 36 events over the 6-hour test period instead of the original 12, but DOE concludes that the incremental burden is small if the data are recorded automatically in a data acquisition system, as is likely for many test labs.

In sum, upon review of the two versions of DH–1, DOE recognizes that there could be minor impacts to the nominal capacity measurement associated with the changes made from DH–1–1992 to DH–1–2008. However, DOE tentatively concludes that, on balance, the use of either version would produce comparable results for its dehumidifier test procedure. Further, DOE believes that the additional clarity and specificity provided by the 2008 version would improve test accuracy, repeatability, and reproducibility.

DOE further proposes that the dehumidifier test procedure directly reference DH–1–2008 for both the capacity and EF measurements given that the EF methodology has been added to DH–1–2008. The proposed test method is based on the ENERGY STAR criteria (as required by EPCA) and CAN/CSA–C794–1994. DOE proposes the direct reference to DH–1–2008 given the improvements in that version as compared to the test method set forth in DH–1–1992 and referenced in the ENERGY STAR criteria. Therefore, DOE proposes in today's SNOPR to update the reference in its dehumidifier test procedure to DH–1–2008 for both capacity and EF measurements, and eliminate the reference to the ENERGY STAR qualification criteria.

F. Technical Corrections

In sections 5.4.1 and 5.4.2 of the current dishwasher test procedure, water energy consumption is calculated as specified for both non-soil-sensing and soil-sensing dishwashers using electrically heated water ''[f]or the normal and truncated normal test cycle.'' Because the normal and truncated normal test cycles do not apply to soil-sensing dishwashers, DOE proposes to remove this qualification in newly designated sections 5.5.1.1 and 5.5.2.1. Similarly, in sections 5.5.1 and 5.5.2 of the current dishwasher test procedure, water energy consumption is calculated as specified for both non-soil-sensing and soil-sensing dishwashers using gas-heated or oil-heater water ''[f]or each test cycle.'' Because for soil-sensing dishwashers the calculation is applied to a single weighted-average water consumption measured over the sensor heavy response, sensor medium response, and sensor light response cycles, DOE believes that this qualification may cause confusion. Therefore, DOE proposes to remove this qualification in newly designated sections 5.6.1.1 and 5.6.2.1. DOE also proposes to correct references to the water consumption values used in the calculation of water energy consumption in these sections of the dishwasher test procedure, so that separate references are provided for non-soil-sensing and soil-sensing dishwashers.

Due to a transcription error in publication, the September 2011 SNOPR erroneously specified in the regulatory text for the proposed dishwasher test procedure amendments the calculation of estimated annual operating cost for dishwashers having a truncated normal cycle which operate at 50 °F inlet water temperature. Specifically, the calculation proposed in 10 CFR 430.23(c)(1)(i)(B) contained extraneous variables ''B'' and ''V.'' DOE proposes in today's SNOPR to remove these extraneous variables to correct the calculation.

G. Removal of Obsolete Measures of Gas Pilot Light Energy Consumption in the Conventional Cooking Products Test Procedure and of Energy Factor Calculations for Dishwashers

The energy conservation standards for cooking products require that gas cooking products manufactured on or after April 9, 2012, shall not be equipped with a constant burning pilot light. 10 CFR 430.32(j). Therefore, the provisions in the cooking products test procedure that measure the energy use of gas pilot lights shall be obsolete at the time any final test procedure amendments become effective. For this reason, DOE proposes to delete existing sections 2.9.2.2 (''Flow meter''), 3.1.1.2 (''Continuously burning pilot lights of a conventional gas oven''), 3.1.2.1 (''Continuously burning pilot lights of a conventional gas cooking top''), 3.2.1.3 (''Gas consumption of continuously burning pilot lights'' [for conventional gas ovens]), 3.2.2.1 (''Gas consumption of continuously burning pilot lights'' [for conventional gas cooking tops]), 3.3.7 (recording the gas flow rate or gas consumption and elapsed time for a continuously burning pilot light of a conventional gas oven), 3.3.10 (recording the gas flow rate or gas consumption and elapsed time for a continuously burning pilot light of a conventional gas cooking top), 4.1.2.2 (''Annual energy consumption of any continuously burning pilot lights'' [for conventional gas ovens]), and 4.2.2.2.2 (''Annual energy consumption of any continuously burning gas pilots'' [for conventional gas cooking tops]) in 10 CFR part 430 subpart B appendix I. DOE also proposes to modify (and renumber where appropriate) existing sections 1.7 (''Normal nonoperating temperature''), 1.14 (''Symbol usage''), 2.9.2.1 (''Positive displacement meters''), 3.1.1 ''Conventional oven''), 3.1.1.1 (''Self-cleaning operation of a conventional oven''), 3.1.2 (''Conventional cooking top''), 4.1.2.5.2 (''Conventional gas oven energy consumption''), 4.1.2.6.2 (''Conventional gas oven energy consumption'' [for multiple conventional gas ovens'']), 4.2.1.2 (''Gas surface unit cooking efficiency''), and 4.2.2.2.3 (''Total annual energy consumption of a conventional gas cooking top'') to eliminate the measures of energy use relating to gas pilot lights.

DOE also proposes to eliminate the calculation of energy factor for dishwashers in 10 CFR 430.23 because this metric is no longer used in DOE's energy conservation standards for dishwashers or to make representations of energy efficiency.

H. Compliance With Other EPCA Requirements

EPCA requires that ''[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use * * * and shall not be unduly burdensome to conduct.'' (42 U.S.C. 6293(b)(3)).

For the reasons stated in the December 2010 NOPR and September 2011 SNOPR, DOE tentatively concluded that the amended test procedures would produce test results that measure the standby mode and off mode power consumption during representative use, and that the test procedures would not be unduly burdensome to conduct. DOE continues to make these assertions for today's SNOPR, as explained below.

Regarding the proposal in today's SNOPR to measure energy use in fan-only mode, DOE recognizes that the current specifications for the watt-hour meter to be used for measuring energy consumption in the dishwasher active washing cycle and conventional cooking products cooking cycle may not be sufficient. Therefore, DOE is proposing more stringent specifications for these watt-hour meters. The watt-hour meter in the dishwasher and conventional cooking products test procedures would be required to have a resolution of 0.1 watt-hour or less and a maximum error of no more than 1 percent of the measured value for any demand greater than 5 watts. Today's proposal would allow the measurement of fan-only mode energy consumption as a continuation of the active mode cycle, rather than necessitating a separate cycle to be run to measure the energy use in fan-only mode using the more accurate watt-meter. The proposed approach would minimize test burden associated with the measurement of fan-only mode.

For the proposed amendments to incorporate the energy and water use associated with dishwasher water softener regeneration, manufacturers would need to run up to an additional ten cycles to ensure that a regeneration process is captured. DOE based this proposal on the information supplied by manufacturers that, on average, water-softening dishwashers regenerate approximately once every six cycles. To minimize test burden, particularly for soil-sensing dishwashers, DOE proposes that these cycles would be run with no test load, since DOE believes that a substantial part of the burden for the existing test procedure is incurred by the preparation and application of soils to the dishware. DOE welcomes comment on this approach, as well as the alternative approach to add constant values for this energy and water use, which could reduce the test burden on manufacturers. DOE also seeks comment on any other alternative methods to initiate, identify, and measure the water softener regeneration process.

The proposed clarifications for dishwasher test load and soiling specifications would not impact test burden because the test conduct would remain the same. The proposed clarification of the energy test cycle selection for certain soil-sensing dishwashers could change the test duration if the cycle time for the non-soil-sensing normal cycle and required soil-sensing cycles are different, but the time could be shorter or longer depending on the specific model. For the proposed detergent dosing clarifications, test burden may be reduced, as the amendments would provide clear instructions on the appropriate method by which to determine the dosing amounts. DOE welcomes comment on the impacts of these proposed clarifications.

As discussed in section III.E, today's proposal to reference AHAM DH–1–2008 in the dehumidifier test procedure would newly specify the precision of digital temperature measurement devices for measuring wet-bulb and dry-bulb temperatures and the accuracy of the barometric pressure measurement instrument. DOE estimates the retail cost of such equipment as approximately $500. The proposed dehumidifier amendments would also allow the use of less accurate weight measurement equipment, which imposes no burden on manufacturers. The proposed test room requirements, however, could require the use of a larger test chamber than is specified under the current test procedure, and could also require different air handling equipment. Many test laboratories may

already be using AHAM DH–1–2008 and thus may meet these requirements. In addition, for those laboratories that are recording data manually, the proposed shortened data recording intervals could result in three times the data recording events than are currently required. Because only four parameters are recorded for each event, however, the total increase in operator time is estimated to be less than 1 hour. DOE welcomes comment on the potential burden of the test room and data recording requirements for today's proposal, including the prevalence of automatic data recording.

IV. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the December 2010 NOPR and September 2011 SNOPR remain unchanged for this SNOPR. These determinations are set forth in the December 2010 NOPR (75 FR 75290, 75317–19 (Dec. 2, 2010)) and the September 2011 SNOPR (76 FR 58346, 58355 (Sept. 20, 2011)). An update to the Regulatory Flexibility Act certification is set forth below.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *www.gc.doe.gov.*

DOE reviewed today's supplemental proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE tentatively concluded that the December 2010 NOPR and September 2011 SNOPR would not have a significant impact on a substantial number of small entities, and today's SNOPR contains no revisions to that proposal that would result in a significant impact on a substantial number of small entities. The updates to the factual basis for this certification are as follows:

The Small Business Administration (SBA) considers a business entity to be small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. These size standards and codes are established by the North American Industry Classification System (NAICS). The threshold number for NAICS classification code 335228, titled ''Other Major Household Appliance Manufacturing,'' is 500 employees; this classification specifically includes residential dishwasher manufacturers. Additionally, the threshold number for NAICS classification code 335221, titled ''Household Cooking Appliance Manufacturing,'' is 750 employees; this classification specifically includes manufacturers of residential conventional cooking products. The threshold number for NAICS classification code 335211, titled ''Electric Housewares and Household Fan Manufacturing,'' is 750 employees; this classification specifically includes manufacturers of dehumidifiers.

Most of the manufacturers supplying residential dishwashers, dehumidifiers and/or conventional cooking products are large multinational corporations. DOE surveyed the AHAM member directory to identify manufacturers of residential dishwashers, dehumidifiers, and conventional cooking products. DOE then consulted publicly-available data, purchased company reports from vendors such as Dun and Bradstreet, and contacted manufacturers, where needed, to determine if they meet the SBA's definition of a ''small business manufacturing facility'' and have their manufacturing facilities located within the United States. Based on this analysis, DOE estimates that there are two small businesses that manufacture conventional cooking products, four small businesses that manufacture dehumidifiers, and no small businesses that manufacture dishwashers.

The proposed rule would amend DOE's test procedures for dishwashers, dehumidifiers and cooking products. Because DOE is unaware of any small businesses that manufacture dishwashers, there would be no impact on such manufacturers due to the proposed amendments to DOE's dishwasher test procedure. The proposed rule would amend DOE's test procedures for dehumidifiers and conventional cooking products by incorporating testing provisions to address standby mode and off mode energy use in these products, as well as cooking products fan-only mode energy consumption. The test procedure amendments involve measuring power input when the product is in standby mode or off mode, as well as fan-only mode for a conventional cooking product. These tests would be conducted in the same facilities used for the current energy testing of these products, so there would be no additional facilities costs required by the proposed rule. In addition, while the watt-hour meter required for these tests might require greater accuracy than the watt-hour meter used for current energy testing, the investment required for a possible instrumentation upgrade would likely be relatively modest. It is possible that the manufacturers, or their testing facilities, already have equipment that meets the proposed meter requirements, but an Internet search of equipment that specifically meets the proposed requirements reveals a cost of approximately $2,000. The amendments proposed in today's SNOPR would also update the industry test method for dehumidifiers. As discussed in section III.H, this update could impose on manufacturers a cost for new measurement equipment of approximately $500, as well as potentially increasing operator time by less than 1 hour over the course of a 24-hour test. These costs are small compared to the overall financial investment needed to undertake the business enterprise of testing consumer products which involves facilities, qualified staff, and specialized equipment. Based on its review of industry data,[14] DOE estimates that the small dehumidifier and cooking product businesses have annual revenues of $10 million to $60 million.

DOE recognizes that the proposed updated reference to the industry dehumidifier test method could potentially require manufacturers to install a larger test chamber and different air handling equipment. However, DOE believes that manufacturers may already be using AHAM DH–1–2008 in certifying their products. DOE notes that one of the small businesses has products listed in AHAM's current dehumidifier certification database, indicating that those tests were conducted according to DH–1–2008. In addition, AHAM selected an independent test laboratory to conduct dehumidifier testing and verification using DH–1–2008. DOE believes that testing that this laboratory performs for manufacturers to determine compliance with energy conservation standards would be conducted in the same facility. Therefore, DOE tentatively

[14] Annual revenue estimates based on financial reports obtained from Hoover's Inc., available online at *www.hoovers.com.*

concludes that small businesses would not be likely to require investments in facility upgrades if DOE amends the dehumidifier test procedure to reference DH–1–2008.

Furthermore, the duration of the fan-only mode testing for conventional ovens and conventional ranges is generally not expected to exceed the time required to conduct current energy testing. DOE's research indicates that the duration of fan-only mode for these products ranges from 10 minutes to 3.5 hours. DOE estimates that the total time currently required for conventional oven testing (or for testing the conventional oven portion of a range) to be approximately 4 hours for products which are not equipped with the capability for forced convection or self-cleaning, with an additional 3 hours required for testing forced convection and an additional 4 hours required for testing self-clean operation. DOE's research did not identify any conventional ovens or conventional ranges manufactured by either of the two small cooking products manufacturers that are equipped with either forced convection or self-clean capability. DOE estimates that fan-only mode testing in the absence of such features could increase testing time by 3–88 percent. However, DOE's research also suggests that none of the conventional ovens and conventional ranges manufactured by the two small cooking products businesses are capable of operation in fan-only mode, and therefore DOE believes it is unlikely that these manufacturers would be impacted by the proposed fan-only mode testing provisions.

For these reasons, DOE continues to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b). DOE seeks comment on the updated certification set forth above.

V. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this SNOPR no later than the date provided in the **DATES** section at the beginning of this notice. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

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

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

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

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

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

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

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

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

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

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure

of the information would be contrary to the public interest.

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

B. Issues on Which DOE Seeks Comment

Although comments are welcome on all aspects of this rulemaking, DOE is particularly interested in receiving comments and views of interested parties on the following issues:

1. Fan-Only Mode

DOE seeks comment on the proposal to measure energy use in fan-only mode. DOE also seeks comment on its analysis of fan-only mode for dishwashers and conventional cooking products. In particular, DOE welcomes input on its definition of fan-only mode, its determination of fan-only mode as an active mode, its proposed test procedure amendments to measure fan-only mode energy use for dishwashers and conventional ovens, and the inclusion of fan-only mode energy use in the efficiency metrics for these products. (See section III.A).

2. Dishwasher Water Softener Regeneration

DOE seeks comment on the proposal to measure water softener regeneration energy and water consumption for residential dishwashers. DOE also requests data on the number of times per year on average that the water softening regeneration process occurs, the percentage of households with water-softening dishwashers that use home water softening systems, and the average per-cycle and annual water and energy use associated with water softener regeneration. DOE also welcomes input on the methodologies proposed in today's SNOPR to measure the water and energy use during regeneration, including the method of adding constant values for this water and energy use, and what those constant values should be. (*See* section III.B).

3. Alternative Methodology for Calculating Annual Energy Use

DOE invites comment on the proposed use of the alternative methodology for allocation of annual hours for each product. (*See* section III.C).

4. Dishwasher Test Procedure Clarifications

DOE invites comment on the approach to ensure the turbidity sensor in soil-sensing dishwashers remains calibrated; the method to select the energy test cycle to be used for soil-sensing dishwasher testing; the clarified definition of normal cycle; the specifications for the test load, including alternatives for obsolete items including flatware, serving pieces, and possibly other items such as the cup and saucer; the method and calculations for preconditioning and determining the quantity of detergent to be added to the prewash and main wash portions of the test cycle; and the proposed detergent formulation. (*See* section III.C).

5. Updated Dehumidifier Test Procedure

DOE seeks comment on the proposed incorporation by reference of ANSI/AHAM DH–1–2008 for the measurement of capacity and energy factor, and the calculation of integrated energy factor in DOE's dehumidifier test procedure. (*See* section III.E).

6. Obsolete Measures of Gas Pilot Light Energy Use

DOE welcomes comment on its proposal to remove the provisions in the cooking products test procedure that measure gas pilot light energy consumption. (*See* section III.G).

7. Test Burden

DOE seeks comment on its analysis of the test burden associated with dishwasher and conventional cooking products fan-only mode testing and dishwasher water softener regeneration testing as proposed in today's SNOPR, as well as its proposals related to the power supply and preconditioning requirements, the energy test cycle for dishwashers with a soil-sensing cycle selection separate from a non-soil-sensing normal cycle, the test load and soiling requirements, and the detergent dosage for dishwashers. DOE also seeks comment on the burden associated with updating the industry test method for dehumidifiers. (*See* sections III.A and III.B).

8. Small Businesses

DOE seeks comment on its tentative conclusion and certification that the December 2010 NOPR, as modified by the September 2011 SNOPR and today's SNOPR, would not have a significant economic impact on a substantial number of small entities.

VI. Approval of the Office of the Secretary

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

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Incorporated by reference, and Reporting and recordkeeping requirements.

10 CFR Part 430

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

Issued in Washington, DC, on April 25, 2012.

Kathleen B. Hogan,

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

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

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

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

Authority: 42 U.S.C. 6291–6317.

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

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

(a) * * *

(2) * * *

(ii) Any represented value of the energy factor, integrated energy factor, or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

* * * * *

3. Section 429.36 is amended by revising paragraph (a)(2)(ii) introductory text to read as follows:

§ 429.36 Dehumidifiers.

(a) * * *

(2) * * *

(ii) Any represented value of the energy factor, integrated energy factor, or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

2. Section 430.3 is amended:

a. By redesignating paragraphs (h)(1) through (h)(5) as (h)(2) through (h)(6);

b. By adding paragraph (h)(1); and

c. By revising paragraph (m)(2).

The additions and revisions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(h) * * *

(1) ANSI/AHAM DH–1–2008 (''DH–1–2008''), *Dehumidifiers,* (2008, ANSI approved May 9, 2008), IBR approved for appendix X to subpart B.

* * * * *

(m) * * *

(2) IEC Standard 62301 (''IEC 62301''), *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01), IBR approved for appendix C, appendix I, appendix J2, and appendix X to subpart B.

* * * * *

3. Section 430.23 is amended by revising paragraphs (c), (i), and (z) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(c) *Dishwashers.* (1) The Estimated Annual Operating Cost (EAOC) for dishwashers must be rounded to the nearest dollar per year and is defined as follows:

(i) When cold water (50 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.23 of appendix C to this subpart, EAOC = $(D_e \times S) + (D_e \times N \times (M - (E_D/2)))$ may be used for units manufactured until (*date 180 days after date of publication of test procedure final rule in the* **Federal Register**);

(B) For dishwashers having a truncated normal cycle as defined in section 1.23 of appendix C to this subpart, EAOC = $(D_e \times E_{TLP}) + (D_e \times N \times (M + M_{WS} + E_F - (E_D/2)))$ must be used for units manufactured on or after (*date 180 days after date of publication of test procedure final rule in the* **Federal Register**);

(C) For dishwashers not having a truncated normal cycle, EAOC = $(D_e \times S) + (D_e \times N \times M)$ may be used for units manufactured until (*date 180 days after date of publication of test procedure final rule in the* **Federal Register**);

(D) For dishwashers not having a truncated normal cycle, EAOC = $(D_e \times E_{TLP}) + (D_e \times N \times (M + M_{WS} + E_F)$ must be used for units manufactured on or after (*date 180 days after date of publication of test procedure final rule in the* **Federal Register**).

Where,

D_e = the representative average unit cost of electrical energy, in dollars per kilowatt-hour, as provided by the Secretary,

S = the annual simplified standby energy consumption in kilowatt-hours per year and determined according to section 5.7 of appendix C to this subpart,

E_{TLP} = the annual combined low-power mode energy consumption in kilowatt-hours per year and determined according to section 5.8 of appendix C to this subpart,

N = the representative average dishwasher use of 215 cycles per year,

M = the machine energy consumption per cycle for the normal cycle as defined in section 1.12 of appendix C to this subpart, in kilowatt-hours and determined according to section 5.1.1 of appendix C to this subpart for non-soil-sensing dishwashers and section 5.1.2 of appendix C to this subpart for soil-sensing dishwashers,

M_{WS} = the machine energy consumption per cycle for water softener regeneration, in kilowatt-hours and determined according to section 5.1.3 of appendix C to this subpart,

E_F = the fan-only mode energy consumption per cycle, in kilowatt-hours and determined according to section 5.2 of appendix C to this subpart, and

E_D = the drying energy consumption defined as energy consumed using the power-dry feature after the termination of the last rinse option of the normal cycle and determined according to section 5.3 of appendix C to this subpart.

(E) Manufacturers calculating EAOC pursuant to paragraph (c)(1)(i)(A) of this section should calculate EAEU pursuant to paragraph (c)(2)(i)(A) of this section. Manufacturers calculating EAOC pursuant to paragraph (c)(1)(i)(B) of this section should calculate EAEU pursuant to paragraph (c)(2)(i)(B) of this section. Manufacturers calculating EAOC pursuant to paragraph (c)(1)(i)(C) of this section should calculate EAEU pursuant to paragraph (c)(2)(ii)(A) of this section. Manufacturers calculating EAOC pursuant to paragraph (c)(1)(i)(D) of this section should calculate EAEU pursuant to paragraph (c)(2)(ii)(B) of this section.

(ii) When electrically-heated water (120 °F or 140 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.23 of appendix C to this subpart, EAOC = $(D_e \times S) + (D_e \times N \times (M - (E_D/2))) + (D_e \times N \times W)$ may be used for units manufactured until (*date 180 days after date of publication of test procedure final rule in the* **Federal Register**);

(B) For dishwashers having a truncated normal cycle as defined in section 1.23 of appendix C to this subpart, EAOC = $(D_e \times E_{TLP}) + (D_e \times N \times (M + M_{WS} + E_F - (E_D/2))) + (D_e \times N \times (W + W_{WS}))$ must be used for units manufactured on or after (*date 180 days after date of publication of test procedure final rule in the* **Federal Register**);

(C) For dishwashers not having a truncated normal cycle, EAOC = $(D_e \times S) + (D_e \times N \times M) + (D_e \times N \times W)$ may be used for units manufactured until (*date 180 days after date of publication of test procedure final rule in the* **Federal Register**);

(D) For dishwashers not having a truncated normal cycle, EAOC = $(D_e \times E_{TLP}) + (D_e \times N \times (M + M_{WS} + E_F)) + (D_e \times N \times (W + W_{WS}))$ must be used for units manufactured on or after (*date 180 days after date of publication of test procedure final rule in the* **Federal Register**).

Where,

D_e, S, E_{TLP}, N, M, M_{WS}, E_F, and E_D, are defined in paragraph (c)(1)(i) of this section,

W = the water energy consumption per cycle for the normal cycle as defined in section 1.12 of appendix C to this subpart, in kilowatt-hours per cycle and determined according to section 5.5 of appendix C to this subpart, and

W_{WS} = the water softener regeneration water energy consumption per cycle in kilowatt-hours per cycle and determined according to section 5.5 of appendix C to this subpart.

(E) Manufacturers calculating EAOC pursuant to paragraph (c)(1)(ii)(A) of this section should calculate EAEU pursuant to paragraph (c)(2)(i)(A) of this section. Manufacturers calculating EAOC pursuant to paragraphs (c)(1)(ii)(B) of this section should calculate EAEU pursuant to paragraph (c)(2)(i)(B) of this section. Manufacturers calculating EAOC pursuant to paragraph (c)(1)(ii)(C) of this section should calculate EAEU pursuant to paragraph (c)(2)(ii)(A) of this section. Manufacturers calculating EAOC pursuant to paragraph (c)(1)(ii)(D) of this section should calculate EAEU pursuant to paragraph (c)(2)(ii)(B) of this section.

(iii) When gas-heated or oil-heated water is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.23 of appendix C to this subpart,

$EAOC_g = (D_e \times S) + (D_e \times N \times (M - (E_D/2))) + (D_g \times N \times W_g)$ may be used for units

manufactured until (*date 180 days after date of publication of test procedure final rule in the* **Federal Register**);

(B) For dishwashers having a truncated normal cycle as defined in section 1.23 of appendix C to this subpart, $EAOC_g = (D_e \times E_{TLP}) + (D_e \times N \times (M + M_{WS} + E_F - (E_D/2))) + (D_g \times N \times (W_g + W_{WSg}))$ must be used for units manufactured on or after (*date 180 days after date of publication of test procedure final rule in the* **Federal Register**);

(C) For dishwashers not having a truncated normal cycle, $EAOC_g = (D_e \times S) + (D_e \times N \times M) + (D_g \times N \times W_g)$ may be used for units manufactured until (*date 180 days after date of publication of test procedure final rule in the* **Federal Register**);

(D) For dishwashers not having a truncated normal cycle, $EAOC_g = (D_e \times E_{TLP}) + (D_e \times N \times (M + M_{WS} + E_F)) + (D_g \times N \times (W_g + W_{WSg}))$ must be used for units manufactured on or after (*date 180 days after date of publication of test procedure final rule in the* **Federal Register**).

Where,

D_e, S, E_{TLP}, N, M, M_{WS}, E_F, and E_D are defined in paragraph (c)(1)(i) of this section,

D_g = the representative average unit cost of gas or oil, as appropriate, in dollars per Btu, as provided by the Secretary,

W_g = the water energy consumption per cycle for the normal cycle as defined in section 1.12 of appendix C to this subpart, in Btus per cycle and determined according to section 5.6 of appendix C to this subpart, and

W_{WSg} = the water softener regeneration energy consumption per cycle in Btu per cycle and determined according to section 5.6 of appendix C to this subpart.

(E) Manufacturers calculating EAOC pursuant to paragraph (c)(1)(iii)(A) of this section should calculate EAEU pursuant to paragraph (c)(2)(i)(A) of this section. Manufacturers calculating EAOC pursuant to paragraphs (c)(1)(iii)(B) of this section should calculate EAEU pursuant to paragraph (c)(2)(i)(B) of this section. Manufacturers calculating EAOC pursuant to paragraph (c)(1)(iii)(C) of this section should calculate EAEU pursuant to paragraph (c)(2)(ii)(A) of this section. Manufacturers calculating EAOC pursuant to paragraph (c)(1)(iii)(D) of this section should calculate EAEU pursuant to paragraph (c)(2)(ii)(B) of this section.

(2) The estimated annual energy use, EAEU, expressed in kilowatt-hours per year must be rounded to the nearest kilowatt-hour per year and is defined as follows:

(i) For dishwashers having a truncated normal cycle as defined in section 1.23 of appendix C to this subpart,

(A) $EAEU = (M - (E_D/2) + W) \times N + S$ may be used for units manufactured:

(i) Before (*date 180 days after date of publication of test procedure final rule in the* **Federal Register**) to make representations of energy efficiency; and

(ii) Before the compliance date of any amended standards to demonstrate compliance.

(B) $EAEU = (M + M_{WS} + E_F - (E_D/2) + W + W_{WS}) \times N + (E_{TLP})$ must be used for units manufactured:

(i) On or after (*date 180 days after date of publication of test procedure final rule in the* **Federal Register**) to make representations of energy efficiency; and

(ii) On or after the compliance date of any amended standards to demonstrate compliance.

Where,

M, M_{WS}, S, E_D, N, E_F, and E_{TLP} are defined in paragraph (c)(1)(i) of this section, and W and W_{WS}, are defined in paragraph (c)(1)(ii) of this section.

(C) Manufacturers calculating EAEU pursuant to paragraph (c)(2)(i)(A) of this section should calculate EAOC pursuant to paragraph (c)(1)(i)(A), (c)(1)(ii)A, or (c)(1)(iii)(A) of this section, as appropriate. Manufacturers calculating EAEU pursuant to paragraph (c)(2)(i)(B) of this section should calculate EAOC pursuant to paragraph (c)(1)(i)(B), (c)(1)(ii)(B), or (c)(1)(ii)(B) of this section, as appropriate.

(ii) For dishwashers not having a truncated normal cycle:

(A) $EAEU = (M + W) \times N + S$ may be used for units manufactured:

(i) Before (*date 180 days after date of publication of test procedure final rule in the* **Federal Register**) to make representations of energy efficiency; and

(ii) Before the compliance date of any amended standards to demonstrate compliance.

(B) $EAEU = (M + M_{WS} + E_F + W + W_{WS}) \times N + E_{TLP}$ must be used for units manufactured:

(i) On or after (*date 180 days after date of publication of test procedure final rule in the* **Federal Register**) to make representations of energy efficiency; and

(ii) On or after the compliance date of any amended standards to demonstrate compliance.

Where,

M, M_{WS}, S, N, E_F, and E_{TLP} are defined in paragraph (c)(1)(i) of this section, and W and W_{WS} are defined in paragraph (c)(1)(ii) of this section.

(C) Manufacturers calculating EAEU pursuant to paragraph (c)(2)(ii)(A) of this section should calculate EAOC pursuant to paragraph (c)(1)(i)(C), (c)(1)(ii)(C), or (c)(1)(iii)(C) of this section, as appropriate. Manufacturers calculating EAEU pursuant to paragraph (c)(2)(ii)(B) of this section should calculate EAOC pursuant to paragraph (c)(1)(i)(D), (c)(1)(ii)(D), or (c)(1)(iii)(D) of this section, as appropriate.

(3) The water consumption, V, and the sum of the water consumption, V, and the water consumption during water softener regeneration, V_{WS}, expressed in gallons per cycle and defined in section 5.4 of appendix C to this subpart, must be rounded to one decimal place.

(i) Water consumption, V, may be measured for units manufactured:

(A) Before (*date 180 days after date of publication of test procedure final rule in the* **Federal Register**) to make representations of energy efficiency; and

(B) Before the compliance date of any amended standards to demonstrate compliance.

(ii) Manufacturers calculating water consumption pursuant to paragraph (c)(3)(i) of this section should calculate EAOC as described in paragraph (c)(1)(i)(A), (c)(1)(i)(C), (c)(1)(ii)(A), (c)(1)(ii)(C), (c)(1)(iii)(A), or (c)(1)(iii)(C) of this section, as appropriate. Manufacturers calculating water consumption pursuant to paragraph (c)(3)(i) of this section should calculate EAUE as described in paragraph (c)(2)(i)(A) or (c)(2)(ii)(A) of this section, as appropriate.

(iii) The sum of the water consumption, V, and the water consumption during water softener regeneration, V_{WS}, must be measured for units manufactured:

(A) On or after (*date 180 days after date of publication of test procedure final rule in the* **Federal Register**) to make representations of energy efficiency; and

(B) On or after the compliance date of any amended standards to demonstrate compliance.

(C) Manufacturers calculating water consumption pursuant to paragraph (c)(3)(iii) of this section should calculate EAOC as described in paragraph (c)(1)(i)(B), (c)(1)(i)(D), (c)(1)(ii)(B), (c)(1)(ii)(D), (c)(1)(iii)(B), or (c)(1)(iii)(D) of this section, as appropriate. Manufacturers calculating water consumption pursuant to paragraph (c)(3)(i) of this section should calculate EAUE as described in paragraph (c)(2)(i)(B) or (c)(2)(ii)(B) of this section, as appropriate.

(4) Other useful measures of energy consumption for dishwashers are those which the Secretary determines are likely to assist consumers in making

purchasing decisions and which are derived from the application of appendix C to this subpart.

* * * * *

(i) *Kitchen ranges and ovens.* (1) The estimated annual operating cost for conventional ranges, conventional cooking tops, and conventional ovens shall be the sum of the following products:

(i) The total integrated annual electrical energy consumption for any electrical energy usage, in kilowatt-hours (kWhs) per year, times the representative average unit cost for electricity, in dollars per kWh, as provided pursuant to section 323(b)(2) of the Act; plus

(ii) The total annual gas energy consumption for any natural gas usage, in British thermal units (Btus) per year, times the representative average unit cost for natural gas, in dollars per Btu, as provided pursuant to section 323(b)(2) of the Act; plus

(iii) The total annual gas energy consumption for any propane usage, in Btus per year, times the representative average unit cost for propane, in dollars per Btu, as provided pursuant to section 323(b)(2) of the Act. The total annual energy consumption for conventional ranges, conventional cooking tops, and conventional ovens shall be as determined according to sections 4.3, 4.2.2, and 4.1.2, respectively, of appendix I to this subpart. For conventional gas cooking tops, total integrated annual electrical energy consumption shall be equal to E_{CTSO}, defined in section 4.2.2.2.4 of appendix I to this subpart. The estimated annual operating cost shall be rounded off to the nearest dollar per year.

(2) The cooking efficiency for conventional cooking tops and conventional ovens shall be the ratio of the cooking energy output for the test to the cooking energy input for the test, as determined according to sections 4.2.1 and 4.1.3, respectively, of appendix I to this subpart. The final cooking efficiency values shall be rounded off to three significant digits.

(3) [Reserved]

(4) The energy factor for conventional ranges, conventional cooking tops, and conventional ovens shall be the ratio of the annual useful cooking energy output to the total annual energy input, as determined according to sections 4.3, 4.2.3.1, and 4.1.4.1, respectively, of appendix I to this subpart. The final energy factor values shall be rounded off to three significant digits.

(5) The integrated energy factor for conventional ranges, conventional cooking tops, and conventional ovens shall be the ratio of the annual useful cooking energy output to the total integrated annual energy input, as determined according to sections 4.3, 4.2.3.2, and 4.1.4.2, respectively, of appendix I to this subpart. The final integrated energy factor values shall be rounded off to three significant digits.

(6) There shall be two estimated annual operating costs, two cooking efficiencies, and two energy factors for convertible cooking appliances—

(i) An estimated annual operating cost, a cooking efficiency, and an energy factor which represent values for those three measures of energy consumption for the operation of the appliance with natural gas; and

(ii) An estimated annual operating cost, a cooking efficiency, and an energy factor which represent values for those three measures of energy consumption for the operation of the appliance with LP-gas.

(7) There shall be two integrated energy factors for convertible cooking appliances—

(i) An integrated energy factor which represents the value for this measure of energy consumption for the operation of the appliance with natural gas; and

(ii) An integrated energy factor which represents the value for this measure of energy consumption for the operation of the appliance with LP-gas.

(8) The estimated annual operating cost for convertible cooking appliances which represents natural gas usage, as described in paragraph (i)(6)(i) of this section, shall be determined according to paragraph (i)(1) of this section using the total annual gas energy consumption for natural gas times the representative average unit cost for natural gas.

(9) The estimated annual operating cost for convertible cooking appliances which represents LP-gas usage, as described in paragraph (i)(6)(ii) of this section, shall be determined according to paragraph (i)(1) of this section using the representative average unit cost for propane times the total annual energy consumption of the test gas, either propane or natural gas.

(10) The cooking efficiency for convertible cooking appliances which represents natural gas usage, as described in paragraph (i)(6)(i) of this section, shall be determined according to paragraph (i)(2) of this section when the appliance is tested with natural gas.

(11) The cooking efficiency for convertible cooking appliances which represents LP-gas usage, as described in paragraph (i)(6)(ii) of this section, shall be determined according to paragraph (i)(2) of this section, when the appliance is tested with either natural gas or propane.

(12) The energy factor for convertible cooking appliances which represents natural gas usage, as described in paragraph (i)(6)(i) of this section, shall be determined according to paragraph (i)(4) of this section when the appliance is tested with natural gas.

(13) The integrated energy factor for convertible cooking appliances which represents natural gas usage, as described in paragraph (i)(7)(i) of this section, shall be determined according to paragraph (i)(5) of this section when the appliance is tested with natural gas.

(14) The energy factor for convertible cooking appliances which represents LP-gas usage, as described in paragraph (i)(6)(ii) of this section, shall be determined according to paragraph (i)(4) of this section when the appliance is tested with either natural gas or propane.

(15) The integrated energy factor for convertible cooking appliances which represents LP-gas usage, as described in paragraph (i)(7)(ii) of this section, shall be determined according to paragraph (i)(5) of this section when the appliance is tested with natural gas or propane.

(16) Other useful measures of energy consumption for conventional ranges, conventional cooking tops, and conventional ovens shall be those measures of energy consumption which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of appendix I to this subpart.

* * * * *

(z) *Dehumidifiers.* (1) The energy factor for dehumidifiers, expressed in liters per kilowatt hour (L/kWh), shall be measured in accordance with section 4.1 of appendix X of this subpart.

(2) The integrated energy factor for dehumidifiers, expressed in L/kWh, shall be determined according to paragraph 5.2 of appendix X to this subpart.

* * * * *

Appendix C—[Amended]

4. Appendix C to subpart B of part 430 is amended:

a. By revising the introductory text after the appendix heading;

b. By revising section 1, Definitions;

c. By revising section 2, Testing Conditions;

d. In section 3. Instrumentation, by:

1. Revising section 3.5; and

2. Adding new section 3.8;

e. By revising section 4, Test Cycle and Measurements: and

f. By revising section 5, Calculation of Derived Results From Test Measurements.

The additions and revisions read as follows:

Appendix C to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dishwashers

Note: The procedures and calculations that refer to the combined low-power mode, fan-only mode, and water softener energy consumption (*i.e.,* sections 2.6.1.1, 2.6.2.1, 2.6.3.1, 4.1, 4.1.1, 4.1.2, 4.2.2, 4.4, 4.4.1, 4.4.2, 5.1.3, 5.2, 5.2.1, 5.2.2, 5.4.3, 5.5.1.2, 5.5.2.2, 5.6.1.2, 5.6.2.2, and 5.8 of this appendix) need not be performed to determine compliance with energy conservation standards for dishwashers at this time. However, any representation related to standby mode and off mode energy consumption of these products made after (*date 180 days after date of publication of the test procedure final rule in the* **Federal Register**) must be based upon results generated under this test procedure using sections 4.4, 4.4.1, 4.4.2, and 5.8 of this appendix and disregarding sections 4.3 and 5.7 of this appendix, consistent with the requirements of 42 U.S.C. 6293(c)(2). Upon the compliance date for any amended energy conservation standards that incorporate standby mode and off mode energy consumption, compliance with the applicable provisions of this test procedure will also be required.

1. Definitions

1.1 *Active mode* means a mode in which the dishwasher is connected to a mains power source, has been activated, and is performing one of the main functions of washing, rinsing, or drying (when a drying process is included) dishware, glassware, eating utensils, and most cooking utensils by chemical, mechanical, and/or electrical means, or is involved in functions necessary for these main functions, such as admitting water into the dishwasher, pumping water out of the dishwasher, circulating air, or regenerating an internal water softener.

1.2 *AHAM* means the Association of Home Appliance Manufacturers.

1.3 *Compact dishwasher* means a dishwasher that has a capacity of less than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1 (incorporated by reference; see § 430.3), using the test load specified in section 2.7 of this appendix.

1.4 *Combined low-power mode* means the aggregate of available modes other than active mode.

1.5 *Cycle* means a sequence of operations of a dishwasher which performs a complete dishwashing function, and may include variations or combinations of washing, rinsing, and drying.

1.6 *Cycle finished mode* means a standby mode which provides continuous status display following operation in active mode.

1.7 *Cycle type* means any complete sequence of operations capable of being preset on the dishwasher prior to the initiation of machine operation.

1.8 *Fan-only mode* means an active mode in which a fan circulates air for a finite period of time after the end of the cycle, as indicated to the consumer.

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

1.10 *Inactive mode* means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

1.11 *Non-soil-sensing dishwasher* means a dishwasher that does not have the ability to adjust automatically any energy consuming aspect of a wash cycle based on the soil load of the dishes.

1.12 *Normal cycle* means the cycle type, including wash and drying temperature options, recommended by the manufacturer for completely washing a full load of normally soiled dishes including the power-dry feature.

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

1.14 *Power-dry feature* means the introduction of electrically-generated heat into the washing chamber for the purpose of improving the drying performance of the dishwasher.

1.15 *Preconditioning cycle* means a cycle that includes a fill, circulation, and drain to ensure that the water lines and sump area of the pump are primed.

1.16 *Sensor heavy response* means, for standard dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, four place settings of which are soiled according to ANSI/AHAM DW–1 (incorporated by reference; see § 430.3). For compact dishwashers, this definition is the same, except that two soiled place settings are used instead of four.

1.17 *Sensor light response* means, for both standard and compact dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, one place setting of which is soiled with half of the gram weight of soils for each item specified in a single place setting according to ANSI/AHAM DW–1 (incorporated by reference; see § 430.3).

1.18 *Sensor medium response* means, for standard dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, two place settings of which are soiled according to ANSI/AHAM DW–1 (incorporated by reference; see § 430.3). For compact dishwashers, this definition is the same, except that one soiled place setting is used instead of two.

1.19 *Simplified standby mode* means the lowest power consumption mode which cannot be switched off or influenced by the user and that may persist for an indefinite time when the dishwasher is connected to the main electricity supply and used in accordance with the manufacturer's instructions.

1.20 *Soil-sensing dishwasher* means a dishwasher that has the ability to adjust any energy-consuming aspect of a wash cycle based on the soil load of the dishes.

1.21 *Standard dishwasher* means a dishwasher that has a capacity equal to or greater than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1 (incorporated by reference; see § 430.3), using the test load specified in section 2.7 of this appendix.

1.22 *Standby mode* means a mode in which the dishwasher is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time: (a) to facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer; (b) continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.*, switching) and that operates on a continuous basis.

1.23 *Truncated normal cycle* means the normal cycle interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.24 *Truncated sensor heavy response* means the sensor heavy response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.25 *Truncated sensor light response* means the sensor light response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.26 *Truncated sensor medium response* means the sensor medium response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.27 *Water-heating dishwasher* means a dishwasher which, as recommended by the manufacturer, is designed for heating cold inlet water (nominal 50 °F) or designed for heating water with a nominal inlet temperature of 120 °F. Any dishwasher designated as water-heating (50 °F or 120 °F inlet water) must provide internal water heating to above 120 °F in a least one wash phase of the normal cycle.

1.28 *Water-softening dishwasher* means a dishwasher which incorporates a water softening system that periodically consumes additional water and energy during the cycle to regenerate.

2. Testing Conditions

2.1 *Installation requirements.* Install the dishwasher according to the manufacturer's instructions. A standard or compact under-counter or under-sink dishwasher must be tested in a rectangular enclosure constructed of nominal 0.374 inch (9.5 mm) plywood painted black. The enclosure must consist of a top, a bottom, a back, and two sides. If the dishwasher includes a counter top as part of the appliance, omit the top of the enclosure. Bring the enclosure into the closest contact with the appliance that the configuration of the dishwasher will allow. For standby mode and off mode testing, these products shall also be installed in accordance with section 5.2 of IEC 62301 (incorporated by reference;

see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

2.2 *Electrical energy supply.*

2.2.1 *Dishwashers that operate with an electrical supply of 115 volts.* Maintain the electrical supply to the dishwasher at 115 volts ±2 percent and within 1 percent of the nameplate frequency as specified by the manufacturer. Maintain a continuous electrical supply to the unit throughout testing, including the preconditioning cycle, specified in section 2.9 of this appendix, and in between all test cycles.

2.2.2 *Dishwashers that operate with an electrical supply of 240 volts.* Maintain the electrical supply to the dishwasher at 240 volts ± 2 percent and within 1 percent of the nameplate frequency as specified by the manufacturer. Maintain a continuous electrical supply to the unit throughout testing, including the preconditioning cycle, specified in section 2.9 of this appendix, and in between all test cycles.

2.2.3 *Supply voltage waveform.* For the standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in section 4.3.2 of IEC 62301 (incorporated by reference; see § 430.3).

2.3 *Water temperature.* Measure the temperature of the water supplied to the dishwasher using a temperature measuring device as specified in section 3.1 of this appendix.

2.3.1 *Dishwashers to be tested at a nominal 140 °F inlet water temperature.* Maintain the water supply temperature at 140° ± 2 °F.

2.3.2 *Dishwashers to be tested at a nominal 120 °F inlet water temperature.* Maintain the water supply temperature at 120° ± 2 °F.

2.3.3 *Dishwashers to be tested at a nominal 50 °F inlet water temperature.* Maintain the water supply temperature at 50° ± 2 °F.

2.4 *Water pressure.* Using a water pressure gauge as specified in section 3.4 of this appendix, maintain the pressure of the water supply at 35 ± 2.5 pounds per square inch gauge (psig) when the water is flowing.

2.5 *Ambient temperature.*

2.5.1 *Active mode ambient and machine temperature.* Using a temperature measuring device as specified in section 3.1 of this appendix, maintain the room ambient air temperature at 75° ± 5 °F and ensure that the dishwasher and the test load are at room ambient temperature at the start of each test cycle.

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

2.6 *Test cycle and load.*

2.6.1 *Non-soil-sensing dishwashers to be tested at a nominal inlet temperature of 140 °F.*

2.6.1.1 If the unit is a water-softening dishwasher, it must be tested first on the normal cycle without a test load for water softener regeneration, as specified in section 4.1 of this appendix. The water softener setting shall be selected according to manufacturer instructions for a water hardness of 217 mg/L (217 ppm or 12.6 grains per gallon). Ensure that dishwasher salt is supplied to the water softener system according to the manufacturer's instructions.

2.6.1.2 All non-soil-sensing dishwashers to be tested according to section 4.2 of this appendix at a nominal inlet temperature of 140 °F must then be tested on the normal cycle and truncated normal cycle without a test load if the dishwasher does not heat water in the normal cycle. Water-softening dishwashers shall be tested using the lowest water hardness water softener setting.

2.6.2 *Non-soil-sensing dishwashers to be tested at a nominal inlet temperature of 50 °F or 120 °F.*

2.6.2.1 If the unit is a water-softening dishwasher, it must be tested first without a test load on the normal cycle for water softener regeneration, as specified in section 4.1 of this appendix. The water softener setting shall be selected according to manufacturer instructions for a water hardness of 217 mg/L (217 ppm or 12.6 grains per gallon). Ensure that dishwasher salt is supplied to the water softener system according to the manufacturer's instructions.

2.6.2.2 All non-soil-sensing dishwashers to be tested at a nominal inlet temperature of 50 °F or 120 °F must then be tested according to section 4.2 of this appendix on the normal cycle with a clean load of eight place settings plus six serving pieces, as specified in section 2.7 of this appendix. If the capacity of the dishwasher, as stated by the manufacturer, is less than eight place settings, then the test load must be the stated capacity. Water-softening dishwashers shall be tested using the lowest water hardness water softener setting.

2.6.3 *Soil-sensing dishwashers to be tested at a nominal inlet temperature of 50 °F, 120 °F, or 140 °F.*

2.6.3.1 Water-softening dishwashers must be tested first without a test load on the normal cycle for water softener regeneration, as specified in section 4.1 of this appendix. The water softener setting shall be selected according to manufacturer instructions for a water hardness of 217 mg/L (217 ppm or 12.6 grains per gallon). Ensure that dishwasher salt is supplied to the water softener system according to the manufacturer's instructions.

2.6.3.2 All soil-sensing dishwashers shall then be tested according to section 4.2 of this appendix. If soil-sensing is available as an option in the normal cycle, the normal cycle shall be selected, with the soil-sensing option if necessary. If soil-sensing is not available for the normal cycle, the cycle type that uses the soil-sensing system, and contains all the elements of a normal cycle including the power-dry feature (if such a feature is provided) shall be selected. The dishwasher shall be tested first for the sensor heavy response, then tested for the sensor medium response, and finally for the sensor light response with the following combinations of soiled and clean test loads. Water-softening dishwashers shall be tested using the lowest water hardness water softener setting.

2.6.3.2.1 For tests of the sensor heavy response, as defined in section 1.16 of this appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this appendix. Four of the eight place settings, except for the flatware, must be soiled according to ANSI/AHAM DW–1 (incorporated by reference, see § 430.3) while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this appendix. Two of the four place settings, except for the flatware, must be soiled according to ANSI/AHAM DW–1 while the remaining place settings, serving pieces, and all flatware are not soiled.

2.6.3.2.2 For tests of the sensor medium response, as defined in section 1.18 of this appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this appendix. Two of the eight place settings, except for the flatware must be soiled according to ANSI/AHAM DW–1 (incorporated by reference, see § 430.3) while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this appendix. One of the four place settings, except for the flatware, must be soiled according to ANSI/AHAM DW–1 while the remaining place settings, serving pieces, and all flatware are not soiled.

2.6.3.2.3 For tests of the sensor light response, as defined in section 1.17 of this appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this appendix. One of the eight place settings, except for the flatware, must be soiled with half of the soil load specified for a single place setting according to ANSI/AHAM DW–1 (incorporated by reference, see § 430.3) while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this appendix. One of the four place settings, except for the flatware, must be soiled with half of the soil load specified for a single place setting according to the ANSI/AHAM DW–1 while the remaining place settings, serving pieces, and all flatware are not soiled.

2.7 *Test load.*

2.7.1 *Test load items.*

Dishware/glassware/flatware item	Primary source	Description	Primary No.	Alternate source	Alternate source No.
Dinner Plate	Corning Comcor®/ Corelle®.	10 inch Dinner Plate	6003893		
Bread and Butter Plate	Corning Comcor®/ Corelle®.	6.75 inch Bread & Butter	6003887	Arzberg	8500217100
Fruit Bowl	Corning Comcor®/ Corelle®.	10 oz. Dessert Bowl	6003899	Arzberg	3820513100
Cup	Corning Comcor®/ Corelle®.	8 oz. Ceramic Cup	6014162	Arzberg	3824732100
Saucer	Corning Comcor®/ Corelle®.	6 inch Saucer	6010972	Arzberg	3824731100
Serving Bowl	Corning Comcor®/ Corelle®.	1 qt. Serving Bowl	6003911		
Platter	Corning Comcor®/ Corelle®.	9.5 inch Oval Platter	6011655		
Glass—Iced Tea	Libbey		551 HT		
Flatware—Knife	Oneida®—Accent		2619KPVF	WMF—Gastro 0800	12.0803.6047
Flatware—Dinner Fork	Oneida®—Accent		2619FRSF	WMF—Signum 1900	12.1905.6040
Flatware—Salad Fork	Oneida®—Accent		2619FSLF	WMF—Signum 1900	12.1964.6040
Flatware—Teaspoon	Oneida®—Accent		2619STSF	WMF—Signum 1900	12.1910.6040
Flatware—Serving Fork	Oneida®—Flight		2865FCM	WMF—Signum 1900	12.1902.6040
Flatware—Serving Spoon	Oneida®—Accent		2619STBF	WMF—Signum 1900	12.1904.6040

2.7.2 *Place setting.* A place setting shall consist of one cup, one saucer, one dinner plate, one bread and butter plate, one fruit bowl, one iced tea glass, one dinner fork, one salad fork, one knife, and two teaspoons.

2.7.3 *Serving pieces.* Serving pieces shall consist of two serving bowls, one platter, one serving fork, and two serving spoons.

2.8 *Testing requirements.* Provisions in this appendix pertaining to dishwashers that operate with a nominal inlet temperature of 50 °F or 120 °F apply only to water-heating dishwashers as defined in section 1.27 of this appendix.

2.9 *Preconditioning requirements.* Precondition the dishwasher by establishing the testing conditions set forth in sections 2.1 through 2.5 of this appendix. Set the dishwasher to the preconditioning cycle as defined in section 1.15 of this appendix, using the cycle setting for the test cycle according to section 2.6.1.2, 2.6.2.2, or 2.6.3.2 of this appendix and without using a test load, and initiate the cycle. Measure the prewash fill water volume, V_{pw}, if any, and the main wash fill water volume, V_{mw}.

2.10 *Detergent.* Use half the quantity of detergent specified according to ANSI/AHAM DW–1 (incorporated by reference, see § 430.3), using Cascade with the Grease Fighting Power of Dawn powder as the detergent formulation. Determine the amount of detergent (in grams) to be added to the prewash compartment (if provided) or elsewhere in the dishwasher (if recommended by the manufacturer) and the main wash compartment according to sections 2.10.1 and 2.10.2 of this appendix.

2.10.1 *Prewash Detergent Dosing.* If the cycle setting for the test cycle includes prewash, determine the quantity of dry prewash detergent, D_{pw}, in grams (g) that results in 0.25 percent concentration by mass in the prewash fill water as:

$D_{pw} = V_{pw} \times \rho \times k \times 0.25/100$

Where,

V_{pw} = the prewash fill volume of water in gallons,

ρ = water density = 8.343 pounds (lb)/gallon for dishwashers to be tested at a nominal inlet water temperature of 50 °F (10 °C), 8.250 lb/gallon for dishwashers to be tested at a nominal inlet water temperature of 120 °F (49 °C), and 8.205 lb/gallon for dishwashers to be tested at a nominal inlet water temperature of 140 °F (60 °C), and

k = conversion factor from lb to g = 453.6 g/lb.

2.10.2 *Main Wash Detergent Dosing.* Determine the quantity of dry main wash detergent, D_{mw}, in grams (g) that results in 0.25 percent concentration by mass in the main wash fill water as:

$D_{mw} = V_{mw} \times \rho \times k \times 0.25/100$

Where,

V_{mw} = the main wash fill volume of water in gallons, and ρ, and k are defined in section 2.10.1 of this appendix.

3. Instrumentation

* * * * *

3.5 *Watt-hour meter.* The watt-hour meter must have a resolution of .1 watt-hour or less and a maximum error of no more than 1 percent of the measured value for any demand greater than 5 watts.

* * * * *

3.8 *Standby mode and off mode watt meter.* The watt meter used to measure standby mode and off mode power consumption shall meet the requirements specified in section 4.4 of IEC 62301 (incorporated by reference, see § 430.3).

4. Test Cycle and Measurements

4.1 *Water softener regeneration for water-softening dishwashers.* Perform a test cycle by establishing the testing conditions set forth in section 2 of this appendix, setting the dishwasher to the cycle type to be tested according to section 2.6.1.1, 2.6.2.1, or 2.6.3.1 of this appendix, initiating the cycle, and allowing the cycle to proceed to completion.

4.1.1 Measure the water consumption, $V_{WS,i}$, expressed as the number of gallons of water delivered to the machine during the entire test cycle, using a water meter as specified in section 3.3 of this appendix, where i is the number of times the cycle has been conducted. Measure the machine electrical energy consumption, $M_{WS,i}$, expressed as the number of kilowatt-hours of electricity consumed by the machine during the entire test cycle, using a watt-hour meter as specified in section 3.5 of this appendix.

4.1.2 Repeat the cycle as specified in section 4.1.1 of this appendix. If:

$$\left| V_{WS,1} - V_{WS,2} \right| > 1.1$$

Then V_{WSmax} is defined as the larger of $V_{WS,1}$ and $V_{WS,2}$, and V_{WSavg} is defined as the smaller of $V_{WS,1}$ and $V_{WS,2}$; and M_{WSmax} is defined as the machine electrical energy consumption for the cycle associated with V_{WSmax}, and M_{WSavg} is defined as the machine electrical energy consumption for the cycle associated with V_{WSavg};

Otherwise, repeat the cycle as specified in section 4.1.1 of this appendix until:

$$V_{WS,i} > 1.1 \times \frac{\left(\sum_{j=1}^{i-1} V_{WS,j} \right)}{(i-1)}$$

Then,

$V_{WSmax} = V_{WS,i}$

$M_{WSmax} = M_{WS,i}$

$$V_{WSavg} = \frac{\left(\sum_{j=1}^{i-1} V_{WS,j} \right)}{(i-1)}$$

and

$$M_{WSavg} = \frac{\left(\sum_{j=1}^{i-1} M_{WS,j}\right)}{(i-1)}$$

Otherwise, if a maximum total of 10 cycles have been conducted and no cycle is determined to have water consumption that is 10 percent higher than the average water consumption of the other cycles, then the unit shall be deemed not a water-softening dishwasher.

4.2 *Active mode cycle.* Perform a test cycle by establishing the testing conditions set forth in section 2 of this appendix, setting the dishwasher to the cycle type to be tested according to section 2.6.1.2, 2.6.2.2, or 2.6.3.2 of this appendix, initiating the cycle, and allowing the cycle to proceed to completion.

4.2.1 *Machine electrical energy consumption.* Measure the machine electrical energy consumption, M, expressed as the number of kilowatt-hours of electricity consumed by the machine during the entire test cycle, using a water supply temperature as set forth in section 2.3 of this appendix and using a watt-hour meter as specified in section 3.5 of this appendix.

4.2.2 *Fan electrical energy consumption.* If the dishwasher is capable of operation in fan-only mode, measure the fan electrical energy consumption, M_F, expressed as the number of kilowatt-hours of electricity consumed by the machine for the duration of the fan-only mode after the completion of each test cycle, using a watt-hour meter as specified in section 3.5 of this appendix. Record the time in minutes that the machine remains in fan-only mode, L_F.

4.2.3 *Water consumption.* Measure the water consumption, V, expressed as the number of gallons of water delivered to the machine during the entire test cycle, using a water meter specified in section 3.3 of this appendix.

4.3 *Simplified standby mode power.* Connect the dishwasher to a standby wattmeter or a standby watt-hour meter as specified in sections 3.6 and 3.7, respectively, of this appendix. Select the conditions necessary to achieve operation in the simplified standby mode as defined in section 1.19 of this appendix. Monitor the power consumption but allow the dishwasher to stabilize for at least 5 minutes. Then monitor the power consumption for at least an additional 5 minutes. If the power level does not change by more than 5 percent from the maximum observed value during the later 5 minutes and if there is no cyclic or pulsing behavior of the load, the load can be considered stable. For stable operation, simplified standby mode power, S_m, can be recorded directly from the standby watt meter in watts or accumulated using the standby watt-hour meter over a period of at least 5 minutes. For unstable operation, the energy must be accumulated using the standby watt-hour meter over a period of at least 5 minutes and must capture the energy use over one or more complete cycles. Calculate the average simplified standby mode power, S_m, expressed in watts by dividing the accumulated energy consumption by the duration of the measurement period.

4.4 *Standby mode and off mode power.* Connect the dishwasher to a standby mode and off mode watt meter as specified in section 3.8 of this appendix. Establish the testing conditions set forth in sections 2.1, 2.2, and 2.5.2 of this appendix. For dishwashers that take some time to enter a stable state from a higher power state as discussed in section 5.1, note 1 of IEC 62301 (incorporated by reference; see § 430.3), allow sufficient time for the dishwasher to reach the lower power state before proceeding with the test measurement. Follow the test procedure specified in section 5.3.2 of IEC 62301 for testing in each possible mode as described in sections 4.4.1 and 4.4.2 of this appendix.

4.4.1 If the dishwasher has an inactive mode, as defined in section 1.10 of this appendix, measure and record the average inactive mode power of the dishwasher, P_{IA}, in watts.

4.4.2 If the dishwasher has an off mode, as defined in section 1.11 of this appendix, measure and record the average off mode power, P_{OM}, in watts.

5. Calculation of Derived Results From Test Measurements

5.1 *Machine energy consumption.*

5.1.1 *Machine energy consumption for non-soil-sensing electric dishwashers.* Take the value recorded in section 4.2.1 of this appendix as the per-cycle machine electrical energy consumption. Express the value, M, in kilowatt-hours per cycle.

5.1.2 *Machine energy consumption for soil-sensing electric dishwashers.* The machine energy consumption for the sensor normal cycle, M, is defined as:

$M = (M_{hr} \times F_{hr}) + (M_{mr} \times F_{mr}) + (M_{lr} \times F_{lr})$

Where,

M_{hr} = the value recorded in section 4.2.1 of this appendix for the test of the sensor heavy response, expressed in kilowatt-hours per cycle,

M_{mr} = the value recorded in section 4.2.1 of this appendix for the test of the sensor medium response, expressed in kilowatt-hours per cycle,

M_{lr} = the value recorded in section 4.2.1 of this appendix for the test of the sensor light response, expressed in kilowatt-hours per cycle,

F_{hr} = the weighting factor based on consumer use of heavy response = 0.05,

F_{mr} = the weighting factor based on consumer use of medium response = 0.33, and

F_{lr} = the weighting factor based on consumer use of light response = 0.62.

5.1.3 *Machine energy consumption during water softener regeneration for water-softening dishwashers.* The machine energy consumption for water softener regeneration, M_{WS}, is defined as:

$M_{WS} = (M_{WSmax} - M_{WSavg}) \times N_{WS}/N$

Where,

M_{WSmax} = the value of the machine electrical energy consumption during a cycle including water softener regeneration recorded in section 4.1 of this appendix, expressed in kilowatt-hours,

M_{WSavg} = the value of the average machine electrical energy consumption during cycles not including water softener regeneration recorded in section 4.1 of this appendix, expressed in kilowatt-hours,

N_{WS} = the representative average number of water softener regeneration cycles per year = 36 cycles per year, and

N = the representative average dishwasher use of 215 cycles per year.

5.2 *Fan-only mode energy consumption.*

5.2.1 *Electrical energy consumption for fan-only mode for non-soil-sensing electric dishwashers.* Take the value recorded in section 4.2.2 of this appendix as the per-cycle electrical energy consumption for fan-only mode. Express the value, E_F, in kilowatt-hours per cycle. If the dishwasher is not capable of operation in fan-only mode, E_F = 0.

5.2.2 *Electrical energy consumption for fan-only mode for soil-sensing electric dishwashers.* The fan-only mode electrical energy consumption, E_F, for the sensor normal cycle is defined as:

$E_F = (E_{Fhr} + E_{Fmr} + E_{Flr})/3$

Where,

E_{Fhr} = the value recorded in section 4.2.2 of this appendix for the test of the sensor heavy response, expressed in kilowatt-hours per cycle,

E_{Fmr} = the value recorded in section 4.2.2 of this appendix for the test of the sensor medium response, expressed in kilowatt-hours per cycle,

E_{Flr} = the value recorded in section 4.2.2 of this appendix for the test of the sensor light response, expressed in kilowatt-hours per cycle,

If the dishwasher is not capable of operation in fan-only mode, E_F = 0.

5.3 *Drying energy.*

5.3.1 *Drying energy consumption for non-soil-sensing electric dishwashers.* Calculate the amount of energy consumed using the power-dry feature after the termination of the last rinse option of the normal cycle. Express the value, E_D, in kilowatt-hours per cycle.

5.3.2 *Drying energy consumption for soil-sensing electric dishwashers.* The drying energy consumption, E_D, for the sensor normal cycle is defined as:

$E_D = (E_{Dhr} + E_{Dmr} + E_{Dlr})/3$

Where,

E_{Dhr} = energy consumed using the power-dry feature after the termination of the last rinse option of the sensor heavy response, expressed in kilowatt-hours per cycle,

E_{Dmr} = energy consumed using the power-dry feature after the termination of the last rinse option of the sensor medium response, expressed in kilowatt-hours per cycle,

E_{Dlr} = energy consumed using the power-dry feature after the termination of the last rinse option of the sensor light response, expressed in kilowatt-hours per cycle,

5.4 *Water consumption.*

5.4.1 *Water consumption for non-soil-sensing electric dishwashers using electrically heated, gas-heated, or oil-heated water.* Take the value recorded in section 4.2.3 of this appendix as the per-cycle water

consumption. Express the value, V, in gallons per cycle.

5.4.2 *Water consumption for soil-sensing electric dishwashers using electrically heated, gas-heated, or oil-heated water.* The water consumption for the sensor normal cycle, V, is defined as:

$V = (V_{hr} \times F_{hr}) + (V_{mr} \times F_{mr}) + (V_{lr} \times F_{lr})$

Where,

V_{hr} = the value recorded in section 4.2.3 of this appendix for the test of the sensor heavy response, expressed in gallons per cycle,

V_{mr} = the value recorded in section 4.2.3 of this appendix for the test of the sensor medium response, expressed in gallons per cycle,

V_{lr} = the value recorded in section 4.2.3 of this appendix for the test of the sensor light response, expressed in gallons per cycle,

F_{hr} = the weighting factor based on consumer use of heavy response = 0.05,

F_{mr} = the weighting factor based on consumer use of medium response = 0.33, and

F_{lr} = the weighting factor based on consumer use of light response = 0.62.

5.4.3 *Water consumption during water softener regeneration for water-softening dishwashers using electrically heated, gas-heated, or oil-heated water.* The water consumption for water softener regeneration, V_{WS}, is defined as:

$V_{WS} = (V_{WSmax} - V_{WSavg}) \times N_{WS}/N$

Where,

V_{WSmax} = the value of the total water consumption during a cycle including water softener regeneration recorded in section 4.1 of this appendix, expressed in gallons per cycle,

V_{WSavg} = the value of the average total water consumption during cycles not including water softener regeneration recorded in section 4.1 of this appendix, expressed in gallons per cycle,

N_{WS} = the representative average number of water softener regeneration cycles per year = 36 cycles per year, and

N = the representative average dishwasher use of 215 cycles per year.

5.5 *Water energy consumption for non-soil-sensing or soil-sensing dishwashers using electrically heated water.*

5.5.1 *Dishwashers that operate with a nominal 140 °F inlet water temperature, only.*

5.5.1.1 Calculate the water energy consumption, W, expressed in kilowatt-hours per cycle and defined as:

$W = V \times T \times K$

Where,

V = water consumption in gallons per cycle, as determined in section 5.4.1 of this appendix for non-soil-sensing dishwashers and section 5.4.2 of this appendix for soil-sensing dishwashers,

T = nominal water heater temperature rise = 90 °F, and

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

5.5.1.2 For water-softening dishwashers, calculate the water softener regeneration water energy consumption, W_{WS}, expressed in kilowatt-hours per cycle and defined as:

$W_{WS} = V_{WS} \times T \times K$

Where,

V_{WS} = water consumption during water softener regeneration in gallons per cycle which includes regeneration, as determined in section 5.4.3 of this appendix,

T = nominal water heater temperature rise = 90 °F, and

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

5.5.2 *Dishwashers that operate with a nominal inlet water temperature of 120 °F.*

5.5.2.1 kilowatt-hours per cycle and defined as:

$W = V \times T \times K$

Where,

V = water consumption in gallons per cycle, as determined in section 5.4.1 of this appendix for non-soil-sensing dishwashers and section 5.4.2 of this appendix for soil-sensing dishwashers,

T = nominal water heater temperature rise = 70 °F, and

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024,

5.5.2.2 For water-softening dishwashers, calculate the water softener regeneration water energy consumption, W_{WS}, expressed in kilowatt-hours per cycle and defined as:

$W_{WS} = V_{WS} \times T \times K$

Where,

V_{WS} = water consumption during water softener regeneration in gallons per cycle which includes regeneration, as determined in section 5.4.3 of this appendix,

T = nominal water heater temperature rise = 70 °F, and

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

5.6 *Water energy consumption per cycle using gas-heated or oil-heated water.*

5.6.1 *Dishwashers that operate with a nominal 140 °F inlet water temperature, only.*

5.6.1.1 Calculate the water energy consumption using gas-heated or oil-heated water, W_g, expressed in Btu's per cycle and defined as:

$W_g = V \times T \times C/e$

Where,

V = water consumption in gallons per cycle, as determined in section 5.4.1 of this appendix for non-soil-sensing dishwashers and section 5.4.2 of this appendix for soil-sensing dishwashers,

T = nominal water heater temperature rise = 90 °F,

C = specific heat of water in Btu's per gallon per degree Fahrenheit = 8.2, and

e = nominal gas or oil water heater recovery efficiency = 0.75,

5.6.1.2 For water-softening dishwashers, calculate the water softener regeneration water energy consumption, W_{WSg}, expressed in kilowatt-hours per cycle and defined as:

$W_{WSg} = V_{WS} \times T \times C/e$

Where,

V_{WS} = water consumption during water softener regeneration in gallons per cycle which includes regeneration, as determined in section 5.4.3 of this appendix,

T = nominal water heater temperature rise = 90 °F,

C = specific heat of water in Btu's per gallon per degree Fahrenheit = 8.2, and

e = nominal gas or oil water heater recovery efficiency = 0.75.

5.6.2 *Dishwashers that operate with a nominal 120 °F inlet water temperature, only.*

5.6.2.1 Calculate the water energy consumption using gas-heated or oil-heated water, W_g, expressed in Btu's per cycle and defined as:

$W_g = V \times T \times C/e$

Where,

V = water consumption in gallons per cycle, as determined in section 5.4.1 of this appendix for non-soil-sensing dishwashers and section 5.4.2 of this appendix for soil-sensing dishwashers,

T = nominal water heater temperature rise = 70 °F,

C = specific heat of water in Btu's per gallon per degree Fahrenheit = 8.2, and

e = nominal gas or oil water heater recovery efficiency = 0.75.

5.6.2.2 For water-softening dishwashers, calculate the water softener regeneration water energy consumption, W_{WSg}, expressed in kilowatt-hours per cycle and defined as:

$W_{WSg} = V_{WS} \times T \times C/e$

Where,

V_{WS} = water consumption during water softener regeneration in gallons per cycle which includes regeneration, as determined in section 5.4.3 of this appendix,

T = nominal water heater temperature rise = 70 °F,

C = specific heat of water in Btu's per gallon per degree Fahrenheit = 8.2, and

e = nominal gas or oil water heater recovery efficiency = 0.75.

5.7 *Annual simplified standby energy consumption.* Calculate the estimated annual simplified standby energy consumption. First determine the number of standby hours per year, H_s, defined as:

$H_s = H—(N \times L)$

Where,

H = the total number of hours per year = 8766 hours per year,

N = the representative average dishwasher use of 215 cycles per year, and

L = the average of the duration of the normal cycle and truncated normal cycle, for non-soil-sensing dishwashers with a truncated normal cycle; the duration of the normal cycle, for non-soil-sensing dishwashers without a truncated normal cycle; the average duration of the sensor light response, truncated sensor light response, sensor medium response, truncated sensor medium response, sensor heavy response, and truncated sensor heavy response, for soil-sensing dishwashers with a truncated cycle option; the average duration of the sensor light response, sensor medium response, and sensor heavy response, for soil-sensing dishwashers without a truncated cycle option.

Then calculate the estimated annual simplified standby power use, S, expressed in kilowatt-hours per year and defined as:

$S = S_m \times ((H_s)/1000)$

Where,

S_m = the simplified standby mode power in watts as determined in section 4.3 of this appendix.

5.8 *Annual combined low-power mode energy consumption*. Calculate the annual combined low-power mode energy consumption for dishwashers, E_{TLP}, expressed in kilowatt-hours per year, according to the following:

$E_{TLP} = [(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM})] \times K$

Where:

P_{IA} = dishwasher inactive mode power, in watts, as measured in section 4.4.1 of this appendix for dishwashers capable of operating in inactive mode; otherwise, P_{IA}=0,

P_{OM} = dishwasher off mode power, in watts, as measured in section 4.4.2 of this appendix for dishwashers capable of operating in off mode; otherwise, P_{OM}=0,

S_{IA} = annual hours in inactive mode as defined as S_{LP} if no off mode is possible, [S_{LP}/2] if both inactive mode and off mode are possible, and 0 if no inactive mode is possible,

S_{OM} = annual hours in off mode as defined as S_{LP} if no inactive mode is possible, [S_{LP}/2] if both inactive mode and off mode are possible, and 0 if no off mode is possible,

S_{LP} = combined low-power annual hours for cycle finished, off, and inactive mode as defined as [H—(N×(L + L_F))] for dishwashers capable of operating in fan-only mode; otherwise, S_{LP}=8,465,

H = the total number of hours per year = 8766 hours per year,

N = the representative average dishwasher use of 215 cycles per year,

L = the average of the duration of the normal cycle and truncated normal cycle, for non-soil-sensing dishwashers with a truncated normal cycle; the duration of the normal cycle, for non-soil-sensing dishwashers without a truncated normal cycle; the average duration of the sensor light response, truncated sensor light response, sensor medium response, truncated sensor medium response, sensor heavy response, and truncated sensor heavy response, for soil-sensing dishwashers with a truncated cycle option; the average duration of the sensor light response, sensor medium response, and sensor heavy response, for soil-sensing dishwashers without a truncated cycle option,

L_F = the duration of the fan-only mode for the normal cycle for non-soil-sensing dishwashers; the average duration of the fan-only mode for sensor light response, sensor medium response, and sensor heavy response for soil-sensing dishwashers, and

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

Appendix I—[Amended]

5. Appendix I to subpart B of part 430 is amended:

a. By revising the Note after the appendix heading;

b. By revising section 1. Definitions;

c. In section 2. Test Conditions, by:

1. Revising sections 2.1, 2.1.1, 2.1.2, 2.1.3, 2.2.1.2, 2.5.2, 2.6, 2.9.1.1, 2.9.1.3, and 2.9.2.1;

2. Removing section 2.9.2.2;

d. By revising section 3. Test Methods and Measurements: And

e. By revising section 4. Calculation of Derived Results From Test Measurements

The additions and revisions read as follows:

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

Note: The procedures and calculations in this Appendix I need not be performed to determine compliance with energy conservation standards for conventional ranges, conventional cooking tops, conventional ovens, and microwave ovens at this time. However, any representation related to standby mode and off mode energy consumption of conventional ranges, conventional cooking tops, and conventional ovens made after (*date 180 days after date of publication of the test procedure final rule in the* **Federal Register**) and of microwave ovens made after September 6, 2011 must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). Upon the compliance date of any energy conservation standard that incorporates standby mode and off mode energy consumption, compliance with the applicable provisions of this test procedure will also be required. Future revisions may add relevant provisions for measuring active mode in microwave ovens.

1. Definitions

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

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

1.3 *Combined low-power mode* means the aggregate of available modes other than active mode.

1.4 *Cycle finished mode* means a standby mode in which a conventional cooking top, conventional oven, or conventional range provides continuous status display following operation in active mode.

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

1.6 *Fan-only mode* means an active mode in which a fan circulates air internally or externally to the cooking product for a finite period of time after the end of the heating function, as indicated to the consumer.

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

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

1.9 *IEC 62301 First Edition* means the test standard published by the International Electrotechnical Commission, titled ''Household electrical appliances—Measurement of standby power,'' Publication 62301 (First Edition 2005–06) (incorporated by reference; see § 430.3).

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

1.11 *Inactive mode* means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

1.12 *Normal nonoperating temperature* means the temperature of all areas of an appliance to be tested are within 5 °F (2.8 °C) of the temperature that the identical areas of the same basic model of the appliance would attain if it remained in the test room for 24 hours while not operating with all oven doors closed.

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

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

1.15 *Secondary energy consumption* means any electrical energy consumption of a conventional gas oven.

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

1.17 *Standby mode* means any modes where the product is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time: (a) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer; (b) continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

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

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

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

2. Test Conditions

2.1 *Installation.* A free standing kitchen range shall be installed with the back directly against, or as near as possible to, a vertical wall which extends at least 1 foot above and on either side of the appliance. There shall be no side walls. A drop-in, built-in, or wall-mounted appliance shall be installed in an enclosure in accordance with the manufacturer's instructions. These appliances are to be completely assembled with all handles, knobs, guards, and the like mounted in place. Any electric resistance heaters, gas burners, baking racks, and baffles shall be in place in accordance with the manufacturer's instructions; however, broiler pans are to be removed from the oven's baking compartment.

2.1.1 *Conventional electric ranges, ovens, and cooking tops.* These products shall be connected to an electrical supply circuit with voltage as specified in section 2.2.1 of this appendix with a watt-hour meter installed in the circuit. The watt-hour meter shall be as described in section 2.9.1.1 of this appendix. For standby mode and off mode testing, these products shall also be installed in accordance with section 5.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

2.1.2 *Conventional gas ranges, ovens, and cooking tops.* These products shall be connected to a gas supply line with a gas meter installed between the supply line and the appliance being tested, according to manufacturer's specifications. The gas meter shall be as described in section 2.9.2 of this appendix. Conventional gas ranges, ovens, and cooking tops with electrical ignition devices or other electrical components shall be connected to an electrical supply circuit of nameplate voltage with a watt-hour meter installed in the circuit. The watt-hour meter shall be as described in section 2.9.1.1 of this appendix. For standby mode and off mode testing, these products shall also be installed in accordance with section 5.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

2.1.3 *Microwave ovens.* Install the microwave oven in accordance with the manufacturer's instructions and connect to an electrical supply circuit with voltage as specified in section 2.2.1 of this appendix. The microwave oven shall also be installed in accordance with section 5.2 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3). A watt meter shall be installed in the circuit and shall be as described in section 2.9.1.3 of this appendix.

* * * * *

2.2.1.2 *Supply voltage waveform.* For conventional range, conventional cooking top, and conventional oven standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in section 4.3.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3). For microwave oven standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in section 4.4 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3).

* * * * *

2.5.2 *Standby mode and off mode ambient temperature.* For conventional range, conventional cooking top, and conventional oven standby mode and off mode testing, maintain room ambient air temperature conditions as specified in section 4.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3). For microwave oven standby mode and off mode testing, maintain room ambient air temperature conditions as specified in section 4.2 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3).

2.6 *Normal nonoperating temperature.* All areas of the appliance to be tested shall attain the normal nonoperating temperature, as defined in section 1.12 of this appendix, before any testing begins. The equipment for measuring the applicable normal nonoperating temperature shall be as described in sections 2.9.3.1, 2.9.3.2, 2.9.3.3, and 2.9.3.4 of this appendix, as applicable.

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2.9.1.1 *Watt-hour meter.* The watt-hour meter for measuring the electrical energy consumption of conventional ovens and cooking tops shall have a resolution of 1 watt-hour (3.6 kJ) or less and a maximum error no greater than 1.5 percent of the measured value for any demand greater than 5 watts. The watt-hour meter for measuring the energy consumption of microwave ovens shall have resolution of 0.1 watt-hour (0.36 kJ) or less and a maximum error no greater than 1.5 percent of the measured value.

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2.9.1.3 *Standby mode and off mode watt meter.* The watt meter used to measure conventional range, conventional cooking top, and conventional oven standby mode and off mode power consumption shall have a resolution as specified in section 4.4 of IEC 62301 (Second Edition) (incorporated by reference, see § 430.3). The watt meter used to measure microwave oven standby mode and off mode power consumption shall have a resolution as specified in section 4.5 of IEC 62301 (First Edition) (incorporated by reference, see § 430.3), and shall also be able to record a ''true'' average power as specified in section 5.3.2(a) of IEC 62301 (First Edition).

2.9.2 *Gas Measurements.*

2.9.2.1 *Positive displacement meters.* The gas meter to be used for measuring the gas consumed by the gas burners of the oven or cooking top shall have a resolution of 0.01 cubic foot (0.28 L) or less and a maximum error no greater than 1 percent of the measured valued for any demand greater than 2.2 cubic feet per hour (62.3 L/h).

3. Test Methods and Measurements

3.1 *Test methods.*

3.1.1 *Conventional oven.* Perform a test by establishing the testing conditions set forth in section 2, *Test Conditions,* of this appendix and turn off the gas flow to the conventional cooking top, if so equipped. Before beginning the test, the conventional oven shall be at its normal nonoperating temperature as defined in section 1.12 of this appendix and described in section 2.6 of this appendix. Set the conventional oven test block W_1 approximately in the center of the usable baking space. If there is a selector switch for selecting the mode of operation of the oven, set it for normal baking. If an oven permits baking by either forced convection by using a fan, or without forced convection, the oven is to be tested in each of those two modes. The oven shall remain on for one complete thermostat ''cut-off/cut-on'' of the electrical resistance heaters or gas burners after the test block temperature has increased 234 °F (130 °C) above its initial temperature.

3.1.1.1 *Self-cleaning operation of a conventional oven.* Establish the test conditions set forth in section 2, *Test Conditions,* of this appendix. Turn off the gas flow to the conventional cooking top. The temperature of the conventional oven shall be its normal nonoperating temperature as defined in section 1.12 of this appendix and described in section 2.6 of this appendix. Then set the conventional oven's self-cleaning process in accordance with the manufacturer's instructions. If the self-cleaning process is adjustable, use the average time recommended by the manufacturer for a moderately soiled oven.

3.1.1.2 *Conventional oven standby mode and off mode power.* Establish the standby mode and off mode testing conditions set forth in section 2, *Test Conditions,* of this appendix. For conventional ovens that take some time to enter a stable state from a higher power state as discussed in section 5.1, Note 1 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), allow sufficient time for the conventional oven to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in section 5.3.2 of IEC 62301 (Second Edition) for testing in each possible mode as described in sections 3.1.1.2.1 and 3.1.1.2.2

of this appendix. For units in which power varies as a function of displayed time in standby mode, either: (1) Set the clock time to 3:23 at the end of the stabilization period specified in section 5.3 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3), and use the average power approach described in section 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33; or (2) at any starting clock time, allow a stabilization period as described in section 5.3 of IEC 62301 (First Edition), and use the average power approach described in section 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 12 hours +0/−30 sec. Testing may be conducted using either a 12-hour test, a 10-minute test, or both tests; however, if a manufacturer elects to perform both tests on a unit, the manufacturer may only use the results from one of the test (*i.e.,* the 12-hour test or the 10-minute test) as the test results for that unit. Results of the 10-minute test that are within ±2 percent of the 12-hour test are deemed to be representative of average energy use.

3.1.1.2.1 If the conventional oven has an inactive mode, as defined in section 1.11 of this appendix, measure and record the average inactive mode power of the conventional oven, P_{IA}, in watts.

3.1.1.2.2 If the conventional oven has an off mode, as defined in section 1.13 of this appendix, measure and record the average off mode power of the conventional oven, P_{OM}, in watts.

3.1.2 *Conventional cooking top.* Establish the test conditions set forth in section 2, *Test Conditions,* of this appendix. Turn off the gas flow to the conventional oven(s), if so equipped. The temperature of the conventional cooking top shall be its normal nonoperating temperature as defined in section 1.12 of this appendix and described in section 2.6 of this appendix. Set the test block in the center of the surface unit under test. The small test block, W_2, shall be used on electric surface units of 7 inches (178 mm) or less in diameter. The large test block, W_3, shall be used on electric surface units over 7 inches (178 mm) in diameter and on all gas surface units. Turn on the surface unit under test and set its energy input rate to the maximum setting. When the test block reaches 144 °F (80 °C) above its initial test block temperature, immediately reduce the energy input rate to 25±5 percent of the maximum energy input rate. After 15±0.1 minutes at the reduced energy setting, turn off the surface unit under test.

3.1.2.1 *Conventional cooking top standby mode and off mode power.* Establish the standby mode and off mode testing conditions set forth in section 2, *Test Conditions,* of this appendix. For conventional cooktops that take some time to enter a stable state from a higher power state as discussed in section 5.1, Note 1 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), allow sufficient time for the conventional cooking top to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in section 5.3.2 of IEC 62301 (Second Edition) for testing in each possible mode as described in sections 3.1.2.1.1 and 3.1.2.1.2 of this appendix. For units in which power varies as a function of displayed time in standby mode, either: (1) set the clock time to 3:23 at the end of the stabilization period specified in section 5.3 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3), and use the average power approach described in section 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33; or (2) at any starting clock time, allow a stabilization period as described in section 5.3 of IEC 62301 (First Edition), and use the average power approach described in section 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 12 hours +0/−30 sec. Testing may be conducted using either a 12-hour test, a 10-minute test, or both tests; however, if a manufacturer elects to perform both tests on a unit, the manufacturer may only use the results from one of the tests (*i.e.,* the 12-hour test or the 10-minute test) as the test results for that unit. Results of the 10-minute test that are within ±2 percent of the 12-hour test are deemed to be representative of average energy use.

3.1.2.1.1 If the conventional cooking top has an inactive mode, as defined in section 1.11 of this appendix, measure and record the average inactive mode power of the conventional cooking top, P_{IA}, in watts.

3.1.2.1.2 If the conventional cooking top has an off mode, as defined in section 1.13 of this appendix, measure and record the average off mode power of the conventional cooking top, P_{OM}, in watts.

3.1.3 *Conventional range standby mode and off mode power.* Establish the standby mode and off mode testing conditions set forth in section 2, *Test Conditions,* of this appendix. For conventional ranges that take some time to enter a stable state from a higher power state as discussed in section 5.1, Note 1 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), allow sufficient time for the conventional range to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in section 5.3.2 of IEC 62301 (Second Edition) for testing in each possible mode as described in sections 3.1.3.1 and 3.1.3.2 of this appendix. For units in which power varies as a function of displayed time in standby mode, either: (1) set the clock time to 3:23 at the end of the stabilization period specified in section 5.3 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3), and use the average power approach described in section 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes +0/-2 sec after an additional stabilization period until the clock time reaches 3:33; or (2) at any starting clock time, allow a stabilization period as described in section 5.3 of IEC 62301 (First Edition), and use the average power approach described in section 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 12 hours +0/-30 sec. Testing may be conducted using either a 12-hour test, a 10-minute test, or both tests; however, if a manufacturer elects to perform both tests on a unit, the manufacturer may only use the results from one of the test (*i.e.,* the 12-hour test or the 10-minute test) as the test results for that unit. Results of the 10-minute test that are within ±2 percent of the 12-hour test are deemed to be representative of average energy use.

3.1.3.1 If the conventional range has an inactive mode, as defined in section 1.11 of this appendix, measure and record the average inactive mode power of the conventional range, P_{IA}, in watts.

3.1.3.2 If the conventional range has an off mode, as defined in section 1.13 of this appendix, measure and record the average off mode power of the conventional range, P_{OM}, in watts.

3.1.4 *Microwave oven.*

3.1.4.1 *Microwave oven test standby mode and off mode power.* Establish the testing conditions set forth in section 2, *Test Conditions,* of this appendix. For microwave ovens that drop from a higher power state to a lower power state as discussed in section 5.1, Note 1 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3), allow sufficient time for the microwave oven to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in section 5.3 of IEC 62301 (First Edition). For units in which power varies as a function of displayed time in standby mode, set the clock time to 3:23 and use the average power approach described in section 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes +0/-2 sec after an additional stabilization period until the clock time reaches 3:33. If a microwave oven is capable of operation in either standby mode or off mode, as defined in sections 1.17 or 1.13 of this appendix, respectively, or both, test the microwave oven in each mode in which it can operate.

3.2 *Test measurements.*

3.2.1 *Conventional oven test energy consumption.* If the oven thermostat controls the oven temperature without cycling on and off, measure the energy consumed, E_O, when the temperature of the block reaches T_O (T_O is 234 °F (130 °C) above the initial block temperature, T_I). If the oven thermostat operates by cycling on and off, make the following series of measurements: Measure the block temperature, T_A, and the energy consumed, E_A, or volume of gas consumed, V_A, at the end of the last ''ON'' period of the conventional oven before the block reaches T_O. Measure the block temperature, T_B, and the energy consumed, E_B, or volume of gas consumed, V_B, at the beginning of the next ''ON'' period. Measure the block temperature, T_C, and the energy consumed, E_C, or volume of gas consumed, V_C, at the end of that ''ON'' period. Measure the block temperature, T_D, and the energy consumed, E_D, or volume of gas consumed, V_D, at the beginning of the following ''ON'' period. Energy measurements for E_O, E_A, E_B, E_C, and E_D should be expressed in watt-hours (kJ) for conventional electric ovens, and volume measurements for V_A, V_B, V_C, and V_D should be expressed in standard cubic feet (L) of gas for conventional gas ovens. For a gas oven, measure in watt-hours (kJ) any electrical

energy, E_{IO}, consumed by an ignition device or other electrical components required for the operation of a conventional gas oven while heating the test block to T_O.

3.2.1.1 *Conventional oven average test energy consumption.* If the conventional oven permits baking by either forced convection or without forced convection and the oven thermostat does not cycle on and off, measure the energy consumed with the forced convection mode, $(E_O)_1$, and without the forced convection mode, $(E_O)_2$, when the temperature of the block reaches T_O (T_O is 234 °F (130 °C) above the initial block temperature, T_I). If the conventional oven permits baking by either forced convection or without forced convection and the oven thermostat operates by cycling on and off, make the following series of measurements with and without the forced convection mode: Measure the block temperature, T_A, and the energy consumed, E_A, or volume of gas consumed, V_A, at the end of the last ''ON'' period of the conventional oven before the block reaches T_O. Measure the block temperature, T_B, and the energy consumed, E_B, or volume of gas consumed, V_B, at the beginning of the next ''ON'' period. Measure the block temperature, T_C, and the energy consumed, E_C, or volume of gas consumed, V_C, at the end of that ''ON'' period. Measure the block temperature, T_D, and the energy consumed, E_D, or volume of gas consumed, V_D, at the beginning of the following ''ON'' period. Energy measurements for E_O, E_A, E_B, E_C, and E_D should be expressed in watt-hours (kJ) for conventional electric ovens, and volume measurements for V_A, V_B, V_C, and V_D should be expressed in standard cubic feet (L) of gas for conventional gas ovens. For a gas oven that can be operated with or without forced convection, measure in watt-hours (kJ) any electrical energy consumed by an ignition device or other electrical components required for the operation of a conventional gas oven while heating the test block to T_O using the forced convection mode, $(E_{IO})_1$, and without using the forced convection mode, $(E_{IO})_2$.

3.2.1.2 *Conventional oven fan-only mode energy consumption.* If the conventional oven is capable of operation in fan-only mode, measure the fan-only mode energy consumption, E_{OF}, expressed in watt-hours (kJ) of electricity consumed by the conventional oven for the duration of the fan-only mode immediately after the completion of the measurement of test energy consumption set forth in section 3.2.1 of this appendix, using a watt-hour meter as specified in section 2.9.1.1 of this appendix. Record the time in minutes that the conventional oven remains in fan-only mode, t_{OF}

3.2.1.3 *Energy consumption of self-cleaning operation.* Measure the energy consumption, E_S, in watt-hours (kJ) of electricity or the volume of gas consumption, V_S, in standard cubic feet (L) during the self-cleaning test set forth in section 3.1.1.1 of this appendix. For a gas oven, also measure in watt-hours (kJ) any electrical energy, E_{IS}, consumed by ignition devices or other electrical components required during the self-cleaning test.

3.2.1.4 *Standby mode and off mode energy consumption.* Make measurements as specified in section 3.1.1.2 of this appendix. If the conventional oven is capable of operating in inactive mode, as defined in section 1.11 of this appendix, measure the average inactive mode power of the conventional oven, P_{IA}, in watts as specified in section 3.1.1.2.1 of this appendix. If the conventional oven is capable of operating in off mode, as defined in section 1.13 of this appendix, measure the average off mode power of the conventional oven, P_{OM}, in watts as specified in section 3.1.1.2.2 of this appendix.

3.2.2 *Conventional surface unit test energy consumption.*

3.2.2.1 *Conventional surface unit average test energy consumption.* For the surface unit under test, measure the energy consumption, E_{CT}, in watt-hours (kJ) of electricity or the volume of gas consumption, V_{CT}, in standard cubic feet (L) of gas and the test block temperature, T_{CT}, at the end of the 15 minute (reduced input setting) test interval for the test specified in section 3.1.2 of this appendix and the total time, t_{CT}, in hours, that the unit is under test. Measure any electrical energy, E_{IC}, consumed by an ignition device of a gas heating element or other electrical components required for the operation of the conventional gas cooking top in watt-hours (kJ).

3.2.2.2 *Conventional surface unit standby mode and off mode energy consumption.* Make measurements as specified in section 3.1.2.1 of this appendix. If the conventional surface unit is capable of operating in inactive mode, as defined in section 1.11 of this appendix, measure the average inactive mode power of the conventional surface unit, P_{IA}, in watts as specified in section 3.1.2.1.1 of this appendix. If the conventional surface unit is capable of operating in off mode, as defined in section 1.13 of this appendix, measure the average off mode power of the conventional surface unit, P_{OM}, in watts as specified in section 3.1.2.1.2 of this appendix.

3.2.3 *Conventional range standby mode and off mode energy consumption.* Make measurements as specified in section 3.1.3 of this appendix. If the conventional range is capable of operating in inactive mode, as defined in section 1.11 of this appendix, measure the average inactive mode power of the conventional range, P_{IA}, in watts as specified in section 3.1.3.1 of this appendix. If the conventional range is capable of operating in off mode, as defined in section 1.13 of this appendix, measure the average off mode power of the conventional range, P_{OM}, in watts as specified in section 3.1.3.2 of this appendix.

3.2.4 *Microwave oven test standby mode and off mode power.* Make measurements as specified in section 5.3 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3). If the microwave oven is capable of operating in standby mode, as defined in section 1.17 of this appendix, measure the average standby mode power of the microwave oven, P_{SB}, in watts as specified in section 3.1.4.1 of this appendix. If the microwave oven is capable of operating in off mode, as defined in section 1.13 of this appendix, measure the average off mode power of the microwave oven, P_{OM}, as specified in section 3.1.4.1 of this appendix.

3.3 *Recorded values.*

3.3.1 Record the test room temperature, T_R, at the start and end of each range, oven, or cooking top test, as determined in section 2.5 of this appendix.

3.3.2 Record measured test block weights W_1, W_2, and W_3 in pounds (kg).

3.3.3 Record the initial temperature, T_1, of the test block under test.

3.3.4 For a conventional oven with a thermostat which operates by cycling on and off, record the conventional oven test measurements T_A, E_A, T_B, E_B, T_C, E_C, T_D, E_D for conventional electric ovens, or T_A, V_A, T_B, V_B, T_C, V_C, T_D, and V_D for conventional gas ovens. If the thermostat controls the oven temperature without cycling on and off, record E_O. For a gas oven which also uses electrical energy for the ignition or operation of the oven, also record E_{IO}.

3.3.5 For a conventional oven that can be operated with or without forced convection and the oven thermostat controls the oven temperature without cycling on and off, measure the energy consumed with the forced convection mode, $(E_O)_1$, and without the forced convection mode, $(E_O)_2$. If the conventional oven operates with or without forced convection and the thermostat controls the oven temperature by cycling on and off, record the conventional oven test measurements T_A, E_A, T_B, E_B, T_C, E_C, T_D, E_D for conventional electric ovens, or T_A, V_A, T_B, V_B, T_C, V_C, T_D, and V_D for conventional gas ovens. For a gas oven that can be operated with or without forced convection, measure any electrical energy consumed by an ignition device or other electrical components used during the forced convection mode, $(E_{IO})_1$, and without using the forced convection mode, $(E_{IO})_2$.

3.3.6 Record the measured energy consumption, E_S, or gas consumption, V_S, and for a gas oven, any electrical energy, E_{IS}, for the test of the self-cleaning operation of a conventional oven.

3.3.7 For conventional ovens, record the conventional oven standby mode and off mode test measurements P_{IA} and P_{OM}, if applicable. For conventional cooktops, record the conventional cooking top standby mode and off mode test measurements P_{IA} and P_{OM}, if applicable. For conventional ranges, record the conventional range standby mode and off mode test measurements P_{IA} and P_{OM}, if applicable.

3.3.8 For the surface unit under test, record the electric energy consumption, E_{CT}, or the gas volume consumption, V_{CT}, the final test block temperature, T_{CT}, and the total test time, t_{CT}. For a gas cooking top which uses electrical energy for ignition of the burners, also record E_{IC}.

3.3.9 Record the heating value, Hn, as determined in section 2.2.2.2 of this appendix for the natural gas supply.

3.3.10 Record the heating value, Hp, as determined in section 2.2.2.3 of this appendix for the propane supply.

3.3.11 Record the average standby mode power, P_{SB}, for the microwave oven standby mode, as determined in section 3.2.4 of this appendix for a microwave oven capable of operating in standby mode. Record the average off mode power, P_{OM}, for the microwave oven off mode power test, as

determined in section 3.2.4 of this appendix for a microwave oven capable of operating in off mode.

4. Calculation of Derived Results From Test Measurements

4.1 *Conventional oven.*

4.1.1 *Test energy consumption.* For a conventional oven with a thermostat which operates by cycling on and off, calculate the test energy consumption, E_O, expressed in watt-hours (kJ) for electric ovens and in Btus (kJ) for gas ovens, and defined as:

$$E_O = E_{AB} + \left[\left(\frac{T_O - T_{AB}}{T_{CD} - T_{AB}}\right) \times \left(E_{CD} - E_{AB}\right)\right]$$

for electric ovens, and,

$$E_O = \left(V_{AB} \times H\right) + \left[\left(\frac{T_O - T_{AB}}{T_{CD} - T_{AB}}\right) \times \left(V_{CD} - V_{AB}\right) \times H\right]$$

for gas ovens,

Where:

H = either H_n or H_p, the heating value of the gas used in the test as specified in sections 2.2.2.2 and 2.2.2.3 of this appendix, expressed in Btus per standard cubic foot (kJ/L).

T_O = 234 °F (130 °C) plus the initial test block temperature.

and,

$$E_{AB} = \frac{\left(E_A + E_B\right)}{2}, \quad E_{CD} = \frac{\left(E_C + E_D\right)}{2},$$

$$V_{AB} = \frac{\left(V_A + V_B\right)}{2}, \quad V_{CD} = \frac{\left(V_C + V_D\right)}{2},$$

$$T_{AB} = \frac{\left(T_A + T_B\right)}{2}, \quad T_{CD} = \frac{\left(T_C + T_D\right)}{2},$$

Where:

T_A = block temperature in °F (°C) at the end of the last ''ON'' period of the conventional oven before the test block reaches T_O.

T_B = block temperature in °F (°C) at the beginning of the ''ON'' period following the measurement of T_A.

T_C = block temperature in °F (°C) at the end of the ''ON'' period which starts with T_B.

T_D = block temperature in °F (°C) at the beginning of the ''ON'' period which follows the measurement of T_C.

E_A = electric energy consumed in Wh (kJ) at the end of the last ''ON'' period before the test block reaches T_O.

E_B = electric energy consumed in Wh (kJ) at the beginning of the ''ON'' period following the measurement of T_A.

E_C = electric energy consumed in Wh (kJ) at the end of the ''ON'' period which starts with T_B.

E_D = electric energy consumed in Wh (kJ) at the beginning of the ''ON'' period which follows the measurement of T_C.

V_A = volume of gas consumed in standard cubic feet (L) at the end of the last ''ON'' period before the test block reaches T_O.

V_B = volume of gas consumed in standard cubic feet (L) at the beginning of the ''ON'' period following the measurement of T_A.

V_C = volume of gas consumed in standard cubic feet (L) at the end of the ''ON'' period which starts with T_B.

V_D = volume of gas consumed in standard cubic feet (L) at the beginning of the ''ON'' period which follows the measurement of T_C.

4.1.1.1 *Average test energy consumption.* If the conventional oven can be operated with or without forced convection, determine the average test energy consumption, E_O and E_{IO}, in watt-hours (kJ) for electric ovens and Btus (kJ) for gas ovens using the following equations:

$$E_O = \frac{\left(E_O\right)_1 + \left(E_O\right)_2}{2}$$

$$E_{IO} = \frac{\left(E_{IO}\right)_1 + \left(E_{IO}\right)_2}{2}$$

Where:

$(E_O)_1$ = test energy consumption using the forced convection mode in watt-hours (kJ) for electric ovens and in Btus (kJ) for gas ovens as measured in section 3.2.1.1 of this appendix.

$(E_O)_2$ = test energy consumption without using the forced convection mode in watt-hours (kJ) for electric ovens and in Btus (kJ) for gas ovens as measured in section 3.2.1.1 of this appendix.

$(E_{IO})_1$ = electrical energy consumption in watt-hours (kJ) of a gas oven in forced

convection mode as measured in section 3.2.1.1 of this appendix.

$(E_{IO})_2$ = electrical energy consumption in watt-hours (kJ) of a gas oven without using the forced convection mode as measured in section 3.2.1.1 of this appendix.

4.1.2 *Conventional oven annual energy consumption.*

4.1.2.1 *Annual cooking energy consumption.*

$$E_{CO} = \frac{E_O \times K_e \times O_O}{W_1 \times C_p \times T_S}$$

for electric ovens,

Where:

E_O = test energy consumption as measured in section 3.2.1 of this appendix or as calculated in sections 4.1.1 or 4.1.1.1 of this appendix.

K_e = 3.412 Btu/Wh (3.6 kJ/Wh,) conversion factor of watt-hours to Btus.

O_O = 29.3 kWh (105,480 kJ) per year, annual useful cooking energy output of conventional electric oven.

W_1 = measured weight of test block in pounds (kg).

C_p = 0.23 Btu/lb-°F (0.96 kJ/kg ÷ °C), specific heat of test block.

T_S = 234 °F (130 °C), temperature rise of test block.

4.1.2.1.1 *Annual primary energy consumption.* Calculate the annual primary energy consumption for cooking, E_{CO}, expressed in kilowatt-hours (kJ) per year for electric ovens and in Btus (kJ) per year for gas ovens, and defined as:

$$E_{CO} = \frac{E_O \times O_O}{W_1 \times C_p \times T_S}$$

for gas ovens,

Where:

E_O = test energy consumption as measured in section 3.2.1 of this appendix or as calculated in sections 4.1.1 or 4.1.1.1 of this appendix.

O_O = 88.8 kBtu (93,684 kJ) per year, annual useful cooking energy output of conventional gas oven.

W_1, C_p and T_S are the same as defined above.

4.1.2.1.2 *Annual secondary energy consumption for cooking of gas ovens.* Calculate the annual secondary energy consumption for cooking, E_{SO}, expressed in kilowatt-hours (kJ) per year and defined as:

$$E_{SO} = \frac{E_{IO} \times K_e \times O_O}{W_1 \times C_p \times T_S},$$

Where:

E_{IO} = electrical test energy consumption as measured in section 3.2.1 of this appendix or as calculated in section 4.1.1.1 of this appendix.

O_O = 29.3 kWh (105,480 kJ) per year, annual useful cooking energy output.

K_e, W_1, C_p, and T_S are as defined in section 4.1.2.1.1 of this appendix.

4.1.2.2 *Annual conventional oven self-cleaning energy.*

4.1.2.2.1 *Annual primary energy consumption.* Calculate the annual primary energy consumption for conventional oven self-cleaning operations, E_{SC}, expressed in kilowatt-hours (kJ) per year for electric ovens and in Btus (kJ) for gas ovens, and defined as:

$E_{SC} = E_S \times S_e \times K$, for electric ovens,

Where:

E_S = energy consumption in watt-hours, as measured in section 3.2.1.3 of this appendix.

S_e = 4, average number of times a self-cleaning operation of a conventional electric oven is used per year.

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

or

$E_{SC} = V_S \times H \times S_g$, for gas ovens,

Where:

V_S = gas consumption in standard cubic feet (L), as measured in section 3.2.1.3 of this appendix.

$H = H_n$ or H_p, the heating value of the gas used in the test as specified in sections 2.2.2.2 and 2.2.2.3 of this appendix in Btus per standard cubic foot (kJ/L).

S_g = 4, average number of times a self-cleaning operation of a conventional gas oven is used per year.

4.1.2.2.2 *Annual secondary energy consumption for self-cleaning operation of gas ovens.* Calculate the annual secondary energy consumption for self-cleaning operations of a gas oven, E_{SS}, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{SS} = E_{IS} \times S_g \times K$,

Where:

E_{IS} = electrical energy consumed during the self-cleaning operation of a conventional gas oven, as measured in section 3.2.1.3 of this appendix.

S_g = 4, average number of times a self-cleaning operation of a conventional gas oven is used per year.

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

4.1.2.3 *Annual combined low-power mode energy consumption of a single conventional oven.* Calculate the annual standby mode and off mode energy consumption for conventional ovens, E_{OTLP}, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{OTLP} = [(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM})] \times K$,

Where:

P_{IA} = conventional oven inactive mode power, in watts, as measured in section 3.2.1.4 of this appendix.

P_{OM} = conventional oven off mode power, in watts, as measured in section 3.2.1.4 of this appendix.

S_{TOT} equals the total number of inactive mode and off mode hours per year;

If the conventional oven has fan-only mode, S_{TOT} equals $(8{,}540.1 - (t_{OF}/60))$ hours, where t_{OF} is the conventional oven fan-only mode duration, in minutes, as measured in section 3.2.1.2 of this appendix, and 60 is the conversion factor for minutes to hours; otherwise, S_{TOT} is equal to 8,540.1 hours.

If the conventional oven has both inactive mode and off mode, S_{IA} and S_{OM} both equal $S_{TOT}/2$;

If the conventional oven has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to S_{TOT} and the off mode annual hours, S_{OM}, is equal to 0;

If the conventional oven has an off mode but no inactive mode, S_{IA} is equal to 0 and S_{OM} is equal to S_{TOT};

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

4.1.2.4 *Total annual energy consumption of a single conventional oven.*

4.1.2.4.1 *Conventional electric oven energy consumption.* Calculate the total annual energy consumption of a conventional electric oven, E_{AO}, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{AO} = E_{CO} + E_{SC}$,

Where:

E_{CO} = annual primary cooking energy consumption as determined in section 4.1.2.1.1 of this appendix.

E_{SC} = annual primary self-cleaning energy consumption as determined in section 4.1.2.2.1 of this appendix.

4.1.2.4.2 *Conventional electric oven integrated energy consumption.* Calculate the

total integrated annual electrical energy consumption of a conventional electric oven, IE_{AO}, expressed in kilowatt-hours (kJ) per year and defined as:

$IE_{AO} = E_{CO} + E_{SC} + E_{OTLP}, + (E_{OF} \times N_{OE})$,

Where:

E_{CO} = annual primary cooking energy consumption as determined in section 4.1.2.1.1 of this appendix.

E_{SC} = annual primary self-cleaning energy consumption as determined in section 4.1.2.2.1 of this appendix.

E_{OTLP} = annual combined low-power mode energy consumption as determined in section 4.1.2.3 of this appendix.

E_{OF} = fan-only mode energy consumption as measured in section 3.2.1.2 of this appendix.

N_{OE} = representative number of annual conventional electric oven cooking cycles per year, which is equal to 219 cycles for a conventional electric oven without self-clean capability and 204 cycles for a conventional electric oven with self-clean capability.

4.1.2.4.3 *Conventional gas oven energy consumption.* Calculate the total annual gas energy consumption of a conventional gas oven, E_{AOG}, expressed in Btus (kJ) per year and defined as:

$E_{AOG} = E_{CO} + E_{SC}$,

Where:

E_{CO} = annual primary cooking energy consumption as determined in section 4.1.2.1.1 of this appendix.

E_{SC} = annual primary self-cleaning energy consumption as determined in section 4.1.2.2.1 of this appendix.

If the conventional gas oven uses electrical energy, calculate the total annual electrical energy consumption, E_{AOE}, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{AOE} = E_{SO} + E_{SS}$,

Where:

E_{SO} = annual secondary cooking energy consumption as determined in section 4.1.2.1.2 of this appendix.

E_{SS} = annual secondary self-cleaning energy consumption as determined in section 4.1.2.2.2 of this appendix.

If the conventional gas oven uses electrical energy, also calculate the total integrated annual electrical energy consumption, IE_{AOE}, expressed in kilowatt-hours (kJ) per year and defined as:

$IE_{AOE} = E_{SO} + E_{SS} + E_{OTLP} + (E_{OF} \times N_{OG})$,

Where:

E_{SO} = annual secondary cooking energy consumption as determined in section 4.1.2.1.2 of this appendix.

E_{SS} = annual secondary self-cleaning energy consumption as determined in section 4.1.2.2.2 of this appendix.

E_{OTLP} = annual combined low-power mode energy consumption as determined in section 4.1.2.3 of this appendix.

E_{OF} = fan-only mode energy consumption as measured in section 3.2.1.2 of this appendix.

N_{OG} = representative number of annual conventional gas oven cooking cycles per year, which is equal to 183 cycles for a conventional gas oven without self-clean capability and 197 cycles for a conventional gas oven with self-clean capability.

4.1.2.5 *Total annual energy consumption of multiple conventional ovens.* If the cooking appliance includes more than one conventional oven, calculate the total annual energy consumption of the conventional ovens using the following equations:

4.1.2.5.1 *Conventional electric oven energy consumption.* Calculate the total annual energy consumption, E_{TO}, in kilowatt-hours (kJ) per year and defined as:

$E_{TO} = E_{ACO} + E_{ASC}$,

Where:

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{CO}\right)_i ,$$

is the average annual primary energy consumption for cooking, and where:

n = number of conventional ovens in the basic model.

E_{CO} = annual primary energy consumption for cooking as determined in section 4.1.2.1.1 of this appendix.

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SC}\right)_i ,$$

average annual self-cleaning energy consumption,

Where:

n = number of self-cleaning conventional ovens in the basic model.

E_{SC} = annual primary self-cleaning energy consumption as determined according to section 4.1.2.2.1 of this appendix.

4.1.2.5.2 *Conventional electric oven integrated energy consumption.* Calculate the total integrated annual energy consumption, IE_{TO}, in kilowatt-hours (kJ) per year and defined as:

$IE_{TO} = E_{ACO} + E_{ASC} + E_{OTLP} + (E_{OF} \times N_{OE})$,

Where:

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{CO}\right)_i ,$$

is the average annual primary energy consumption for cooking, and where:

n = number of conventional ovens in the basic model.

E_{CO} = annual primary energy consumption for cooking as determined in section 4.1.2.1.1 of this appendix.

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SC}\right)_i ,$$

average annual self-cleaning energy consumption,

Where:

n = number of self-cleaning conventional ovens in the basic model.

E_{SC} = annual primary self-cleaning energy consumption as determined according to section 4.1.2.2.1 of this appendix.

E_{OTLP} = annual combined low-power mode energy consumption for the cooking appliance as determined in section 4.1.2.3 of this appendix.

E_{OF} = fan-only mode energy consumption as measured in section 3.2.1.2 of this appendix.

N_{OE} = representative number of annual conventional electric oven cooking cycles per year, which is equal to 219 cycles for a conventional electric oven without self-clean capability and 204 cycles for a conventional electric oven with self-clean capability.

4.1.2.5.3 *Conventional gas oven energy consumption.* Calculate the total annual gas energy consumption, E_{TOG}, in Btus (kJ) per year and defined as:

$E_{TOG} = E_{ACO} + E_{ASC}$,

Where:

E_{ACO} = average annual primary energy consumption for cooking in Btus (kJ) per year and is calculated as:

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{CO}\right)_i ,$$

Where:

n = number of conventional ovens in the basic model.

E_{CO} = annual primary energy consumption for cooking as determined in section 4.1.2.1.1 of this appendix.

and,

E_{ASC} = average annual self-cleaning energy consumption in Btus (kJ) per year and is calculated as:

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SC}\right)_i ,$$

Where:

n = number of self-cleaning conventional ovens in the basic model.

E_{SC} = annual primary self-cleaning energy consumption as determined according to section 4.1.2.2.1 of this appendix.

If the oven also uses electrical energy, calculate the total annual electrical energy consumption, E_{TOE}, in kilowatt-hours (kJ) per year and defined as:

$E_{TOE} = E_{ASO} + E_{AAS}$,

Where:

$$E_{ASO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SO}\right)_i ,$$

is the average annual secondary energy consumption for cooking,

Where:

n = number of conventional ovens in the basic model.

E_{SO} = annual secondary energy consumption for cooking of gas ovens as determined in section 4.1.2.1.2 of this appendix.

$$E_{AAS} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SS}\right)_i ,$$

is the average annual secondary self-cleaning energy consumption,

Where:

n = number of self-cleaning ovens in the basic model.

E_{SS} = annual secondary self-cleaning energy consumption of gas ovens as determined in section 4.1.2.2.2 of this appendix.

If the oven also uses electrical energy, also calculate the total integrated annual electrical energy consumption, IE_{TOE}, in kilowatt-hours (kJ) per year and defined as:

$IE_{TOE} = E_{ASO} + E_{AAS} + E_{OTLP} + (E_{OF} \times N_{OG})$,

Where:

$$E_{ASO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SO}\right)_i ,$$

is the average annual secondary energy consumption for cooking,

Where:

n = number of conventional ovens in the basic model.

E_{SO} = annual secondary energy consumption for cooking of gas ovens as determined in section 4.1.2.1.2 of this appendix.

$$E_{AAS} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SS}\right)_i ,$$

is the average annual secondary self-cleaning energy consumption,

Where:

n = number of self-cleaning ovens in the basic model.

E_{SS} = annual secondary self-cleaning energy consumption of gas ovens as determined in section 4.1.2.2.2 of this appendix.

E_{OTLP} = annual combined low-power mode energy consumption as determined in section 4.1.2.3 of this appendix.

E_{OF} = fan-only mode energy consumption as measured in section 3.2.1.2 of this appendix.

N_{OG} = representative number of annual conventional gas oven cooking cycles per year, which is equal to 183 cycles for a conventional gas oven without self-clean capability and 197 cycles for a conventional gas oven with self-clean capability.

4.1.3 *Conventional oven cooking efficiency.*

4.1.3.1 *Single conventional oven.* Calculate the conventional oven cooking efficiency, Eff_{AO}, using the following equations:

For electric ovens:

$$Eff_{AO} = \frac{W_1 \times C_p \times T_S}{E_O \times K_e}$$

and,

For gas ovens:

$$Eff_{AO} = \frac{W_1 \times C_p \times T_S}{E_O + \left(E_{IO} \times K_e\right)}$$

Where:

W_1 = measured weight of test block in pounds (kg).

C_p = 0.23 Btu/lb-°F (0.96 kJ/kg÷ °C), specific heat of test block.

T_S = 234 °F (130 °C), temperature rise of test block.

E_O = test energy consumption as measured in section 3.2.1 of this appendix or calculated in sections 4.1.1 or 4.1.1.1 of this appendix.

K_e = 3.412 Btu/Wh (3.6 kJ/Wh), conversion factor for watt-hours to Btus.

E_{IO} = electrical test energy consumption according to section 3.2.1 of this appendix or as calculated in section 4.1.1.1 of this appendix.

4.1.3.2 *Multiple conventional ovens.* If the cooking appliance includes more than one conventional oven, calculate the cooking efficiency for all of the conventional ovens in the appliance, Eff_{TO}, using the following equation:

$$Eff_{TO} = \frac{n}{\sum_{i=1}^{n}\left(Eff_{AO}\right)_i} ,$$

Where:

n = number of conventional ovens in the cooking appliance.

Eff_{AO} = cooking efficiency of each oven determined according to section 4.1.3.1 of this appendix.

4.1.4 *Conventional oven energy factor and integrated energy factor.*

4.1.4.1 *Conventional oven energy factor.* Calculate the energy factor, or the ratio of useful cooking energy output to the total energy input, R_O, using the following equations:

$$R_O = \frac{O_O}{E_{AO}},$$

For electric ovens,

Where:

O_O = 29.3 kWh (105,480 kJ) per year, annual useful cooking energy output.

E_{AO} = total annual energy consumption for electric ovens as determined in section 4.1.2.4.1 of this appendix.

For gas ovens:

$$R_O = \frac{O_O}{E_{AOG} + \left(E_{AOE} \times K_e\right)},$$

Where:

O_O = 88.8 kBtu (93,684 kJ) per year, annual useful cooking energy output.

E_{AOG} = total annual gas energy consumption for conventional gas ovens as determined in section 4.1.2.4.3 of this appendix.

E_{AOE} = total annual electrical energy consumption for conventional gas ovens as determined in section 4.1.2.4.3 of this appendix.

K_e = 3,412 Btu/kWh (3,600 kJ/kWh), conversion factor for kilowatt-hours to Btus.

4.1.4.2 *Conventional oven integrated energy factor.* Calculate the integrated energy factor, or the ratio of useful cooking energy output to the total integrated energy input, IR_O, using the following equations:

$$IR_O = \frac{O_O}{IE_{AO}},$$

For electric ovens,

Where:

O_O = 29.3 kWh (105,480 kJ) per year, annual useful cooking energy output.

IE_{AO} = total integrated annual energy consumption for electric ovens as determined in section 4.1.2.4.2 of this appendix.

For gas ovens:

$$IR_O = \frac{O_O}{E_{AOG} + \left(IE_{AOE} \times K_e\right)},$$

Where:

O_O = 88.8 kBtu (93,684 kJ) per year, annual useful cooking energy output.

E_{AOG} = total annual gas energy consumption for conventional gas ovens as determined in section 4.1.2.4.3 of this appendix.

IE_{AOE} = total integrated annual electrical energy consumption for conventional gas ovens as determined in section 4.1.2.4.3 of this appendix.

K_e = 3,412 Btu/kWh (3,600 kJ/kWh), conversion factor for kilowatt-hours to Btus.

4.2 *Conventional cooking top.*

4.2.1 *Conventional cooking top cooking efficiency.*

4.2.1.1 *Electric surface unit cooking efficiency.* Calculate the cooking efficiency, Eff_{SU}, of the electric surface unit under test, defined as:

$$Eff_{SU} = W \times C_P \times \left(\frac{T_{SU}}{K_e \times E_{CT}}\right),$$

Where:

W = measured weight of test block, W_2 or W_3, expressed in pounds (kg).

C_p = 0.23 Btu/lb-°F (0.96 kJ/kg ÷ °C), specific heat of test block.

T_{SU} = temperature rise of the test block: final test block temperature, T_{CT}, as determined in section 3.2.2 of this appendix, minus the initial test block temperature, T_I, expressed in °F (°C) as determined in section 2.7.5 of this appendix.

K_e = 3.412 Btu/Wh (3.6 kJ/Wh), conversion factor of watt-hours to Btus.

E_{CT} = measured energy consumption, as determined according to section 3.2.2.1 of this appendix, expressed in watt-hours (kJ).

4.2.1.2 *Gas surface unit cooking efficiency.* Calculate the cooking efficiency,

Eff_{SU}, of the gas surface unit under test, defined as:

$$Eff_{SU} = \left(\frac{W_3 \times C_P \times T_{SU}}{E}\right),$$

Where:

W_3 = measured weight of test block as measured in section 3.3.2 of this appendix, expressed in pounds (kg).

C_p and T_{SU} are the same as defined in section 4.2.1.1 of this appendix.

and,

$E = V_{CT} + (E_{IC} \times K_e)$,

Where:

V_{CT} = total gas consumption in standard cubic feet (L) for the gas surface unit test as measured in section 3.2.2.1 of this appendix.

E_{IC} = electrical energy consumed in watt-hours (kJ) by an ignition device of a gas surface unit as measured in section 3.2.2.1 of this appendix.

K_e = 3.412 Btu/Wh (3.6 kJ/Wh), conversion factor of watt-hours to Btus.

4.2.1.3 *Conventional cooking top cooking efficiency.* Calculate the conventional cooking top cooking efficiency, Eff_{CT}, using the following equation:

$$Eff_{CT} = \frac{1}{n}\sum_{i=1}^{n}\left(Eff_{SU}\right)_i$$

Where:

n = number of surface units in the cooking top.

Eff_{SU} = the efficiency of each of the surface units, as determined according to sections 4.2.1.1 or 4.2.1.2 of this appendix.

4.2.2 *Conventional cooking top annual energy consumption.*

4.2.2.1 *Conventional electric cooking top.*

4.2.2.1.1 *Annual energy consumption of a conventional electric cooking top.* Calculate the annual electrical energy consumption of an electric cooking top, E_{CA}, in kilowatt-hours (kJ) per year, defined as:

$$E_{CA} = \frac{O_{CT}}{Eff_{CT}},$$

Where:

O_{CT} = 173.1 kWh (623,160 kJ) per year, annual useful cooking energy output.

Eff_{CT} = conventional cooking top cooking efficiency as defined in section 4.2.1.3 of this appendix.

4.2.2.1.2 *Integrated annual energy consumption of a conventional electric cooking top.* Calculate the total integrated annual electrical energy consumption of an electric cooking top, IE_{CA}, in kilowatt-hours (kJ) per year, defined as:

$$IE_{CA} = \frac{O_{CT}}{Eff_{CT}} + E_{CTLP},$$

Where:

O_{CT} = 173.1 kWh (623,160 kJ) per year, annual useful cooking energy output.

Eff_{CT} = conventional cooking top cooking efficiency as defined in section 4.2.1.3 of this appendix.

E_{CTLP} = conventional cooking top combined low-power mode energy consumption = $[(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM})] \times K$,

Where:

P_{IA} = conventional cooking top inactive mode power, in watts, as measured in section 3.1.2.1.1 of this appendix.

P_{OM} = conventional cooking top off mode power, in watts, as measured in section 3.1.2.1.2 of this appendix.

If the conventional cooking top has both inactive mode and off mode annual hours, S_{IA} and S_{OM} both equal 4273.4;

If the conventional cooking top has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to 8546.9, and the off mode annual hours, S_{OM}, is equal to 0;

If the conventional cooking top has an off mode but no inactive mode, S_{IA} is equal to 0, and S_{OM} is equal to 8546.9;

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

4.2.2.2.2 *Total integrated annual energy consumption of a conventional gas cooking top.* Calculate the total integrated annual energy consumption of a conventional gas cooking top, IE_{CA}, in Btus (kJ) per year, defined as:

$IE_{CA} = E_{CC} + E_{CTSO}$,

Where:

E_{CC} = energy consumption for cooking as determined in section 4.2.2.2.1 of this appendix.

E_{CTSO} = conventional cooking top combined low-power mode energy consumption = $[(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM})] \times K$,

Where:

P_{IA} = conventional cooking top inactive mode power, in watts, as measured in section 3.1.2.1.1 of this appendix.

P_{OM} = conventional cooking top off mode power, in watts, as measured in section 3.1.2.1.2 of this appendix.

If the conventional cooking top has both inactive mode and off mode annual hours, S_{IA} and S_{OM} both equal 4273.4;

If the conventional cooking top has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to 8546.9, and the off mode annual hours, S_{OM}, is equal to 0;

If the conventional cooking top has an off mode but no inactive mode, S_{IA} is equal to 0, and S_{OM} is equal to 8546.9;

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

4.2.3 *Conventional cooking top energy factor and integrated energy factor.*

4.2.3.1 *Conventional cooking top energy factor.* Calculate the energy factor or ratio of useful cooking energy output for cooking to the total energy input, R_{CT}, as follows:

For an electric cooking top, the energy factor is the same as the cooking efficiency as determined according to section 4.2.1.3 of this appendix.

For gas cooking tops,

$$R_{CT} = \frac{O_{CT}}{E_{CC}},$$

Where:

O_{CT} = 527.6 kBtu (556,618 kJ) per year, annual useful cooking energy output of cooking top.

E_{CC} = energy consumption for cooking as determined in section 4.2.2.2.1 of this appendix.

4.2.3.2 *Conventional cooking top integrated energy factor.* Calculate the integrated energy factor or ratio of useful cooking energy output for cooking to the total integrated energy input, IR_{CT}, as follows:

For electric cooking tops,

$$IR_{CT} = \frac{O_{CT}}{IE_{CA}},$$

Where:

O_{CT} = 527.6 kBtu (556,618 kJ) per year, annual useful cooking energy output of cooking top.

IE_{CA} = total annual integrated energy consumption of cooking top determined according to section 4.2.2.1.2 of this appendix.

For gas cooking tops,

$$IR_{CT} = \frac{O_{CT}}{IE_{CA}},$$

Where:

O_{CT} = 527.6 kBtu (556,618 kJ) per year, annual useful cooking energy output of cooking top.

IE_{CA} = total integrated annual energy consumption of cooking top determined according to section 4.2.2.2.2 of this appendix.

4.3 *Combined components.* The annual energy consumption of a kitchen range (*e.g.,* a cooking top and oven combined) shall be the sum of the annual energy consumption of each of its components. The integrated annual energy consumption of a kitchen range shall be the sum of the annual energy consumption of each of its components plus the total annual fan-only mode energy consumption for the oven component, E_{TOF}, defined as:

$E_{TOF} = E_{OF} \times N_R$,

Where,

N_R = representative number of annual conventional oven cooking cycles per year, which is equal to 219 cycles for a conventional electric oven without self-clean capability, 204 cycles for a conventional electric oven with self-clean capability, 183 cycles for a conventional gas oven without self-clean capability, and 197 cycles for a conventional gas oven with self-clean capability,

plus the conventional range integrated annual combined low-power mode energy consumption,

E_{RTLP}, defined as:

$E_{RTLP} = [(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM})] \times K$

Where:

P_{IA} = conventional range inactive mode power, in watts, as measured in section 3.1.3.1 of this appendix.

P_{OM} = conventional range off mode power, in watts, as measured in section 3.1.3.2 of this appendix.

S_{TOT} equals the total number of inactive mode and off mode hours per year;

If the conventional oven component of the conventional range has fan-only mode, S_{TOT} equals $(8{,}329.2 - (t_{OF}/60))$ hours, where t_{OF} is the conventional oven fan-only mode duration, in minutes, as measured in section 3.2.1.2 of this appendix, and 60 is the conversion factor for minutes to hours; otherwise, S_{TOT} is equal to 8,329.2 hours.

If the conventional range has both inactive mode and off mode, S_{IA} and S_{OM} both equal $S_{TOT}/2$;

If the conventional range has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to S_{TOT}, and the off mode annual hours, S_{OM}, is equal to 0;

If the conventional range has an off mode but no inactive mode, S_{IA} is equal to 0, and S_{OM} is equal to S_{TOT};

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

The annual energy consumption for other combinations of ovens and cooktops will also be treated as the sum of the annual energy consumption of each of its components. The energy factor of a combined component is the sum of the annual useful cooking energy output of each component divided by the sum of the total annual energy consumption of each component. The integrated energy factor of other combinations of ovens and cooktops is the sum of the annual useful cooking energy output of each component divided by the sum of the total integrated annual energy consumption of each component.

6. Appendix X to subpart B of part 430 is revised to read as follows:

Appendix X to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dehumidifiers

Note: The procedures and calculations that refer to standby mode and off mode energy consumption (*i.e.,* sections 3.2, 3.2.1 through 3.2.4, 4.2, 4.2.1 through 4.2.4, 5.1, and 5.2 of this appendix) need not be performed to determine compliance with energy conservation standards for dehumidifiers at this time. However, any representation related to standby mode and off mode energy consumption of these products made after (*date 180 days after date of publication of the test procedure final rule in the* **Federal Register**) must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). Upon the compliance date for any energy conservation standards that incorporate standby mode and off mode energy consumption, compliance with the applicable provisions of this test procedure will be required.

1. Scope

This appendix covers the test requirements used to measure the energy performance of dehumidifiers.

2. Definitions

a. ANSI/AHAM DH–1 means the test standard published by the American National Standards Institute and the Association of Home Appliance Manufacturers, titled ''Dehumidifiers,'' ANSI/AHAM DH–1–2008, (incorporated by reference; see § 430.3).

b. *Active mode* means a mode in which a dehumidifier is connected to a mains power source, has been activated, and is performing the main functions of removing moisture from air by drawing moist air over a refrigerated coil using a fan, or circulating air through activation of the fan without activation of the refrigeration system.

c. *Bucket full/removed mode* means a standby mode in which the dehumidifier has automatically powered off its main function by detecting when the water bucket is full or has been removed.

d. *Energy factor for dehumidifiers* means a measure of energy efficiency of a dehumidifier calculated by dividing the water removed from the air by the energy consumed, measured in liters per kilowatt-hour (L/kWh).

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

f. *Inactive mode* means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

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

h. *Off-cycle mode* means a standby mode in which the dehumidifier:

(1) Has cycled off its main function by humidistat or humidity sensor;

(2) Does not have its fan or blower operating; and

(3) Will reactivate the main function according to the humidistat or humidity sensor signal.

i. *Product capacity for dehumidifiers* means a measure of the ability of the dehumidifier to remove moisture from its surrounding atmosphere, measured in pints collected per 24 hours of continuous operation.

j. *Standby mode* means any modes where the dehumidifier is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time:

(1) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer;

(2) Continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

3. Test Apparatus and General Instructions

3.1 *Active mode.* The test apparatus and instructions for testing dehumidifiers shall conform to the requirements specified in section 3, ''Definitions,'' section 4, ''Instrumentation,'' and section 5, ''Test Procedure,'' of ANSI/AHAM DH–1 (incorporated by reference, see § 430.3). Record measurements at the resolution of the test instrumentation. Round off calculations to the same number of significant digits as the previous step. Round the final minimum energy factor value to two decimal places as follows:

(i) A fractional number at or above the midpoint between two consecutive decimal places shall be rounded up to the higher of the two decimal places; or

(ii) A fractional number below the midpoint between two consecutive decimal places shall be rounded down to the lower of the two decimal places.

3.2 *Standby mode and off mode.*

3.2.1 *Installation requirements.* For the standby mode and off mode testing, the dehumidifier shall be installed in accordance with section 5.2 of IEC 62301 (incorporated by reference, see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

3.2.2 *Electrical energy supply.*

3.2.2.1 *Electrical supply.* For the standby mode and off mode testing, maintain the electrical supply voltage and frequency indicated in section 7.1.3, ''Standard Test Voltage,'' of ANSI/AHAM DH–1, (incorporated by reference, see § 430.3). The electrical supply frequency shall be maintained ±1 percent.

3.2.2.2 *Supply voltage waveform.* For the standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in section 4, paragraph 4.3.2 of IEC 62301, (incorporated by reference; see § 430.3).

3.2.3 *Standby mode and off mode watt meter.* The watt meter used to measure standby mode and off mode power consumption shall meet the requirements specified in section 4.4 of IEC 62301 (incorporated by reference, see § 430.3).

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

4. Test Measurement

4.1 *Active mode.* Measure the energy factor for dehumidifiers, expressed in liters per kilowatt hour (L/kWh) and product capacity in pints per day (pints/day), in accordance with the test requirements specified in section 7, ''Capacity Test and Energy Consumption Test,'' of ANSI/AHAM

DH–1 (incorporated by reference, see § 430.3).

4.2 *Standby mode and off mode.* Establish the testing conditions set forth in section 3.2 of this appendix. For dehumidifiers that take some time to enter a stable state from a higher power state as discussed in section 5.1, Note 1 of IEC 62301, (incorporated by reference; see § 430.3), allow sufficient time for the dehumidifier to reach the lower power state before proceeding with the test measurement. Follow the test procedure specified in section 5.3.2 of IEC 62301 for testing in each possible mode as described in sections 4.2.1 through 4.2.4 of this appendix.

4.2.1 If the dehumidifier has an inactive mode, as defined in section 2(f) of this appendix, measure and record the average inactive mode power of the dehumidifier, P_{IA}, in watts.

4.2.2 If the dehumidifier has an off-cycle mode, as defined in section 2(h) of this appendix, measure and record the average off-cycle mode power of the dehumidifier, P_{OC}, in watts.

4.2.3 If the dehumidifier has a bucket full/removed mode, as defined in section 2(c) of this appendix, measure and record the average bucket full/removed mode power of the dehumidifier, P_{BFR}, in watts.

4.2.4 If the dehumidifier has an off mode, as defined in section 2(g) of this appendix, measure and record the average off mode power, P_{OM}, in watts.

5. Calculation of Derived Results From Test Measurements

5.1 *Standby mode and off mode annual energy consumption.* Calculate the standby mode and off mode annual energy consumption for dehumidifiers, E_{TSO}, expressed in kilowatt-hours per year, according to the following:

$$E_{TSO} = [(P_{IA} \times S_{IA}) + (P_{OC} \times S_{OC}) + (P_{BFR} \times S_{BFR}) + (P_{OM} \times S_{OM})] \times K$$

Where:

P_{IA} = dehumidifier inactive mode power, in watts, as measured in section 4.2.1 of this appendix.

P_{OC} = dehumidifier off-cycle mode power, in watts, as measured in section 4.2.2 of this appendix.

P_{BFR} = dehumidifier bucket full/removed mode power, in watts, as measured in section 4.2.3 of this appendix.

P_{OM} = dehumidifier off mode power, in watts, as measured in section 4.2.4 of this appendix.

If the dehumidifier has an inactive mode and off-cycle mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to $S_{TOT}/2$; the off-cycle mode annual hours, S_{OC}, is equal to $S_{TOT}/2$; and the off mode annual hours, S_{OM}, is equal to 0;

S_{TOT} equals the total number of inactive mode, off-cycle mode, and off mode hours per year, defined as:

If the dehumidifier has bucket full/removed mode, S_{TOT} equals 3,024 hours;

If the dehumidifier does not have bucket full/removed mode, S_{TOT} equals 3,681 hours;

If the dehumidifier has an inactive mode and off mode but no off-cycle mode, the inactive mode annual hours, S_{IA}, is equal to $S_{TOT}/2$; the off mode annual hours, S_{OM}, is equal to $S_{TOT}/2$; and the off-cycle mode annual hours, S_{OC}, is equal to 0;

If the dehumidifier has an inactive mode but no off-cycle mode or off mode, the inactive mode annual hours, S_{IA}, is equal to S_{TOT}, and the off-cycle mode annual hours, S_{OC}, and the off mode annual hours, S_{OM}, are each equal to 0;

If the dehumidifier has an off-cycle mode and off mode but no inactive mode, the off-cycle mode annual hours, S_{OC}, is equal to $S_{TOT}/2$; the off mode annual hours, S_{OM}, is equal to $S_{TOT}/2$; and the inactive mode annual hours, S_{IA}, is equal to 0;

If the dehumidifier has an off-cycle mode but no off mode or inactive mode, the off-cycle mode annual hours, S_{OC}, is equal to S_{TOT}, and the off mode annual hours, S_{OM}, and the inactive mode annual hours, S_{IA}, are each equal to 0;

If the dehumidifier has an off mode but no inactive mode or off-cycle mode, the off mode annual hours, S_{OM}, is equal to S_{TOT}, and the inactive mode annual hours, S_{IA}, and the off-cycle mode annual hours, S_{OC}, are both equal to 0;

If the dehumidifier has an inactive mode, off-cycle mode, and off mode, the inactive mode annual hours, S_{IA}, is equal to $S_{TOT}/3$; the off-cycle mode annual hours, S_{OC}, is equal to $S_{TOT}/3$; and the off mode annual hours, S_{OM}, is equal to $S_{TOT}/3$;

S_{BFR} = 657, dehumidifier bucket full/removed mode annual hours;

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

5.2 *Integrated energy factor.* Calculate the integrated energy factor, IEF, expressed in liters per kilowatt-hour, rounded to two decimal places, according to the following:

$$IEF = L_W/(E_{active} + ((E_{TSO} \times 24)/S_{active}))$$

Where:

L_W = water removed from the air during dehumidifier energy factor test, in liters, as measured in section 4.1 of this appendix.

E_{active} = dehumidifier energy factor test energy consumption, in kilowatt-hours, as measured in section 4.1 of this appendix.

E_{TSO} = standby mode and off mode annual energy consumption, in kilowatt-hours per year, as calculated in section 5.1 of this appendix.

24 = hours per day.

S_{active} = 1,095, dehumidifier active mode annual hours.

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FEDERAL REGISTER

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Part III

The President

Proclamation 8828—National Maritime Day, 2012

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Presidential Documents

Title 3—

The President

Proclamation 8828 of May 22, 2012

National Maritime Day, 2012

By the President of the United States of America

A Proclamation

For 237 years, the men and women of the United States Merchant Marine have risen to meet our country's call. They have strengthened our economy and our security in times of calm and conflict, connecting our service members to the supplies they need and transporting our exports into the global marketplace. On National Maritime Day, we pay tribute to all those who have served and sacrificed on our waterways and around the world.

From privateers who bravely fought for American independence to mariners who have supported our Armed Forces for over two centuries, the United States Merchant Marine carries forward an enduring legacy of service to our Nation. In the War of 1812, mariners put their lives on the line to preserve our young Republic, engaging British warships with sloops and schooners off our Atlantic coast. During World War II, they executed perilous transits to support our troops in combat. And throughout the 20th century and into the 21st, Merchant Mariners have contributed to the defense of our Nation by transporting essential cargo to ports across the globe. Their commitment has helped deliver us through periods of conflict, and their service will remain a critical asset to our security in the years ahead.

Our maritime industry also sustains the robust domestic and international trade networks that power our economy. As we open up new markets for American exports and support our businesses here at home, the United States Merchant Marine will continue to play a vital role in driving progress and prosperity in communities across our country. Today, we commemorate that important work, and we honor the mariners who dedicate their lives to seeing it through.

The Congress, by a joint resolution approved May 20, 1933, has designated May 22 of each year as ''National Maritime Day,'' and has authorized and requested the President to issue annually a proclamation calling for its appropriate observance.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim May 22, 2012, as National Maritime Day. I call upon the people of the United States to mark this observance and to display the flag of the United States at their homes and in their communities. I also request that all ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of May, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

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H.R. 298/P.L. 112–107

To designate the facility of the United States Postal Service located at 500 East Whitestone Boulevard in Cedar Park, Texas, as the "Army Specialist Matthew Troy Morris Post Office Building". (May 15, 2012; 126 Stat. 328)

H.R. 1423/P.L. 112–108

To designate the facility of the United States Postal Service located at 115 4th Avenue Southwest in Ardmore, Oklahoma, as the "Specialist Michael E. Phillips Post Office". (May 15, 2012; 126 Stat. 329)

H.R. 2079/P.L. 112–109

To designate the facility of the United States Postal Service located at 10 Main Street in East Rockaway, New York, as the "John J. Cook Post Office". (May 15, 2012; 126 Stat. 330)

H.R. 2213/P.L. 112–110

To designate the facility of the United States Postal Service located at 801 West Eastport Street in Iuka, Mississippi, as the "Sergeant Jason W. Vaughn Post Office". (May 15, 2012; 126 Stat. 331)

H.R. 2244/P.L. 112–111

To designate the facility of the United States Postal Service located at 67 Castle Street in Geneva, New York, as the "Corporal Steven Blaine Riccione Post Office". (May 15, 2012; 126 Stat. 332)

H.R. 2660/P.L. 112–112

To designate the facility of the United States Postal Service located at 122 North Holderrieth Boulevard in Tomball, Texas, as the "Tomball Veterans Post Office". (May 15, 2012; 126 Stat. 333)

H.R. 2668/P.L. 112–113

Brian A. Terry Memorial Act (May 15, 2012; 126 Stat. 334)

H.R. 2767/P.L. 112–114

To designate the facility of the United States Postal Service located at 8 West Silver Street in Westfield, Massachusetts, as the "William T. Trant Post Office Building". (May 15, 2012; 126 Stat. 336)

H.R. 3004/P.L. 112–115

To designate the facility of the United States Postal Service located at 260 California Drive in Yountville, California, as the "Private First Class Alejandro R. Ruiz Post Office Building". (May 15, 2012; 126 Stat. 337)

H.R. 3246/P.L. 112–116

To designate the facility of the United States Postal Service located at 15455 Manchester Road in Ballwin, Missouri, as the "Specialist Peter J. Navarro Post Office Building". (May 15, 2012; 126 Stat. 338)

H.R. 3247/P.L. 112–117

To designate the facility of the United States Postal Service located at 1100 Town and Country Commons in Chesterfield, Missouri, as the "Lance Corporal Matthew P. Pathenos Post Office Building". (May 15, 2012; 126 Stat. 339)

H.R. 3248/P.L. 112–118

To designate the facility of the United States Postal Service located at 112 South 5th Street in Saint Charles, Missouri, as the "Lance Corporal Drew W. Weaver Post Office Building". (May 15, 2012; 126 Stat. 340)

S. 1302/P.L. 112–119

To authorize the Administrator of General Services to convey a parcel of real property in Tracy, California, to the City of Tracy. (May 15, 2012; 126 Stat. 341)

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