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9 a.m.-12:30 p.m.

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Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741-6008



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Memorandum of April 24, 2012

Delegation of Reporting Functions Specified in Section 8 of the Belarus Democracy Act of 2004, as Amended

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to you the reporting functions conferred upon the President by section 8 of the Belarus Democracy Act of 2004 (Public Law 109-480; 22 U.S.C. 5811 note), as amended by section 5 of the Belarus Democracy and Human Rights Act of 2011 (Public Law 112-82).

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



THE WHITE HOUSE,
Washington, April 24, 2012

Presidential Documents

Presidential Determination No. 2012-07 of April 25, 2012

Waiver of Restriction on Providing Funds to the Palestinian Authority

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7040(b) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Division I, Public Law 112-74) (the "Act"), I hereby certify that it is important to the national security interests of the United States to waive the provisions of section 7040(a) of the Act, in order to provide funds appropriated to carry out Chapter 4 of Part II of the Foreign Assistance Act, as amended, to the Palestinian Authority.

You are directed to transmit this determination to the Congress, with a report pursuant to section 7040(d) of the Act, and to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, April 25, 2012

Rules and Regulations

Federal Register

Vol. 77, No. 111

Friday, June 8, 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.

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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Docket No. OP–1441]

Statement of Policy Regarding the Conformance Period for Entities Engaged in Prohibited Proprietary Trading or Private Equity Fund or Hedge Fund Activities

AGENCY: Board of Governors of the Federal Reserve System (“Board”).

ACTION: Notification of policy statement.

SUMMARY: The Board is issuing this guidance to provide clarity on the manner in which the conformance period would apply to various activities and investments covered by the requirements of section 619 of the Dodd-Frank Act. This guidance is identical to what the Board announced on its public Web site on April 19, 2012.

DATES: Effective June 8, 2012.

FOR FURTHER INFORMATION CONTACT:

Board: Christopher M. Paridon, Counsel, (202) 452–3274, or Anna M. Harrington, Attorney, Legal Division, (202) 452–6406; Jeremy R. Newell, Division of Bank Supervision and Regulation, (202) 452–3239, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Introduction

On February 9, 2011, the Board issued its final rule to implement the provisions of section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) ¹ that grant banking entities and nonbank financial companies supervised by the Board a period of time to conform their

¹ See Conformance Period for Entities Engaged in Prohibited Proprietary Trading or Private Equity Fund or Hedge Fund Activities, 76 FR 8265 (Feb. 14, 2011).

activities and investments with the prohibitions and restrictions imposed by that section on proprietary trading activities and on hedge fund and private equity funds activities. Subsequently, the Board received a number of requests for clarification of the manner in which this conformance period would apply to various activities and investments covered by the requirements of section 619 of the Dodd-Frank Act. The Board is issuing this interpretation to address this question.

As more fully explained in this statement, the Board confirms that banking entities by statute have two years from July 21, 2012, to conform all of their activities and investments to section 619, unless that period is extended by the Board. During the conformance period, banking entities should engage in good-faith planning efforts, appropriate for their activities and investments, to enable them to conform their activities and investments to the requirements of section 619 and final implementing rules by no later than the end of the conformance period. This may include complying with reporting or recordkeeping requirements if such elements are included in the final rules implementing section 619 and the agencies determine such actions are required during the conformance period.

Background

Section 619 of the Dodd-Frank Act added a new section 13 to the Bank Holding Company Act (“BHC Act”) that imposes certain prohibitions and requirements on a banking entity ² and a nonbank financial company supervised by the Board ³ that engages in proprietary trading and has certain

² The term “banking entity” includes any insured depository institution (other than certain limited purpose trust institutions), any company that controls an insured depository institution, any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106), and any affiliate or subsidiary of any of the foregoing. See 12 U.S.C. 1851(h)(1); see also *Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds*, 76 FR 68846, 68944 (Nov. 7, 2011).

³ A “nonbank financial company supervised by the Board” is a nonbank financial company or other company that the Financial Stability Oversight Council (“Council”) has determined, under section 113 of the Dodd-Frank Act, shall be subject to supervision by the Board and prudential standards. See 12 U.S.C. 1851(h)(3); 76 FR at 68945.

interests in, or relationships with, a hedge fund or private equity fund (each a “covered fund”).⁴ As required by section 13(b)(2) of the BHC Act, the Board, the Office of the Comptroller of the Currency (“OCC”), Federal Deposit Insurance Corporation (“FDIC”), and Securities and Exchange Commission (“SEC”) in October 2011 invited the public to comment on proposed rules implementing that section’s prohibitions and requirements.⁵ Those proposed rules may be found at 76 FR 68846 *et seq.* (Nov. 7, 2011). The period for filing public comments on this proposal was extended for an additional 30 days, until February 13, 2012. On January 11, 2012, the CFTC requested comment on a substantially similar proposed rule to implement section 13 of the BHC Act and invited public comment through April 16, 2012.⁶

Section 13(c)(6) of the BHC Act required the Board, acting alone, to adopt rules regarding the conformance periods for activities and investments restricted by section 13.⁷ The Board issued its final conformance rule (“Conformance Rule”) on February 9, 2011.⁸

Board Guidance

After adoption by the Board of the Conformance Rule, a number of commenters on the interagency proposed rules to implement section 13 requested advice regarding the period of time a banking entity would have to conform its activities and investments to the requirements of section 13 and the implementing rules and whether certain activities would be prohibited prior to

⁴ See 12 U.S.C. 1851. Section 13 of the BHC Act defines the terms “hedge fund” and “private equity fund” as any issuer that would be an investment company, as defined under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), but for section 3(c)(1) or 3(c)(7) of that Act, or any such similar funds as the appropriate Federal banking agencies, the SEC, and the CFTC may, by rule, determine should be treated as a hedge fund or private equity fund. See 12 U.S.C. 1851(h)(2); see also 76 FR at 68950.

⁵ See 12 U.S.C. 1851(b)(2).

⁶ This proposed rule may be found at 77 FR 8332 (Feb. 14, 2012).

⁷ See 12 U.S.C. 1851(c)(6).

⁸ See 76 FR 8264. The Board proposed to relocate the Board’s Conformance Rule, which was added as §§ 225.180–182 of the Board’s Regulation Y, as subpart E of the Board’s proposed rule to implement the substantive portions of section 13 of the BHC Act. See 76 FR at 68850, 68968. As part of that proposed rule, the Board also sought public comment on whether any part of the Conformance Rule should be revised. See *id.* at 68923.

the expiration of the conformance period.⁹ In particular, commenters sought confirmation that the Conformance Rule would allow a banking entity the full period permitted by statute to conform all of its investments and activities to section 13 and the final implementing rules. In addition, commenters sought confirmation that activities conducted and investments made during the conformance period would not be subjected to the requirements of the implementing rules during the conformance period.

Section 13 of the BHC Act generally provides that, unless the period for conformance is extended by the Board, a banking entity must conform its activities and investments to the prohibitions and requirements of that section and any final implementing rules no later than 2 years after the statutory effective date of section 13.¹⁰ The effective date of section 13 is July 21, 2012.¹¹

As noted in the issuing release for the Conformance Rule and the legislative history of section 13, the conformance period for banking entities is intended to give markets and firms an opportunity to adjust to the prohibitions and requirements of that section and any implementing rules adopted by the agencies.¹² Consistent with this purpose and the statute, the Conformance Rule provides each banking entity with a

period of 2 years after the effective date of section 13 (i.e., until July 21, 2014) in which to fully conform its activities and investments to the prohibitions and requirements of section 13 and the final implementing rules, unless that period is extended by the Board (the “conformance period”). The Conformance Rule also provides a nonbank financial company supervised by the Board with 2 years after the date the company becomes a nonbank financial company supervised by the Board to comply with any applicable requirements of section 13 of the BHC Act, including any applicable capital requirements or quantitative limitations adopted thereunder, unless that period is extended by the Board.¹³

Under the Conformance Rule, all proprietary trading activity conducted by each banking entity must conform to the prohibitions and requirements of section 13 of the BHC Act and any final implementing rules by no later than the end of the conformance period. Similarly, all activities, investments and transactions with or involving a covered fund, including a covered fund organized and offered or sponsored by the banking entity, must conform to section 13 of the BHC Act and final implementing rules by no later than the end of the relevant conformance period.

During the conformance period, every banking entity that engages in an activity or holds an investment covered by section 13 is expected to engage in good-faith efforts, appropriate for its activities and investments, which will result in the conformance of all of its activities and investments to the requirements of section 13 of the BHC Act by no later than the end of the conformance period. This includes evaluating the extent to which the banking entity is engaged in activities and investments that are covered by section 13 of the BHC Act, as well as developing and implementing a conformance plan that is as specific as possible about how the banking entity will fully conform all of its covered activities and investments with section 13 of the BHC Act and any final implementing rules by July 21, 2014, unless that period is extended by the Board. These good-faith efforts should take account of the statutory provisions in section 13 of the BHC Act as they will

apply to the activities and investments of the banking entity at the end of the conformance period as well as any applicable implementing rules adopted in final by the primary financial regulatory agency for the banking entity. Good-faith conformance efforts may also include complying with reporting or recordkeeping requirements if such elements are included in the final rules implementing section 13 of the BHC Act and the agencies determine such actions are required during the conformance period.

Nothing in this guidance restricts in any way the authority of any agency to use its supervisory or other authority to limit any activity the agency determines to be unsafe or unsound or otherwise in violation of law.

By order of the Board of Governors of the Federal Reserve System, June 5, 2012.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. 2012–13937 Filed 6–7–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1236

RIN 2590–AA13

Prudential Management and Operations Standards

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: Section 1108 of the Housing and Economic Recovery Act of 2008 (HERA) amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) to require the Federal Housing Finance Agency (FHFA) to establish prudential standards (Standards) relating to the management and operations of the Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), and Federal Home Loan Banks (Banks) (collectively, regulated entities). This final rule implements those HERA amendments by providing for the establishment of the Standards in the form of guidelines, which initially are set out in an appendix to the rule. The final rule includes other provisions relating to the possible consequences for a regulated entity that fails to operate in accordance with the Standards.

DATES: This final rule is effective on August 7, 2012. For additional

⁹ See, e.g., comment letters to the agencies from the Securities Industry and Financial Markets Association *et al.*, “Comment Letter on the Notice of Proposed Rulemaking Implementing the Volcker Rule—Proprietary Trading” (Feb. 13, 2011); The Bank of New York Mellon Corporation *et al.* (Feb. 13, 2012); and Credit Suisse, “Covered Funds Issues in the Volcker Rule Proposal” (Feb. 13, 2012).

¹⁰ See 12 U.S.C. 1851(c)(2); see also proposed 12 CFR 248.31(a), 76 FR 68969. Pursuant to section 13(c)(2) of the BHC Act, the Board may, by rule or order, extend the two-year conformance period provided in the Conformance Rule for not more than one year at a time, with a maximum of three one-year extensions, if the Board determines that such an extension is consistent with the purposes of this section and would not be detrimental to the public interest. See 12 U.S.C. 1851(c)(2), proposed 12 CFR 248.31(a)(3), 76 FR at 68969. The Board may further extend the period of time within which a banking entity may acquire or retain an ownership interest in, or otherwise provide additional capital to, an illiquid fund, provided that certain criteria are satisfied. See 12 U.S.C. 1851(c)(3), proposed 12 CFR 248.31(b), 76 FR at 68969.

¹¹ Section 13(c)(1) of the BHC Act provides that section 13 shall take effect on the earlier of (i) 12 months after the date of issuance of final rules implementing that section, or (ii) 2 years after the date of enactment of section 13, which is July 21, 2012. See 12 U.S.C. 1851(c)(1). Because the agencies did not issue final rules implementing section 13 of the BHC Act by July 21, 2011, section 13 of the BHC Act specifies that the effective date for its provisions will be July 21, 2012. *Id.*

¹² See 76 FR at 8265 (citing 156 Cong. Reg. S5898 (daily ed. July 15, 2010) (statement of Sen. Merkley)).

¹³ See proposed 12 CFR 248.32, 76 FR 68970. As noted in the October 2011 proposed rule to implement section 13 of the BHC Act, the Board has not proposed at this time to require any additional capital requirements, quantitative limits, or other restrictions on nonbank financial companies pursuant to section 13, in light of the fact that the Council has not yet finalized the criteria for designation of, nor yet designated, any nonbank financial company. See 76 FR at 68847.

information, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Anthony Cornyn, Senior Associate Director, Office of Offsite Monitoring and Analysis, *Anthony.Cornyn@fhfa.gov*, (202) 649-3303; Karen Walter, Senior Associate Director, Office of Examination Policy and Programs, *Karen.Walter@fhfa.gov*, (202) 649-3405; Neil R. Crowley, Deputy General Counsel, Office of the General Counsel, *Neil.Crowley@fhfa.gov*, (202) 649-3055; or Michou Nguyen, Assistant General Counsel, Office of the General Counsel, *Michou.Nguyen@fhfa.gov*, (202) 649-3081; Federal Housing Finance Agency, 400 7th Street SW., Washington, DC 20024, (not toll free numbers). The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. HERA Requirements

Effective July 30, 2008, HERA, Public Law 110-289, 122 Stat. 2654 (2008), created FHFA as an independent agency of the Federal Government and transferred to it the supervisory and oversight responsibilities over the regulated entities formerly vested with the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (Finance Board). Section 1108 of HERA also added a new section 1313B to the Safety and Soundness Act, which requires the FHFA Director to establish standards that address 10 separate areas relating to the management and operation of the regulated entities, and authorizes the Director to establish the standards by regulation or by guideline. 12 U.S.C. 4513b. Those 10 areas relate to: Adequacy of internal controls and information systems; adequacy and independence of the internal audit systems; management of interest rate risk; management of market risk; adequacy of liquidity and reserves; management of growth in assets and in the investment portfolio; management of investments and acquisition of assets to ensure that they are consistent with the purposes of the Safety and Soundness Act and the regulated entities' authorizing statutes;¹ adequacy of overall risk management processes;

adequacy of credit and counterparty risk management practices; and maintenance of records that allow an accurate assessment of the institution's financial condition. 12 U.S.C. 4513b(a)(1)-(10). Section 1313B(a) also specifically authorizes the Director to establish other appropriate management and operations standards. 12 U.S.C. 4513b(a)(11).

Section 1313B(b)(1) addresses the possible consequences for a regulated entity that fails to meet any of the Standards, and provides that the Director "shall require" the regulated entity to submit a corrective plan if the Standards have been adopted by regulation and "may require" the regulated entity to submit a corrective plan if the Standards have been adopted as guidelines. 12 U.S.C. 4513b(b)(1)(A). If a regulated entity is required to submit a corrective plan to FHFA, it must do so within thirty (30) days after the Director determines that it has failed to meet any Standard. That plan must specify the actions that the regulated entity will take to conform its practices to the requirements of the Standards. 12 U.S.C. 4513b(b)(1). FHFA generally must act on such plans within thirty (30) days after receipt. 12 U.S.C. 4513b(b)(1)(C)(ii).

Section 1313B(b)(2) also addresses the possible consequences for a regulated entity that fails to submit an acceptable plan within the required time period or that fails in any material respect to implement a corrective plan that the Director has approved. In those cases, the Director must order the regulated entity to correct the deficiency. 12 U.S.C. 4513b(b)(2)(A). The Director also has the discretionary authority to order further sanctions, including limits on asset growth, increases in capital, or any other action the Director believes will better carry out the purposes of the statute, until the regulated entity meets the Standard. 12 U.S.C. 4513b(b)(2)(B). Although the imposition of those additional sanctions generally is a matter of discretion for the Director, if a regulated entity that has failed to submit or implement a corrective plan also has experienced "extraordinary growth" within the preceding 18 months, the Director is then required to impose at least one of those additional sanctions. The remedial powers that the Director may invoke under the prudential standards provisions are not exclusive, and section 1313B(c) expressly preserves the Director's right to exercise any other supervisory or enforcement authority available under the Safety and Soundness Act. 12 U.S.C. 4513b(c).

B. The Proposed Rule

On June 20, 2011, FHFA proposed a rule to establish the Standards as guidelines, which were set out in an appendix to the proposed rule.² The proposal included other provisions relating to procedures for FHFA to notify a regulated entity of its failure to meet the Standards and the possible consequences for doing so. The proposed rule did not subject the Banks' Office of Finance (OF) to the prudential standards regime because several of the Standards address matters that are not relevant to the OF, such as those relating to interest rate, market and credit risks, and investment portfolio growth, and because the relevant HERA provisions did not require the inclusion of the OF. The same is true with respect to the statutory sanctions for noncompliance with the Standards, which include limits on asset growth and mandatory increases in capital.

C. Considerations of Differences Between the Banks and the Enterprises

Section 1313(f) of the Safety and Soundness Act, as amended by HERA, requires the Director, when promulgating regulations relating to the Banks, to consider differences between the Banks and the Enterprises (Fannie Mae and Freddie Mac) with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. In preparing this final rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors, and determined that the rule is appropriate.

In developing the proposed rule, FHFA differentiated between the Banks and the Enterprises in defining "extraordinary growth" by excluding Bank advances from the calculation of extraordinary growth. The proposed standards also included provisions relating to market value of equity and par value of capital stock, which applied only to the Banks. Those provisions recognized the Banks' mission of providing liquidity to members through advances, as well as their unique capital structure. As discussed below in Section II.B.2. of this final rule, FHFA has further refined the definition of extraordinary growth in response to the Banks' comments by using a longer-term six calendar quarter period as the basis for measuring such growth. The revised definition should make it less likely that the short-term

¹ The authorizing statute for Fannie Mae is the Federal National Mortgage Association Charter Act (12 U.S.C. 1716-1723i), for Freddie Mac, the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451-1459), and for the Banks, the Federal Home Loan Bank Act (12 U.S.C. 1421-1449) (Bank Act). 12 U.S.C. 4502(3).

² 76 FR 35791 (June 20, 2011).

fluctuations in non-advance assets that occur between the time that a member repays an advance and the time that a Bank redeems or repurchases the underlying capital stock will be deemed to constitute extraordinary growth.

FHFA considered the Banks' request for different treatment in other areas as well. The Banks, in their joint comment letter (Joint Bank Letter), cited the importance of advances to the Banks' mission and the history of no credit-default on advances in support of their request to be exempted from § 1236.5(a)(1) of the proposed rule, which allows FHFA, among other things, to prohibit a regulated entity from increasing its average total assets if it fails to submit a corrective plan or fails to comply with an approved corrective plan. The Banks raised that same argument with respect to certain requirements under Standard 9 relating to credit concentration.³ With respect to § 1236.5(a)(1) of the proposed rule, that provision included a cross-reference to a statutory definition of "total assets," located at 12 U.S.C. 4516(b)(4), because the Safety and Soundness Act explicitly mandates that FHFA use that definition in determining a regulated entity's "total assets" for purposes of imposing any growth limitations under the remedial provisions of § 1236.5(a). The Banks contended that the statutory definition of total assets in 12 U.S.C. 4516(b)(4) should not apply to them because that provision on its face applies only to the Enterprises. Although that is technically true, the HERA provision mandating the establishment of the prudential standards, 12 U.S.C. 4513b(b)(2)(B)(i), explicitly incorporates that definition into the prudential standards regime, which effectively extends that definition to the Banks for purposes of this final rule. Moreover, that definition, which includes only a regulated entity's on-balance sheet assets, any mortgage-backed securities that it has issued or guaranteed, and any off-balance sheet obligations permitted by FHFA, can readily be applied to the Banks. Accordingly, FHFA has determined not to treat the Banks any differently from the Enterprises for purposes of the definition of "total assets," as used in § 1236.5(a)(1). With respect to the comments about credit concentration, FHFA has determined that § 1236.5(a)(1) could serve as an effective and necessary remedy in appropriate circumstances without jeopardizing the Banks' mission. Furthermore, the absence of any history of defaults on advances does not guarantee that future

defaults would not occur. Therefore, FHFA did not adopt these suggestions in the final rule.

II. Final Rule

A. Overview

In this final rule, FHFA establishes the Standards, which are attached in an Appendix, as guidelines, as is authorized by 12 U.S.C. 4513b(a). By adopting the Standards as guidelines, rather than as regulations, the Director may modify, revoke, or add to any one or more of them at any time by order and without undertaking a notice and comment rulemaking. The final rule also establishes certain procedures related to the Standards, and sets out the processes by which FHFA can notify a regulated entity of its failure to operate in accordance with the Standards and can direct the entity to take corrective action. The final rule also specifies the possible consequences for any regulated entity that fails to operate in accordance with the Standards or otherwise fails to comply with this part.

In adopting the final rule, FHFA considered the four comment letters received in response to the proposed rule. The twelve Banks jointly submitted one comment letter, and individual letters were received from Fannie Mae (Fannie Letter), Freddie Mac (Freddie Letter), and the Mortgage Insurance Companies of America (MICA Letter). FHFA adopted some of the commenters' recommendations, in some instances making changes to the language of several rule provisions and Standards, and in other instances providing clarification in the

SUPPLEMENTARY INFORMATION.

In response to certain comments regarding the inclusion within many of the proposed Standards of references to the responsibilities of the boards and management, FHFA has made two principal revisions to the Standards. First, FHFA has created an introductory section to the Standards, entitled "General Responsibilities of the Board of Directors and Senior Management." Second, FHFA has revised the Standards to remove many of the references to specific obligations of the board and management from the individual standards.

The introductory section does not constitute a separate Standard, and thus does not impose any additional requirement on the regulated entities. Instead, this section is intended to recite, in the context of the regulated entities and the Standards generally, common concepts of corporate governance that would be typical for the board and management of any financial

institution. The introductory section also contains a reminder that the specified responsibilities found in the Standards are not a comprehensive listing of the responsibilities of either the boards of directors or senior management, each of whom have additional duties and responsibilities to those described in the Standards. The streamlining of certain principles under the other Standards is designed to simplify them and eliminate repetition. The final rule also makes several clarifying non-substantive changes to the wording of certain principles of the Standards and to the text of §§ 1236.1, 1236.3(b), 1236.4(b), and 1236.5(b) and (c). With those exceptions, the overall approach to establishing the Standards used in the proposed rule remains the same in the final rule.

The following discussion of the comments is divided into two sections. The first section discusses three comments that are general in nature. These comments relate to the definition of extraordinary growth, corporate governance and the role of boards of directors of regulated entities, and potential conflicts between the Standards and existing FHFA regulations, including those of the Finance Board and OFHEO that remain in effect. The second category consists of comments that relate to specific provisions of the proposed rule or Standards. For ease of reference, in discussing the comments on the specific principles that make up each Standard, FHFA refers to each principle using the number given to the principle in the proposed rule. Other than the modifications discussed in this section, FHFA is adopting the rule and Standards as proposed.

B. General Comments

1. Responsibility of Boards of Directors of Regulated Entities

The Banks and the Enterprises both believe that the language of several Standards can be read as placing on boards of directors of regulated entities responsibilities that are above and beyond the fiduciary duties typically imposed by existing corporate law. They also believe that the proposed rule may be interpreted in a manner that distorts the conventional distinction between the respective roles of boards of directors and senior management.⁴

In response to these comments, FHFA has modified the Standards in a manner that clarifies the duties of the boards of directors but still preserves the intent of the Standards. As previously noted,

⁴ See Joint Bank Letter at 2, Fannie Letter at 1-2, and Freddie Letter at 1-2.

³ See Joint Bank Letter at 7 and 10-11.

FHFA has also streamlined and combined many of the principles relating to responsibilities of boards of directors and imported certain universally applicable concepts from the individual Standards into the new introductory section of the Standards. FHFA notes that boards of directors of regulated entities are ultimately responsible for overseeing the operations of a regulated entity and are expected to understand and remain informed about the nature of the risks faced by a regulated entity, and to have in place appropriate policies and controls to manage those risks. FHFA did not intend to suggest in the proposed rule that the boards of directors must effectively assume the duties of senior management, such as by becoming involved in the day-to-day operations of the entity, in order to carry out their oversight responsibilities.

2. Definition of Extraordinary Growth

a. Threshold for Extraordinary Growth

The proposed rule included separate definitions of “extraordinary growth” for the Banks and for the Enterprises.⁵ For the Enterprises, “extraordinary growth” was defined to mean, for a given calendar quarter, quarterly non-annualized growth of assets in excess of 7.5 percent, with such growth occurring within the 18-month period preceding the date on which FHFA notified the Enterprise that it must submit a corrective plan to address a failure to operate in accordance with the Standards. For the Banks, the definition was the same except that it was based on the growth of “non-advance assets” rather than total assets. The Banks suggested expanding the definition of “extraordinary growth” in § 1236.2 of the proposed rule to include a 20 percent annualized combined six calendar quarter growth threshold in addition to the quarterly 7.5 percent threshold proposed by FHFA.⁶

The Banks argued that, due to the mechanics and time lags in the repayment of advances and redemption of capital stock, short-term quarterly fluctuations in non-advance assets are common and can distort the results of the 7.5 percent test. In support of their contention, the Banks stated that as of

the date of their letter, 9 of the 12 Banks would have been considered to be experiencing extraordinary growth, as defined by the proposed rule. The Banks believed that implementing an additional threshold of 20 percent annualized growth over the entire six calendar quarter look-back period would resolve their issue.⁷ After careful consideration of the Banks’ comment and conducting its own analysis, FHFA is persuaded that the proposed definition of extraordinary growth for the Banks could have resulted in Banks being deemed to have experienced extraordinary growth based on short-term fluctuations in their non-advance assets that should not necessarily be deemed to have been extraordinary, given the cooperative business model of the Banks. Accordingly, in the final rule FHFA is eliminating the 7.5 percent threshold for the Banks and replacing it with a threshold of 30 percent non-annualized growth in non-advance assets over the entire six calendar quarter look-back period.⁸

b. Calculation of Extraordinary Growth

The look-back trigger date for the determination of extraordinary growth is the date on which FHFA notifies a regulated entity that it has failed to operate in accordance with the Standards and must submit a corrective plan. In order to accommodate situations where the trigger date occurs in the middle of a calendar quarter, FHFA is interpreting the look-back period to be the six full calendar quarters⁹ immediately prior to the trigger date. For example, if FHFA notifies an Enterprise on September 15, 2012 that it must submit a corrective plan, the relevant six calendar quarters over which the extraordinary growth calculation would be made would be the first two quarters of 2012 and all four quarters in 2011. If the Enterprise had asset growth of more than 7.5 percent in any of those quarters, it would be deemed to have experienced extraordinary growth. For a Bank, utilizing the same dates, if its non-advance assets grew more than 30 percent from January 1, 2011 (the beginning of the first quarter of 2011) to June 30, 2012 (the end of the second

quarter of 2012), it would be deemed to have experienced extraordinary growth.

c. Other Comments on Extraordinary Growth

FHFA received the following additional comments with respect to the definition of extraordinary growth. The Banks’ letter asked that FHFA apply the extraordinary growth test prospectively, such that only asset growth occurring after the effective date of the final rule would be considered.¹⁰ The Freddie Letter asked that FHFA follow the approach of the federal banking agencies, in which the definition would only apply to regulated entities that are not in the highest capital classification. The Freddie Letter also asked that, for the Enterprises, assets be measured using the criteria specified in determining compliance with the portfolio limit covenant of the Senior Stock Purchase agreement with the Department of the Treasury.¹¹ Both Freddie and the Banks also advocated for the creation of a process by which a regulated entity could challenge FHFA’s finding of extraordinary growth. The Banks also argued that FHFA should be required to submit its numerical analysis to the regulated entity to support its finding of extraordinary growth.¹²

Applying the extraordinary growth test using only asset growth that would occur after the effective date of the final rule would unduly delay the operation of that portion of the rule for at least 18 months, which FHFA does not believe is necessary given the revisions that it has made to the definition of extraordinary growth with respect to the Banks. FHFA also believes that modifying the definition of extraordinary growth with respect to the Enterprises to incorporate the portfolio limit covenant of the Senior Stock Purchase agreement is not appropriate. Under that covenant, the Enterprises are required to reduce their “mortgage-related investments portfolios” by 10 percent per year until reaching a specified limit, and FHFA does not believe that such a provision is appropriate for measuring growth of the Enterprises. With respect to limiting the application of extraordinary growth to those entities that are not in the highest capital classification, FHFA is not persuaded that the standards used for depository institutions are necessarily well-suited to the regulated entities, and the Safety and Soundness Act does not

⁵ The concept of “extraordinary growth” becomes relevant only if a regulated entity has either failed to submit an acceptable corrective plan or has failed to implement an approved plan. The presence of “extraordinary growth” by itself does not trigger any of the supervisory sanctions under the prudential standards statute or this rule, although FHFA may invoke its other supervisory authorities if necessary to address asset growth that it believes poses safety and soundness concerns.

⁶ See Joint Bank Letter at 3–5.

⁷ See Joint Bank Letter at 3–5.

⁸ For efficiency and clarity, FHFA is adopting a 30% non-annualized growth threshold instead of the Banks’ suggested threshold of 20% annualized growth, which would equal 31.45% growth over the six quarter time period.

⁹ Calendar quarters means January 1st to March 31st, April 1st to June 30th, July 1st to September 30th, and October 1st to December 31st.

¹⁰ See Joint Bank Letter at 5.

¹¹ See Freddie Letter at 4.

¹² See Freddie Letter at 4 and Joint Bank letter at 5.

mandate that the definition be limited in that manner. Moreover, the Standards address matters other than capital adequacy, and it is possible that an adequately-capitalized entity may fail to operate in accordance with the Standards. Lastly, FHFA does not believe that it is appropriate to include a method to contest a determination of extraordinary growth or to require FHFA to submit numerical analysis to justify a finding of extraordinary growth, as both steps would unduly delay the administration of the rule and remedies for failures to meet the Standards. Also, given that FHFA has revised the definition of extraordinary growth for the Banks, they should be able to assess FHFA's determination based on the data in their own call reports.

3. Potential Conflicts With FHFA Regulations

The Banks believed that certain Standards conflict or overlap with other existing regulations, particularly the remaining regulations of the Finance Board.¹³ As noted when this rule was proposed, FHFA intends to review all of its regulations, as well as those of the Finance Board and OFHEO as it incorporates them into the FHFA regulations, to ensure conformity and eliminate conflicts and overlap. To address any potential issues that may arise until such review is completed, FHFA is amending § 1236.3 of the proposed rule to provide that in cases of a direct conflict between a Standard and an FHFA regulation (including Finance Board and OFHEO regulations that remain in effect pursuant to sections 1302 and 1312 of HERA), the regulation would control. Additionally, in such cases, a regulated entity would not be held accountable for failing to meet the Standard and the remedial provisions in §§ 1236.4 and 1236.5 relating to the failure to meet a Standard and the submission and implementation of a corrective plan would not apply. FHFA notes that in cases where it is possible for a regulated entity to comply with both a Standard and a regulation, such as when there is substantial overlap or when a Standard is more stringent than a regulation, FHFA does not consider this to be a direct conflict and expects regulated entities to comply with both the Standard and the regulation.

C. Specific Comments

1. Section 1236.3 (Prudential Standards as Guidelines)

The Banks have requested that FHFA provide the opportunity for notice and comment on any future changes to the Standards and afford regulated entities at least a 90-day grace period to conform with such changes.¹⁴ The proposed rule would have allowed FHFA to update the Standards by order, as necessary to incorporate changes in best practices and to address particular supervisory concerns. That approach is clearly contemplated by the HERA amendments, which authorize the Director to adopt the Standards as regulations, which require formal notice and comment, or as guidelines, which do not. Although the final rule does not require the Director to go through a rulemaking process to amend the Standards, it does allow the Director the flexibility to seek public comment on particular changes to the guidelines, as the Director deems to be appropriate. FHFA believes that the decision to exercise the flexibility to seek public comment and to provide a grace period for regulated entities to align their practices with new or revised guidelines is best addressed on a case-by-case basis when future changes are proposed.

2. Section 1236.4 (Failure To Meet a Standard, Corrective Plans)

The Banks have requested that in making any finding of a failure to meet a Standard pursuant to § 1236.4(a), FHFA identify the relevant Standard and the basis for the determination. The Banks' letter also requests that FHFA create a process for a regulated entity to contest a finding of failure to meet a Standard, and a safe-harbor provision for a good faith effort to meet a Standard.¹⁵ FHFA has added language to § 1236.4(b) of the final rule that would provide that the written notice that FHFA must provide to any regulated entity that is required to submit a corrective plan must inform the regulated entity of FHFA's determination. By adding that language, FHFA intends that any such notice would clearly identify the Standard and the substance of the regulated entity's failure to meet it. However, FHFA does not believe that the creation of a process to contest a finding of failure to meet a Standard is appropriate because it would unduly delay the remediation of the underlying problem and hinder FHFA's ability to carry out its oversight responsibilities. Furthermore, such a

process is not required by statute. Unlike a violation of a statute or a regulation that has been adopted with force and effect of law, a regulated entity's failure to meet a Standard that has been adopted as a guideline would likely not trigger FHFA's administrative enforcement authority. Instead, a failure to meet a Standard would, in the absence of any other violation or unsafe or unsound conduct, trigger only those remedies provided by HERA with respect to the prudential standards regime.

Section 1236.4(c) addresses the contents and filing requirements relating to a corrective plan. One provision of the proposed rule implemented a statutory provision, which provides that a regulated entity that is undercapitalized and is required to submit a capital restoration plan may submit the corrective plan required under these regulations as part of the capital restoration plan. 12 U.S.C. 4513b(b)(1)(B). Section 1236.4(c)(2)(ii) of the proposed rule carried over the substance of the statutory provision, providing that a regulated entity that is required to file a capital restoration plan may, with the permission of FHFA, submit a corrective plan as part of the capital restoration plan. The proposed rule also expanded on the statutory authorization by allowing a regulated entity to submit its corrective plan as part of its response to any cease-and-desist order, agreement with FHFA, or a report of examination or inspection. The Banks have requested that FHFA remove the requirement for obtaining FHFA permission in order for a regulated entity to file its corrective plan as part of some other submission.¹⁶ In the final rule, in order to be consistent with the statutory language, FHFA is removing the requirement that a regulated entity obtain FHFA's permission before combining its corrective plan with a capital restoration plan. However, FHFA notes that in certain cases, a capital restoration plan and a corrective plan may well have little in common to justify their combination or may present matters that must be addressed on different timeframes. For example, a corrective plan will set out the actions that a regulated entity plans to take in order to conform its practices to one or more of the prudential standards and the timeframe for doing so. A capital restoration plan will address matters relating to the capital adequacy and may present issues of more compelling urgency that must be addressed before any other supervisory matters. In any

¹³ See Joint Bank Letter at 1–2.

¹⁴ See Joint Bank Letter at 2.

¹⁵ See Joint Bank Letter at 6.

¹⁶ See Joint Bank Letter at 6.

cases where combining a corrective plan and capital restoration plan would not be effective, FHFA may decline to consider a corrective plan as part of a capital restoration plan. Because the HERA amendments are permissive in nature, providing that a regulated entity “may” submit a corrective plan as part of a capital restoration plan, FHFA believes that it need not consider the two plans together if it believes there are valid supervisory reasons for evaluating them separately. Thus, FHFA expects that any undercapitalized entity that is contemplating submitting combined plans should first consult with FHFA to determine whether it would have any supervisory reasons for objecting to that approach. Furthermore, for similar reasons as stated above, FHFA has retained the requirement that a regulated entity obtain FHFA’s permission before combining its corrective plan with another type of response to a supervisory action because FHFA believes that the discretion on whether it is desirable to combine a corrective plan with another type of response to a supervisory action, other than a capital restoration plan, must remain with FHFA. FHFA has made clarifying revisions to § 1236.4(c)(2)(ii), which make clear that while it may be possible for a regulated entity to submit a corrective plan as part of a capital restoration plan, the corrective plan would not be “part of” a cease-and-desist order, formal or informal agreement, or examination, even if it were to be submitted as part of a regulated entity’s compliance with any such order, agreement, or response to an examination.

Section 1236.4(e) addresses the period of time within which FHFA must act in response to the submission of a corrective plan. As a general matter, within thirty (30) calendar days of its receipt of a corrective plan, FHFA must notify the regulated entity of its decision on the plan (*i.e.*, approval or denial), or of its need for additional information, or of its decision to extend the review period beyond thirty (30) calendar days. The Banks’ letter requests that the decision to extend the review period be communicated in writing.¹⁷ FHFA is revising § 1236.4(e) to adopt this suggestion.

3. Section 1236.5 (Failure To Submit a Corrective Plan, Noncompliance)

The underlying statute sets forth certain actions that FHFA may take if a regulated entity has failed to timely submit an acceptable corrective plan or has failed to implement or otherwise

comply with an approved corrective plan in any material respect. At a minimum, the Director must order the regulated entity to correct that deficiency. The Director also has the discretion under the statute to place limits on asset growth, require increases to capital, limit dividends and stock redemptions or repurchases, or require a minimum level of retained earnings, or take any other action that the Director deems would better carry out the purposes of the prudential standards statutory regime. 12 U.S.C. 4513b(b)(2)(B). The statute further provides that, if a regulated entity that has failed to submit or implement a corrective plan also has experienced “extraordinary growth” over the 18-month period preceding its failure to meet the Standards, the Director must impose at least one of the remedies listed above. Section 1236.5(a) and (b) of the proposed rule largely carried over those statutory requirements into the final rule.

Freddie Mac’s letter requests that materiality be factored into any determination of non-compliance with a corrective plan, and seeks clarification that any other remedy that the Director decides to impose must be deemed to be more effective than the five remedies listed in § 1236.5(a).¹⁸ The Banks’ letter requests that a regulated entity be afforded an opportunity to modify a corrective plan deemed unacceptable instead of being penalized for a failure to submit an acceptable plan.¹⁹ In response to Freddie Mac’s comment, FHFA is revising § 1236.5(a) to add in the words “in any material respect” in relation to a regulated entity’s failure to implement an approved corrective plan, and is revising § 1236.5(a)(6) to include language that any “other actions” that the Director may order must “better carry out” the purposes of the statute, as that proviso also appears in the statute. FHFA also notes that it does not intend to penalize regulated entities that in good faith submit corrective plans that require modifications in order to be accepted by FHFA. FHFA would not deem a plan unacceptable unless a regulated entity fails to promptly modify it to provide for acceptable remediation, or submits a plan that is so significantly insufficient that it does not appear to be realistically susceptible of acceptable modification through the normal processes of discussion between a regulator and the regulated entity. With respect to the “other actions” that the Director may take under § 1236.5(a)(6), FHFA does not interpret

the “better carry out” proviso as requiring that any such “other action” must be taken in lieu of the enumerated remedies. Rather, FHFA believes that the proviso authorizes the Director to combine one or more of the enumerated remedies with any “other action” that the Director determines will better enable FHFA to ensure that the entity operates in accordance with the Standards.²⁰

Under § 1236.5(c)(1), FHFA generally will notify a regulated entity that has failed to submit or implement a corrective plan of its intent to issue an order requiring the regulated entity to take corrective action. However, if the circumstances so require, § 1236.5(c)(4) provides that FHFA need not provide advance notice and may instead require a regulated entity immediately to take or refrain from taking actions to correct its failure to meet one or more of the Standards. Within fourteen (14) calendar days of the issuance of such an immediately effective order, unless otherwise specified by FHFA, a regulated entity may appeal the order in writing. FHFA will act on an appeal within sixty (60) days, during which time the order will remain in effect unless FHFA stays its effectiveness.

The Banks have requested that FHFA clarify the circumstances under which the Director may invoke the provision in § 1236.5(c)(4) and issue an immediately effective order. The Banks also believe that the sixty (60) days granted to FHFA to act on an appeal is too lengthy, especially when compared to the fourteen (14) days granted to a regulated entity to appeal an immediately effective order.²¹ FHFA believes that it is impractical to specify in advance all of the circumstances under which an immediately effective order might be necessary, and that the rule must allow the Director sufficient latitude to respond to various types of circumstances that may require immediate corrective action. Furthermore, FHFA believes that the safeguards provided by the appeal process, including the proposed time frames, as proposed, are appropriate.

4. Standard 1 (Internal Controls and Information Systems)²²

The Banks and Freddie Mac both requested revisions to Standard 1,

²⁰ As discussed in Section I.C. *supra*, the Banks requested that restrictions on increases in advances not be included as a possible remedy ordered by the Director. For the reasons previously stated, FHFA is not adopting the Banks’ suggestion.

²¹ See Joint Bank Letter at 7–8.

²² The Joint Bank Letter cites several specific provisions in the Standards that the Banks believe

¹⁷ See Joint Bank Letter at 6.

¹⁸ See Freddie Letter at 4.

¹⁹ See Joint Bank Letter at 7.

believing that the scope of Principle 2 of proposed Standard 1, which requires the board of directors of a regulated entity to review and approve the overall business strategy and significant policies of the regulated entity, is overly broad. The Banks' letter suggests that the term "significant policies" should be defined only as internal controls that must be approved by the audit committee under the Sarbanes-Oxley Act, while Freddie Mac's letter suggests that the principle be limited to corporate governance rules of the national securities exchanges where a regulated entity's securities are listed.²³ FHFA believes that having board-approved business strategies and significant policies are a key starting point for having effective internal controls and that narrowing the scope of Principle 2 in the manner suggested would unnecessarily weaken the effectiveness of the principle.²⁴

Freddie Mac's letter states that proposed Principle 3, which requires the board of directors of a regulated entity to approve the entity's organizational structure, is too vague and overly burdensome. Freddie suggests either eliminating the principle or limiting its scope.²⁵ FHFA disagrees with Freddie Mac's assessment and believes that, as drafted, the principle is an appropriate means to ensure that regulated entities have appropriate organizational structures that are part of a robust internal control function.²⁶

In their letter, the Banks argue that the requirement to have a formal self-assessment process to monitor internal controls under proposed Principle 12 is redundant in light of the fact that the Banks must comply with Sarbanes-Oxley Act requirements relating to internal controls.²⁷ However, the scope of Principle 12 is broader than the scope of the Sarbanes-Oxley requirements, as those requirements address internal controls for financial reporting, whereas

either overlap or conflict with existing regulations. The issue of conflicts with regulations is addressed in section II.B.3. *supra*. Similarly, the Joint Bank Letter, the Fannie Mae Letter, and the Freddie Mac Letter cite several specific Standards in relation to corporate governance issues. Those comments are addressed comprehensively in section II.B.1. *supra*.

²³ See Joint Bank Letter at 8 and Freddie Letter at 2.

²⁴ In the final rule, proposed Principle 2 has been consolidated with proposed Principles 1, 3, and 4 into a final Principle 1. Portions of proposed Principle 2, including the requirement to review "significant policies," have been relocated to part 1 of the general responsibilities section of the Standards in the final rule.

²⁵ See Freddie Letter at 2.

²⁶ In the final rule, the substance of proposed Principle 3 has been consolidated with proposed Principles 1, 2, and 4 into final Principle 1.

²⁷ See Joint Bank Letter at 8.

Principle 12 is designed to address all types of internal controls. Therefore, FHFA does not believe that Principle 12 is redundant and is adopting it as proposed.²⁸

5. Standard 2 (Independence and Adequacy of Internal Audit Systems)

The Banks have requested that proposed Principle 5, relating to internal audit systems, use the term "testing" instead of "monitoring" because the Banks believe that audits are designed to test and not provide ongoing monitoring.²⁹ Freddie Mac believes that the term "internal audit system" should be changed to "internal audit function" to avoid any suggestion that "system" means a fully automated system.³⁰ FHFA is adopting both of these suggestions. In addition, FHFA is changing proposed Principle 10, in response to a comment by the Banks, to clarify the scope of the responsibilities of the internal audit department. This revision removes a requirement that the audit department must "ensure" that certain violations or findings are satisfactorily resolved because the auditors do not have operational responsibilities and thus cannot act to "resolve" the underlying matters. As revised, the Standard requires the audit department to determine whether the responsible parties within the organization have addressed the violations or findings.

6. Standard 3 (Management of Market Risk Exposure)

Fannie Mae believes that proposed Principle 1, relating to market risk exposure, is redundant because proposed Principle 7, which requires the board of directors or a committee of the board to review risk exposures periodically, and proposed Principle 6 under Standard 8, which requires, among other things, that the board of directors and senior management be provided with accurate and timely reports on market risk exposure, sufficiently address the issue of market risk.³¹ FHFA believes that proposed Principle 1 is broader and different in focus than the other principles cited by Fannie Mae and should not be repealed. However, in an effort to streamline the

²⁸ In the final rule, FHFA has consolidated proposed Principles 5 and 6 into final Principle 2; proposed Principles 7 through 12 have been consolidated into final Principles 4 and 5 and certain concepts from those principles have been relocated to parts 1 and 5 of the general responsibilities section. FHFA also made clarifying changes to proposed Principle 13 and renumbered it and other principles accordingly.

²⁹ See Joint Bank Letter at 8.

³⁰ See Freddie Letter at 2.

³¹ See Fannie Letter at 2-3.

board of responsibility requirements, the substance of proposed Principles 2, 3, 4, 5, 6, and 7 have been merged into final Principles 2 and 3 and certain concepts have been relocated to parts 1 and 4 of the general responsibilities section.

Proposed Principle 11 requires senior management to ensure that a regulated entity's policies and procedures identify remedial actions to be taken in the event that market risk limits are violated. The Banks argue that a particular future remedial action to be taken in response to a violation of the market risk limitations cannot be predetermined, and thus should not be required to be stated in their policies and procedures.³² In response to the comment, FHFA has revised the principle to require that if a market risk limit is breached, the board of directors must ensure that appropriate remedial action is taken.³³ The Banks' letter asks FHFA to clarify that under proposed Principle 12, which requires senior management to keep the board of directors sufficiently informed about market risk exposures, satisfactory monitoring by the board would generally include periodic monitoring of established market risk tolerances and limits and exception-based reporting.³⁴ Although the actions identified by the Banks' letter may well be part of an acceptable process for identifying and managing market risk exposure, FHFA does not believe that it would be appropriate to specify that these particular actions would be sufficient to demonstrate compliance with the Standard. Because the level of market risk may vary from regulated entity to regulated entity, FHFA believes that the language of the proposed standard, which requires that the information provided to the board be sufficient for it to meaningfully assess market risk exposures, is a better approach. Accordingly, the final rule does not include the requested change. FHFA has, however, streamlined proposed Principles 3, 4, 5, 8, 9, 10, 12 and 13 (which are now final Principles 3, 5, 6) and moved certain concepts to items 4, 6, and 8 of the general responsibilities section of the Standards.

7. Standard 4 (Management of Market Risk—Measurement Systems, Risk Limits, Stress Testing, and Monitoring and Reporting)

Proposed Principle 3 requires that a regulated entity's market risk

³² See Joint Bank Letter at 9.

³³ The substance of proposed Principle 11 has been reorganized into final Principles 2 and 6.

³⁴ See Joint Bank Letter at 9.

measurement system be capable of valuing all financial assets and liabilities in the entity's portfolio. The Banks' letter requests further clarification of the terms "financial assets and liabilities."³⁵ FHFA believes that these terms are widely understood and do not require additional clarification.

8. Standard 5 (Adequacy and Maintenance of Liquidity and Reserves)

Proposed Principle 1 of this Standard requires a regulated entity's board to approve, at least annually, all major strategies and policies governing liquidity and reserves. The Banks' letter notes that Finance Board regulations § 917.3(a)(2) and 917.3(b)(3)(iii) require the boards of directors of the Banks to review the risk management policy annually and re-adopt such policy at least every three years, which the Banks view as a direct conflict.³⁶ FHFA does not believe that the regulations directly conflict with Principle 1 because the annual approval contemplated by the Standard would satisfy the requirement that the boards re-adopt policies at least every three years. However, FHFA has streamlined proposed Principles 1 and 2 into final Principle 1, streamlined proposed Principles 3 and 4 into final Principle 2, and relocated some of the requirements to parts 1 and 2 of the general responsibilities section of the Standards.

9. Standard 6 (Management of Asset and Investment Portfolio Growth)

Proposed Principle 2 generally requires the board of directors to establish policies governing asset and investment growth, including limits on growth of mortgage loans and mortgage-backed securities. The Banks asked that FHFA revise this provision to make clear that it is not intended to apply to the growth of advances or letters of credits by the Banks.³⁷ FHFA has decided not to make any changes to the text of the principle to exempt advances and standby letters of credit from these requirements because it believes that the Banks should monitor growth in those products to ensure that the Banks are not taking any undue risks. That said, the requirement that the Banks must have policies relating to growth in advances and letters of credit does not mean that the Banks must establish numerical limits for those products. Instead, it would be sufficient for the Banks to have policies that link growth in advances and letters of credit to

factors such as the financial condition of the members, the amount and quality of the collateral, the members' collateral management practices, and prudent underwriting standards. FHFA notes that it has combined proposed Principles 1 and 2 into final Principle 1; streamlined proposed Principles 3 and 4 (renumbered as final Principles 2 and 3); moved certain concepts in proposed Principles 1, 2, and 3 to items 1, 2, and 5 in the general responsibilities section of the Standards; and reorganized the subheadings in Standard 6.

10. Standard 7 (Investments and Acquisitions of Assets)

Proposed Standard 7 implements a statutory requirement that FHFA adopt Standards that relate to a regulated entity's "investments and acquisitions of assets" to ensure that they are consistent with the regulated entity's chartering statute and the Safety and Soundness Act. Several principles under Standard 7 utilize the terms "investments" and "other assets," neither of which is defined, and Freddie Mac has asked that FHFA clarify the meaning of "other assets."³⁸ FHFA considers "investments" to mean all assets held by the regulated entity for the purpose of yielding a return but that are not related to its core mission as a GSE. In the case of the Banks, "investments" would include things such as federal funds sold, repurchase agreements, and investment securities. In the case of the Enterprises, investments would include things such as federal funds and investment securities. "Other assets" are all assets held by the regulated entity other than "investments," including mission related assets such as advances and acquired member assets in the case of the Banks and mortgage loans in the case of the Enterprises. FHFA notes that the final rule has streamlined proposed Principles 1 and 2 into final Principle 1 and replaced a subheading within Standard 7.

11. Standard 8 (Overall Risk Management Processes)

The final rule revises proposed Principle 11 (renumbered as final Principle 5) to state that the chief risk officer should report directly to both the chief executive officer and the risk committee of the board of directors. This change is being made to conform proposed Principle 11 to the recommended practices issued by other financial regulators.³⁹ The final rule also

combines proposed Principles 1 through 4 into final Principle 1 and proposed Principles 5 through 8 into final Principle 2 and certain concepts from these principles have been relocated to items 2 and 4 of the general responsibilities section of the Standards.

12. Standard 9 (Management of Credit Counterparty Risk)

In light of a pending joint rulemaking on derivative instruments by the Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Commission ("SEC"), the Banks' letter requests that FHFA suspend proposed Principle 2, relating to policies and procedures for the use of derivative instruments, until the completion of the CFTC and SEC rulemaking.⁴⁰ FHFA has decided not to suspend this principle until the joint rulemaking is complete because the Banks currently use derivative instruments and should already have appropriate derivative policies in place, even in the absence of final rulemaking by the CFTC and SEC. FHFA expects that those policies will need to be modified after the issuance of final rules by the CFTC and SEC relating to the use of clearinghouses and exchanges for derivatives trades.⁴¹

Proposed Principle 4⁴² requires senior management to brief the board regularly on a regulated entity's credit exposure including, among other things, "problem credits," and proposed Principle 10 requires entities to have policies for addressing such "problem credits." The Banks' letter requests that FHFA exclude advances from the scope of the term "problem credits" because the Banks have never sustained any credit losses on advances. The Banks further argue that the programs that they currently have in place to assess, monitor, measure, and report credit risk are sufficient.⁴³ As previously noted, the historical absence of credit losses on advances does not guarantee that there will be no future losses and does not justify excluding advances from the scope of Principles 4 and 10.⁴⁴

The Banks again cite the historical absence of credit losses on advances to argue that proposed Principle 5

⁴⁰ See Joint Bank Letter at 10.

⁴¹ Proposed Principles 1, 2, and 3 have been streamlined and combined into final Principle 1 and certain concepts have been relocated to items 1 and 2 of the general responsibilities section of the Standards.

⁴² Proposed Principle 4 has been streamlined and renumbered as final Principle 2.

⁴³ See Joint Bank Letter at 10.

⁴⁴ In order to streamline Standard 9, the requirement to address problem credits has been removed from Principle 4 but still exists in Principle 8 (formerly Principle 10).

³⁵ See Joint Bank Letter at 9.

³⁶ See Joint Bank Letter at 9.

³⁷ See Joint Bank Letter at 9–10.

³⁸ See Freddie Mac Letter at 3.

³⁹ Proposed Principle 11 has been renumbered as final Principle 5.

(renumbered as final Principle 3), which requires a regulated entity to have policies that limit concentrations of credit risk and systems that can identify such concentrations, should not apply to them.⁴⁵ For the same reasons discussed in the previous paragraph, FHFA believes that proposed Principle 5 should apply to all regulated entities. Concentrations of credit risk for the Banks may be present in their advances business as well as in other areas of their business, such as extensions of unsecured credit and derivatives transactions, as well as the investment portfolio. The existence of those other sources of risk requires that the Banks have systems in place that can identify such concentration of risk, as well as policies to limit those concentration risks. Although the secured nature of advances and the lien priority that is afforded to the Banks lessen the risks to a Bank resulting from a concentration of advances to certain borrowers, the risks exist and the Banks should have in place policies for addressing them. Given the unique nature of advances and the Banks' cooperative business model, FHFA expects that a Bank's policies and limits relating to concentrations arising from its advances business may well differ from those relating to concentrations arising from other sources.

MICA's letter suggests that FHFA expand proposed Principle 8 (renumbered as final Principle 6) to not only require that regulated entities have procedures and policies in place to make informed credit decisions at the outset, but to also require that such procedures are employed on an ongoing basis and include the use of back-testing to ensure that the initial credit decisions are validated and to reveal any need for further improvement in credit-risk protocols.⁴⁶ FHFA does not believe that the extra procedures requested by MICA are necessary at this time.

Proposed Principle 11 (renumbered as final Principle 9) requires a regulated entity to have a system of independent, ongoing credit review, including stress testing and scenario analysis. The Banks' letter seeks clarification of the scope of the term "independent ongoing credit review."⁴⁷ In response to the comment, FHFA is revising Principle 11 to more specifically identify the type of ongoing credit review program envisioned by this principle.

13. Standard 10 (Maintenance of Adequate Records)

In response to a comment from the Banks, FHFA is changing the term "records management plan" to "record retention program" in proposed Principle 3⁴⁸ to better align it with the terminology of part 1235 of the FHFA regulations (12 CFR part 1235), which addresses record retention requirements for the regulated entities.⁴⁹ In response to a comment from Freddie Mac, FHFA is modifying proposed Principle 4 to make it clear that the scope of the records management plan includes all records and not just the records of the board of directors.⁵⁰ Lastly, in response to a comment by the Banks requesting clarification as to what type of "reporting errors" or "irregularities" must be detected and corrected, FHFA is revising proposed Principle 5 to delete the term "irregularities."⁵¹ FHFA believes that the term "reporting errors" is sufficiently clear. The final rule also deletes the subheading that appears before proposed Principle 6.

D. Introduction—General Responsibilities for Boards and Management

As discussed previously, the final version of the Standards includes an introductory section dealing with the general responsibilities of the boards and management of the regulated entities. That new section consists of the following three parts: Responsibilities of the board of directors, responsibilities of senior management, and joint responsibilities of the board and senior management. Each section is compiled from concepts that had been included as part of the Principles under most of the 10 proposed Standards. FHFA believes that grouping these generally applicable board of directors and senior management responsibilities in an introductory section, rather than dispersing them over 10 separate Standards, improves the presentation and clarity of the Standards. As stated previously, the introductory section is intended to provide an overview of what FHFA believes to be typical director and officer responsibilities in the context of financial institutions generally, as well as in the context of the Standards.

⁴⁸ The numbering of the principles in Standard 10 has not changed from the proposed rule to the final rule.

⁴⁹ See Joint Bank Letter at 11.

⁵⁰ See Freddie Mac Letter at 3.

⁵¹ See Joint Bank Letter at 11.

1. Board of Director Responsibilities

Items 1 through 4 of the general responsibilities section address responsibilities of boards of directors. Item 1 requires the board of directors, with respect to each subject matter addressed by each Standard, to adopt appropriate business strategies, policies, and procedures. It also requires boards to review such strategies, policies and procedures periodically and approve all major strategies, policies, and procedures annually. The next item addresses the board's responsibility in overseeing management and ensuring that management includes qualified personnel. Items 3 and 4 require boards to remain informed about the operations of a regulated entity and about specific risks and exposures, including market, credit, and counterparty risk. These items also address the need to establish risk tolerances and remedy any violation of those risk limits.

2. Senior Management Responsibilities

Items 5 through 8 of the general responsibilities section address the responsibilities of senior management of the regulated entities. Item 5 requires senior management, with respect to each subject matter addressed by each Standard, to develop the policies, procedures, and practices that are necessary to implement the business strategies and policies adopted by the board of directors. Senior management should also ensure that the policies, procedures, and practices are followed by all personnel and that such personnel are competent and appropriately trained. Item 6 requires senior management to ensure that the regulated entity has adequate resources, systems, and controls to effectively execute the entity's business strategies, policies and procedures, including operating consistently with each of the Standards. The last two items, 7 and 8, address the need for senior management to keep the board of directors informed through periodic reports and discussions.

3. Joint Responsibilities

Items 9 and 10 (formerly Principle 13 of proposed Standard 1 and Principle 7 of proposed Standard 8, respectively) of the general responsibilities section require the board of directors and senior management to conduct themselves in a manner that promotes high ethical standards and a culture of compliance throughout the organization. The board of directors and senior management are also required to ensure that the regulated entity's overall risk profile is aligned with its mission objectives.

⁴⁵ See Joint Bank Letter at 11.

⁴⁶ See MICA Letter at 2.

⁴⁷ See Joint Bank Letter at 11.

III. Paperwork Reduction Act

The final rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Regulatory Flexibility Act

The final rule applies only to the Banks and the Enterprises, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). See 5 U.S.C. 650(b). Therefore, FHFA certifies that this final rule will not have significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 1236

Administrative practice and procedure, Federal home loan banks, Government-sponsored enterprises, Reporting and recordkeeping requirements.

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, FHFA amends chapter XII of title 12 of the Code of Federal Regulations by adding part 1236 to subchapter B to read as follows:

PART 1236—PRUDENTIAL MANAGEMENT AND OPERATIONS STANDARDS

Sec.

- 1236.1 Purpose.
- 1236.2 Definitions.
- 1236.3 Prudential standards as guidelines.
- 1236.4 Failure to meet a standard; corrective plans.
- 1236.5 Failure to submit a corrective plan; noncompliance.

Appendix to Part 1236—Prudential Management and Operations Standards

Authority: 12 U.S.C. 4511, 4513(a) and (f), 4513b, and 4526.

§ 1236.1 Purpose.

This part establishes the prudential management and operations standards that are required by 12 U.S.C. 4513b and the processes by which FHFA can notify a regulated entity of its failure to operate in accordance with the standards and can direct the entity to take corrective action. This part further specifies the possible consequences for any regulated entity that fails to operate in accordance with the standards or otherwise fails to comply with this part.

§ 1236.2 Definitions.

Unless otherwise indicated, terms used in this part have the meanings that they have in the Federal Housing Enterprises Financial Safety and Soundness Act, 12 U.S.C. 4501 *et seq.*,

or the Federal Home Loan Bank Act, 12 U.S.C. 1421 *et seq.*

Extraordinary growth—(1) For purposes of 12 U.S.C. 4513b(b)(3)(C), means:

(i) With respect to a Bank, growth of non-advance assets in excess of 30 percent over the six calendar quarter period preceding the date on which FHFA notified the Bank that it was required to submit a corrective plan; and

(ii) With respect to an Enterprise, quarterly non-annualized growth of assets in excess of 7.5 percent in any calendar quarter during the six calendar quarter period preceding the date on which FHFA notified the Enterprise that it was required to submit a corrective plan.

(2) For purposes of calculating an increase in assets, assets acquired through merger or acquisition approved by FHFA are not to be included.

FHFA means the Federal Housing Finance Agency.

Standards means any one or more of the prudential management and operations standards established by the Director pursuant to 12 U.S.C. 4513b(a), as modified from time to time pursuant to § 1236.3(b).

§ 1236.3 Prudential standards as guidelines.

(a) The Standards constitute the prudential management and operations standards required by 12 U.S.C. 4513b.

(b) The Standards have been adopted as guidelines, as authorized by 12 U.S.C. 4513b(a), and the Director may modify, revoke, or add to the Standards, or any one or more of them, at any time by order or notice.

(c) In the case of a direct conflict between a Standard and an FHFA regulation, when it is not possible to comply with both the Standard and the FHFA regulation, the regulation shall control.

(d) Failure to meet any Standard may constitute an unsafe and unsound practice for purposes of the enforcement provisions of 12 U.S.C. chapter 46, subchapter III.

§ 1236.4 Failure to meet a standard; corrective plans.

(a) **Determination.** FHFA may, based upon an examination, inspection or any other information, determine that a regulated entity has failed to meet one or more of the Standards.

(b) **Submission of corrective plan.** If FHFA determines that a regulated entity has failed to meet any Standard, FHFA may require the entity to submit a corrective plan, in which case FHFA shall, by written notice, inform the

regulated entity of that determination and the requirement to submit a corrective plan.

(c) **Corrective plans.**—(1) **Contents of plan.** A corrective plan shall describe the actions the regulated entity will take to correct its failure to meet any one or more of the Standards, and the time within which each action will be taken.

(2) **Filing deadline.**—(i) **In general.** A regulated entity must file a written corrective plan with FHFA within thirty (30) calendar days of being notified by FHFA of its failure to meet a Standard and need to file a corrective plan, unless FHFA notifies the regulated entity in writing that the plan must be filed within a different time period.

(ii) **Other plans.** If a regulated entity must file a capital restoration plan submitted pursuant to 12 U.S.C. 4622, it may submit the corrective plan required under this section as part of the capital restoration plan, subject to the deadline in paragraph (c)(2)(i) of this section. If a regulated entity currently is operating under a cease-and-desist order entered into pursuant to 12 U.S.C. 4631 or 4632, or a formal or informal agreement, or must file a response to a report of examination or report of inspection, it may, with the permission of FHFA, submit the corrective plan required under this section as part of the regulated entity's compliance with that order, agreement or response, subject to the deadline in paragraph (c)(2)(i) of this section, but the corrective plan would not become a part of the order, agreement, or response.

(d) **Amendment of corrective plan.** A regulated entity that is operating in accordance with an approved corrective plan may submit a written request to FHFA to amend the plan as necessary to reflect any changes in circumstance. Until such time that FHFA approves a proposed amendment, the regulated entity must continue to operate in accordance with the terms of the corrective plan as previously approved.

(e) **Review of corrective plans and amendments.** Within thirty (30) calendar days of receiving a corrective plan or proposed amendment to a plan, FHFA will notify the regulated entity in writing of its decision on the plan, will direct the regulated entity to submit additional information, or will notify the regulated entity in writing that FHFA has established a different deadline.

§ 1236.5 Failure to submit a corrective plan; noncompliance.

(a) **Remedies.** If a regulated entity fails to submit an acceptable corrective plan under § 1236.4(b), or fails in any material respect to implement or

otherwise comply with an approved corrective plan, FHFA shall order the regulated entity to correct that deficiency, and may:

(1) Prohibit the regulated entity from increasing its average total assets, as defined in 12 U.S.C. 4516(b)(4), for any calendar quarter over its average total assets for the preceding calendar quarter, or may otherwise restrict the rate at which the average total assets of the regulated entity may increase from one calendar quarter to another;

(2) Prohibit the regulated entity from paying dividends;

(3) Prohibit the regulated entity from redeeming or repurchasing capital stock;

(4) Require the regulated entity to maintain or increase its level of retained earnings;

(5) Require an Enterprise to increase its ratio of core capital to assets, or require a Bank to increase its ratio of total capital, as defined in 12 U.S.C. 1426(a)(5), to assets; or

(6) Require the regulated entity to take any other action that the Director determines will better carry out the purposes of the statute by bringing the regulated entity into conformance with the Standards.

(b) *Extraordinary growth.* If a regulated entity that has failed to submit an acceptable corrective plan or has failed in any material respect to implement or otherwise comply with an approved corrective plan, also has experienced extraordinary growth, FHFA shall impose at least one of the sanctions listed in paragraph (a) of this section, consistently with the requirements of 12 U.S.C. 4513b(b)(3).

(c) *Orders.*—(1) *Notice.* Except as provided in paragraph (c)(4) of this section, FHFA will notify a regulated entity in writing of its intent to issue an order requiring the regulated entity to correct its failure to submit or its failure in any material respect to implement or otherwise comply with an approved corrective plan. Any such notice will include:

(i) A statement that the regulated entity has failed to submit a corrective plan under § 1236.4, or has not implemented or otherwise has not complied in any material respect with an approved plan;

(ii) A description of any sanctions that FHFA intends to impose and, in the case of the mandatory sanctions required by 12 U.S.C. 4513b(b)(3), a statement that FHFA believes that the regulated entity has experienced extraordinary growth; and

(iii) The proposed date when any sanctions would become effective or the proposed date for completion of any required actions.

(2) *Response to notice.* A regulated entity may file a written response to a notice of intent to issue an order, which must be delivered to FHFA within fourteen (14) calendar days of the date of the notice, unless FHFA determines that a different time period is appropriate in light of the safety and soundness of the regulated entity or other relevant circumstances. The response should include:

(i) An explanation why the regulated entity believes that the action proposed by FHFA is not an appropriate exercise of discretion;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation or other evidence in support of the position of the regulated entity regarding the proposed order.

(3) *Failure to file response.* A regulated entity's failure to file a written response within the specified time period will constitute a waiver of the opportunity to respond and will constitute consent to issuance of the order.

(4) *Immediate issuance of final order.* FHFA may issue an order requiring a regulated entity immediately to take actions to correct a Standards deficiency or to take or refrain from taking other actions pursuant to paragraph (a) of this section. Within fourteen (14) calendar days of the issuance of an order under this paragraph, or other time period specified by FHFA, a regulated entity may submit a written appeal of the order to FHFA. FHFA will respond in writing to a timely filed appeal within sixty (60) days after receiving the appeal. During this period, the order will remain in effect unless FHFA stays the effectiveness of the order.

(d) *Request for modification or rescission of order.* A regulated entity subject to an order under this part may submit a written request to FHFA for an amendment to the order to reflect a change in circumstance. Unless otherwise ordered by FHFA, the order shall continue in place while such a request is pending before FHFA.

(e) *Agency review and determination.* FHFA will respond in writing within thirty (30) days after receiving a response or amendment request, unless FHFA notifies the regulated entity in writing that it will respond within a different time period. After considering a regulated entity's response or amendment request, FHFA may:

(1) Issue the order as proposed or in modified form;

(2) Determine not to issue the order and instead issue a different order; or

(3) Seek additional information or clarification of the response from the regulated entity, or any other relevant source.

Appendix to Part 1236—Prudential Management and Operations Standards

General Responsibilities of the Board of Directors and Senior Management

The following provisions address the general responsibilities of the boards of directors and senior management of the regulated entities as they relate to the matters addressed by each of the Standards. The descriptions are not a comprehensive listing of the responsibilities of either the boards or senior management, each of whom have additional duties and responsibilities to those described in these Standards.

Responsibilities of the Board of Directors

1. With respect to the subject matter addressed by each Standard, the board of directors is responsible for adopting business strategies, policies, and procedures that are appropriate for the particular subject matter. The board should review all such strategies, policies, and procedures periodically, and should review and approve all major strategies and policies at least annually, and make any revisions that are necessary to ensure that they remain consistent with the entity's overall business plan.

2. The board of directors is responsible for overseeing management of the regulated entity, which includes ensuring that management includes personnel who are appropriately trained and competent to oversee the operation of the regulated entity as it relates to the functions and requirements addressed by each Standard, and that management implements the policies and procedures set forth by the board.

3. The board of directors is responsible for remaining informed about the operations and condition of the regulated entity, including operating consistently with the Standards, and senior management's implementation of the strategies, policies and procedures established by the board of directors.

4. The board of directors must remain sufficiently informed about the nature and level of the regulated entity's overall risk exposures, including market, credit, and counterparty risk, so that it can understand the possible short- and long-term effects of those exposures on the financial health of the regulated entity, including the possible short- and long-term consequences to earnings, liquidity, and economic value. The board of directors should: establish the regulated entity's risk tolerances and should provide management with clear guidance regarding the level of acceptable risks; review the regulated entity's entire market risk management framework, including policies and entity-wide risk limits at least annually; oversee the adequacy of the actions taken by senior management to identify, measure, manage, and control the regulated entity's risk exposures; and ensure that management takes appropriate corrective measures whenever market risk limit violations or breaches occur.

Responsibilities of Senior Management

5. With respect to the subject matter addressed by each Standard, senior management is responsible for developing the policies, procedures and practices that are necessary to implement the business strategies and policies adopted by the board of directors. Senior management should ensure that such items are clearly written, sufficiently detailed, and are followed by all personnel. Senior management also should ensure that the regulated entity has personnel who are appropriately trained and competent to carry out their respective functions and that all delegated responsibilities are performed.

6. Senior management should ensure that the regulated entity has adequate resources, systems and controls available to execute effectively the entity's business strategies, policies and procedures, including operating consistently with each of the Standards.

7. Senior management should provide the board of directors with periodic reports relating to the regulated entity's condition and performance, including the subject matter addressed by each of the Standards, that are sufficiently detailed to allow the board of directors to remain fully informed about the business of the regulated entity.

8. Senior management should regularly review and discuss with the board of directors information regarding the regulated entity's risk exposures that is sufficient in detail and timeliness to permit the board of directors to understand and assess the performance of management in identifying and managing the various risks to which the regulated entity is exposed.

Responsibilities of the Board of Directors and Senior Management

9. The board of directors and senior management should conduct themselves in such a manner as to promote high ethical standards and a culture of compliance throughout the organization.

10. The board of directors and senior management should ensure that the regulated entity's overall risk profile is aligned with its mission objectives.

The following provisions constitute the prudential management and operations standards established pursuant to 12 U.S.C. 4513b(a).

Standard 1—Internal Controls and Information Systems*Responsibilities of the Board of Directors*

1. Regarding internal controls and information systems, the board of directors of each regulated entity should adopt appropriate policies, ensure personnel are appropriately trained and competent, approve and periodically review overall business strategies, approve the organizational structure, and assess the adequacy of senior management's oversight of this function.

Responsibilities of Senior Management

2. Regarding internal controls and information systems, senior management should implement strategies and policies approved by the board of directors, establish appropriate policies, monitor the adequacy

and effectiveness of this function, and ensure personnel are appropriately trained and competent. The organizational structure should clearly assign responsibility, authority, and reporting relationships.

Responsibilities of the Board of Directors and Senior Management

3. Regarding internal controls and information systems, both the board of directors and senior management should promote high ethical standards, create a culture that emphasizes the importance of this function, and promptly address any issues in need of remediation.

Framework

4. The regulated entity should have an adequate and effective system of internal controls, which should include a board approved organizational structure that clearly assigns responsibilities, authority, and reporting relationships, and establishes an appropriate segregation of duties that ensures that personnel are not assigned conflicting responsibilities.

5. The regulated entity should establish appropriate internal control policies and should monitor the adequacy and effectiveness of its internal controls and information systems on an ongoing basis through a formal self-assessment process.

6. The regulated entity should have an organizational culture that emphasizes and demonstrates to personnel at all levels the importance of internal controls.

7. The regulated entity should address promptly any violations, findings, weaknesses, deficiencies, and other issues in need of remediation relating to the internal control systems.

Risk Recognition and Assessment

8. A regulated entity should have an effective risk assessment process that ensures that management recognizes and continually assesses all material risks, including credit risk, market risk, interest rate risk, liquidity risk, and operational risk.

Control Activities and Segregation of Duties

9. A regulated entity should have an effective internal control system that defines control activities at every business level.

10. A regulated entity's control activities should include:

- a. Board of directors and senior management reviews of progress toward goals and objectives;
- b. Appropriate activity controls for each business unit;
- c. Physical controls to protect property and other assets and limit access to property and systems;
- d. Procedures for monitoring compliance with exposure limits and follow-up on non-compliance;
- e. A system of approvals and authorizations for transactions over certain limits; and
- f. A system for verification and reconciliation of transactions.

Information and Communication

11. A regulated entity should have information systems that provide relevant, accurate and timely information and data.

12. A regulated entity should have secure information systems that are supported by adequate contingency arrangements.

13. A regulated entity should have effective channels of communication to ensure that all personnel understand and adhere to policies and procedures affecting their duties and responsibilities.

Monitoring Activities and Correcting Deficiencies

14. A regulated entity should monitor the overall effectiveness of its internal controls and key risks on an ongoing basis and ensure that business units and internal and external audit conduct periodic evaluations.

15. Internal control deficiencies should be reported to senior management and the board of directors on a timely basis and addressed promptly.

Applicable Laws, Regulations, and Policies

16. A regulated entity should comply with all applicable laws, regulations, and supervisory guidance (e.g., advisory bulletins) governing internal controls and information systems.

Standard 2—Independence and Adequacy of Internal Audit Systems*Audit Committee*

1. A regulated entity's board of directors should have an audit committee that exercises proper oversight and adopts appropriate policies and procedures designed to ensure the independence of the internal audit function. The audit committee should ensure that the internal audit department includes personnel who are appropriately trained and competent to oversee the internal audit function.

2. The board of directors should review and approve the audit committee charter at least every three years.

3. The audit committee of the board of directors is responsible for monitoring and evaluating the effectiveness of the regulated entity's internal audit function.

4. Issues reported by the internal audit department to the audit committee should be promptly addressed and satisfactorily resolved.

Internal Audit Function

5. A regulated entity should have an internal audit function that provides for adequate testing of the system of internal controls.

6. A regulated entity should have an independent and objective internal audit department that reports directly to the audit committee of the board of directors.

7. A regulated entity's internal audit department should be adequately staffed with properly trained and competent personnel.

8. The internal audit department should conduct risk-based audits.

9. The internal audit department should conduct adequate testing and review of internal control and information systems.

10. The internal audit department should determine whether violations, findings, weaknesses and other issues reported by regulators, external auditors, and others have been promptly addressed.

Applicable Laws, Regulations, and Policies

11. A regulated entity should comply with applicable laws, regulations, and supervisory guidance (e.g., advisory bulletins) governing the independence and adequacy of internal audit systems.

Standard 3—Management of Market Risk Exposure*Responsibilities of the Board of Directors*

1. Regarding the overall management of market risk exposure, the board of directors should remain sufficiently informed about the nature and level of the regulated entity's market risk exposures. At least annually, the board should review the entire market risk framework, including policies and risk limits, and provide an assessment of compliance.

2. Regarding the policies, practices and procedures surrounding the management of market risk, the board of directors should approve all major strategies and policies relating to the management of market risk, ensure all major strategies and policies are consistent with the overall business plan, establish and communicate a market risk tolerance, and ensure appropriate corrective measures are taken when market risk limit violations or breaches occur.

3. The board, or a board appointed committee, should oversee the adequacy of actions taken by senior management to identify, measure, manage, and control market risk exposures, ensure market risk policies establish lines of authority and responsibility, and review risk exposures on a periodic basis.

Responsibilities of Senior Management

4. Regarding the overall management of market risk exposure, senior management should provide sufficient and timely information to the board of directors, ensure personnel are appropriately trained and competent, ensure adequate systems and resources are available to manage and control market risk, report any breaches to the board of directors (or the appropriate board committee), and take appropriate remedial action.

5. Regarding the policies, practices, and procedures surrounding market risk exposure, senior management should ensure market risk policies and procedures are clearly written, sufficiently detailed, and followed. Approved policies and procedures should include clear market risk limits and lines of authority for managing market risk.

Market Risk Strategy

6. A regulated entity should have a clearly defined and well-documented strategy for managing market risk, which must be consistent with its overall business plan, must enable the regulated entity to identify, manage, monitor, and control the regulated entity's risk exposures on a business unit and an enterprise-wide basis, and must ensure that the lines of authority and responsibility for managing market risk and monitoring market risk limits are clearly identified. The strategy should specify a target account, or target accounts, for managing market risk (e.g., specify whether the objective is to control risk to earnings, net portfolio value,

or some other target, or some combination of targets), and, if a market risk limit is breached, should require that the breach be reported to the board of directors, or the appropriate board committee, and that appropriate remedial action, including any ordered by the board of directors, should be taken.

7. Management should ensure that the board of directors is made aware of the advantages and disadvantages of the regulated entity's chosen market risk management strategy, as well as those of alternative strategies, so that the board of directors can make an informed judgment about the relative efficacy of the different strategies.

8. A Bank's strategy for managing market risk should take into account the importance of maintaining the market value of equity of member stock commensurate with the par value of that stock so that the Bank is able to redeem and repurchase member stock at par value.

9. A regulated entity should comply with all applicable laws, regulations, and supervisory guidance, (e.g., advisory bulletins) governing the independence and adequacy of the management of market risk exposure.

Standard 4—Management of Market Risk—Measurement Systems, Risk Limits, Stress Testing, and Monitoring and Reporting*Risk Measurement Systems*

1. A regulated entity should have a risk measurement system (a model or models) that capture(s) all material sources of market risk and provide(s) meaningful and timely measures of the regulated entity's risk exposures, as well as personnel who are appropriately trained and competent to operate and oversee the risk measurement system.

2. The risk measurement system should be capable of estimating the effect of changes in interest rates and other key risk factors on the regulated entity's earnings and market value of equity over a range of scenarios.

3. The measurement system should be capable of valuing all financial assets and liabilities in the regulated entity's portfolio.

4. The measurement system should address all material sources of market risk including repricing risk, yield curve risk, basis risk, and options risk.

5. Management should ensure the integrity and timeliness of the data inputs used to measure the regulated entity's market risk exposures, and should ensure that assumptions and parameters are reasonable and properly documented.

6. The measurement system's methodologies, assumptions, and parameters should be thoroughly documented, understood by management, and reviewed on a regular basis.

7. A regulated entity's market risk model should be upgraded periodically to incorporate advances in risk modeling technology.

8. A regulated entity should have a documented approval process for model changes that requires model changes to be authorized by a party independent of the party making the change.

9. A regulated entity should ensure that its models are independently validated on a regular basis.

Risk Limits

10. Risk limits should be consistent with the regulated entity's strategy for managing interest rate risk and should take into account the financial condition of the regulated entity, including its capital position.

11. Risk limits should address the potential impact of changes in market interest rates on net interest income, net income, and the regulated entity's market value of equity.

Stress Testing

12. A regulated entity should conduct stress tests on a regular basis for a variety of institution-specific and market-wide stress scenarios to identify potential vulnerabilities and to ensure that exposures are consistent with the regulated entity's tolerance for risk.

13. A regulated entity should use stress test outcomes to adjust its market risk management strategies, policies, and positions and to develop effective contingency plans.

14. Special consideration should be given to ensuring that complex financial instruments, including instruments with complex option features, are properly valued under stress scenarios and that the risks associated with options exposures are properly understood.

15. Management should ensure that the regulated entity's board of directors or a committee thereof considers the results of stress tests when establishing and reviewing its strategies, policies, and limits for managing and controlling interest rate risk.

16. The board of directors and senior management should review periodically the design of stress tests to ensure that they encompass the kinds of market conditions under which the regulated entity's positions and strategies would be most vulnerable.

Monitoring and Reporting

17. A regulated entity should have an adequate management information system for reporting market risk exposures.

18. The board of directors, senior management, and the appropriate line managers should be provided with regular, accurate, informative, and timely market risk reports.

Applicable Laws, Regulations, and Policies

19. A regulated entity should comply with all applicable laws, regulations, and supervisory guidance (e.g., advisory bulletins) governing the management of market risk.

Standard 5—Adequacy and Maintenance of Liquidity and Reserves*Responsibilities of the Board of Directors*

1. Regarding the adequacy and maintenance of liquidity and reserves, the board of directors should review (at least annually) all major strategies and policies governing this area, approve appropriate revisions to such strategies and policies, and ensure senior management are appropriately trained to effectively manage liquidity.

Responsibilities of Senior Management

2. Regarding the adequacy and maintenance of liquidity and reserves, senior management should develop strategies, policies, and practices to manage liquidity risk, ensure personnel are appropriately trained and competent, and provide the board of directors with periodic reports on the regulated entity's liquidity position.

Policies, Practices, and Procedures

3. A regulated entity should establish a liquidity management framework that ensures it maintains sufficient liquidity to withstand a range of stressful events.

4. A regulated entity should articulate a liquidity risk tolerance that is appropriate for its business strategy and its mission goals and objectives.

5. A regulated entity should have a sound process for identifying, measuring, monitoring, controlling, and reporting its liquidity position and its liquidity risk exposures.

6. A regulated entity should establish a funding strategy that provides effective diversification in the sources and tenor of funding.

7. A regulated entity should conduct stress tests on a regular basis for a variety of institution-specific and market-wide stress scenarios to identify sources of potential liquidity strain and to ensure that current exposures remain in accordance with each regulated entity's established liquidity risk tolerance.

8. A regulated entity should use stress test outcomes to adjust its liquidity management strategies, policies, and positions and to develop effective contingency plans.

9. A regulated entity should have a formal contingency funding plan that clearly sets out the strategies for addressing liquidity shortfalls in emergencies. Where practical, contingent funding sources should be tested or drawn on periodically to assess their reliability and operational soundness.

10. A regulated entity should maintain adequate reserves of liquid assets, including adequate reserves of unencumbered, marketable securities that can be liquidated to meet unexpected needs.

Applicable Laws, Regulations, and Policies

11. A regulated entity should comply with all applicable laws, regulations, and supervisory guidance (e.g., advisory bulletins) governing the adequacy and maintenance of liquidity and reserves.

Standard 6—Management of Asset and Investment Portfolio Growth*Responsibilities of the Board of Directors and Senior Management*

1. Regarding the management of asset and investment portfolio growth, the board of directors is responsible for overseeing the management of growth in these areas, ensuring senior management are appropriately trained and competent, establishing policies governing the regulated entity's assets and investment growth, with prudential limits on the growth of mortgages and mortgage-backed securities, and reviewing policies at least annually.

2. Regarding the management of asset and investment portfolio growth, senior management should adhere to board-approved policies governing growth in these areas, and ensure personnel are appropriately trained and competent to manage the growth.

Risk Measurement, Monitoring, and Control

3. A regulated entity should manage its asset growth and investment growth in a prudent manner that is consistent with the regulated entity's business strategy, board-approved policies, risk tolerances, and safe and sound operations, and should establish prudential limits on the growth of its portfolios of mortgage loans and mortgage backed securities.

4. A regulated entity should manage asset growth and investment growth in a way that is compatible with mission goals and objectives.

5. A regulated entity should manage investments and acquisition of assets in a way that complies with all applicable laws, regulations, and supervisory guidance (e.g., advisory bulletins).

Standard 7—Investments and Acquisitions of Assets*Responsibilities of the Board of Directors and Senior Management*

1. The board of directors is responsible for overseeing the regulated entity's investments and acquisition of other assets, ensuring senior management are appropriately trained and competent, and establishing, approving and periodically reviewing policies and procedures governing investments and acquisitions of other assets.

Policies, Practices, and Procedures

2. A regulated entity should have a board-approved investment policy that establishes clear and explicit guidelines that are appropriate to the regulated entity's mission and objectives. The investment policy should establish the regulated entity's investment objectives, risk tolerances, investment constraints, and policies and procedures for selecting investments.

3. A regulated entity should have a board-approved policy governing acquisitions of major categories of assets other than investments. The policy should establish clear and explicit guidelines for asset acquisitions that are appropriate to the regulated entity's mission and objectives.

4. A regulated entity should manage investments and acquisitions of assets prudently and in a manner that is consistent with mission goals and objectives.

5. Each Bank's investment policies and acquisition of assets should take into account the importance of maintaining the market value of member stock commensurate with the par value of that stock so that the Bank is able to redeem and repurchase member stock at par value at all times.

6. A regulated entity should manage investments and acquisitions of assets in a way that complies with all applicable laws, regulations, and supervisory guidance (e.g., advisory bulletins).

Standard 8—Overall Risk Management Processes*Responsibilities of the Board of Directors*

1. Regarding overall risk management processes, the board of directors is responsible for overseeing the process, ensuring senior management are appropriately trained and competent, ensuring processes are in place to identify, manage, monitor and control risk exposures (this function may be delegated to a board appointed committee), approving all major risk limits, and ensuring incentive compensation measures for senior management capture a full range of risks.

Responsibilities of the Board and Senior Management

2. Regarding overall risk management processes, the board of directors and senior management should establish and sustain a culture that promotes effective risk management. This culture includes timely, accurate and informative risk reports, alignment of the regulated entity's overall risk profile with its mission objectives, and the annual review of comprehensive self-assessments of material risks.

Independent Risk Management Function

3. A regulated entity should have an independent risk management function, or unit, with responsibility for risk measurement and risk monitoring, including monitoring and enforcement of risk limits.

4. The chief risk officer should head the risk management function.

5. The chief risk officer should report directly to the chief executive officer and the risk committee of the board of directors.

6. The risk management function should have adequate resources, including a well-trained and capable staff.

Risk Measurement, Monitoring, and Control

7. A regulated entity should measure, monitor, and control its overall risk exposures, reviewing market, credit, liquidity, and operational risk exposures on both a business unit (or business segment) and enterprise-wide basis.

8. A regulated entity should have the risk management systems to generate, at an appropriate frequency, the information needed to manage risk. Such systems should include systems for market, credit, operational, and liquidity risk analysis, asset and liability management, regulatory reporting, and performance measurement.

9. A regulated entity should have a comprehensive set of risk limits and monitoring procedures to ensure that risk exposures remain within established risk limits, and a mechanism for reporting violations and breaches of risk limits to senior management and the board of directors.

10. A regulated entity should ensure that it has sufficient controls around risk measurement models to ensure the completeness, accuracy, and timeliness of risk information.

11. A regulated entity should have adequate and well-tested disaster recovery and business resumption plans for all major

systems and have remote facilities to limit the impact of disruptive events.

Applicable Laws, Regulations, and Policies

12. A regulated entity should comply with all applicable laws, regulations, and supervisory guidance (e.g., advisory bulletins) governing the management of risk.

Standard 9—Management of Credit and Counterparty Risk

Responsibilities of the Board of Directors and Senior Management

1. Regarding the management of credit and counterparty risk, the board of directors and senior management are responsible for ensuring that the regulated entity has appropriate policies, procedures, and systems that cover all aspects of credit administration, including credit pricing, underwriting, credit limits, collateral standards, and collateral valuation procedures. This should also include derivatives and the use of clearing houses. They are also responsible for ensuring personnel are appropriately trained, competent, and equipped with the necessary tools, procedures and systems to assess risk.

2. Senior management should provide the board of directors with regular briefings and reports on credit exposures.

Policies, Procedures, Controls, and Systems

3. A regulated entity should have policies that limit concentrations of credit risk and systems to identify concentrations of credit risk.

4. A regulated entity should establish prudential limits to restrict exposures to a single counterparty that are appropriate to its business model.

5. A regulated entity should establish prudential limits to restrict exposures to groups of related counterparties that are appropriate to its business model.

6. A regulated entity should have policies, procedures, and systems for evaluating credit risk that will enable it to make informed credit decisions.

7. A regulated entity should have policies, procedures, and systems for evaluating credit risk that will enable it to ensure that claims are legally enforceable.

8. A regulated entity should have policies and procedures for addressing problem credits.

9. A regulated entity should have an ongoing credit review program that includes stress testing and scenario analysis.

Applicable Laws, Regulations, and Policies

10. A regulated entity should manage credit and counterparty risk in a way that complies with applicable laws, regulations, and supervisory guidance (e.g., advisory bulletins).

Standard 10—Maintenance of Adequate Records

1. A regulated entity should maintain financial records in compliance with Generally Accepted Accounting Principles (GAAP), FHFA guidelines, and applicable laws and regulations.

2. A regulated entity should ensure that assets are safeguarded and financial and

operational information is timely and reliable.

3. A regulated entity should have a records retention program consistent with laws and corporate policies, including accounting policies, as well as personnel that are appropriately trained and competent to oversee and implement the records management plan.

4. A regulated entity, with oversight from the board of directors, should conduct a review and approval of the records retention program and records retention schedule for all types of records at least once every two years.

5. A regulated entity should ensure that reporting errors are detected and corrected in a timely manner.

6. A regulated entity should comply with all applicable laws, regulations, and supervisory guidance (e.g., advisory bulletins) governing the maintenance of adequate records.

Dated: May 31, 2012.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2012-13997 Filed 6-7-12; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 111 and 163

[CBP Dec. 12-12; USCBP-2009-0019]

RIN 1515-AD66 (Formerly RIN 1505-AC12)

Customs Broker Recordkeeping Requirements Regarding Location and Method of Record Retention

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with an additional technical correction, proposed amendments to the Customs and Border Protection (CBP) regulations regarding customs broker recordkeeping requirements as they pertain to the location and method of record retention. The amendments permit a licensed customs broker, under prescribed conditions, to store records relating to his or her customs transactions at any location within the customs territory of the United States. The amendments also remove the requirement, as it currently applies to brokers who maintain separate electronic records, that certain entry records must be retained in their original format for the 120-day period

after the release or conditional release of imported merchandise. These changes maximize the use of available technologies and serve to conform CBP's recordkeeping requirements to reflect modern business practices without compromising the agency's ability to monitor and enforce recordkeeping compliance.

DATES: Effective July 9, 2012.

FOR FURTHER INFORMATION CONTACT:

Anita Harris, Broker Compliance Branch, Trade Policy and Programs, Office of International Trade, Customs and Border Protection, 202-863-6069.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 2010, U.S. Customs and Border Protection (CBP) published in the **Federal Register** (75 FR 13699) a proposal to amend title 19 of the Code of Federal Regulations (19 CFR) regarding customs broker recordkeeping requirements as they pertain to the location and method of record retention. In that document, CBP proposed amendments to the CBP regulations to permit a licensed customs broker to store records relating to his or her customs transactions at any location within the customs territory of the United States, so long as the broker's designated recordkeeping contact, identified in the broker's permit application, makes all records available to CBP within a reasonable period of time from request at the broker district that covers the CBP port to which the records relate. The document also proposed to remove the requirement, as it applied to brokers who maintain separate electronic records, that certain entry records must be retained in their original format for the 120-day period after the release or conditional release of imported merchandise.

CBP solicited comments on the proposed rulemaking.

Discussion of Comments

Eleven commenters responded to the solicitation of public comment in the proposed rule. Eight commenters expressed support for the proposed rulemaking, noting in particular that the proposed amendments serve to maximize the use of available technologies, increase efficiency and reduce the cost of storing records. Several of these eight commenters included additional suggestions.

A description of the comments received, together with CBP's analyses, is set forth below.

Comment: One commenter requested that CBP issue guidance to the ports as to what constitutes a "reasonable time

period” within which a broker must produce requested documentation. The commenter also suggested that CBP allow brokers to submit requested entry documents to any port in an electronic format.

CBP Response: In an effort to maintain uniform standards at its ports, CBP is amending 19 CFR 111.23(a) in this final rule by replacing the term “reasonable time period” with “30 calendar days, or such longer time as specified by CBP.” Regarding the submission of requested entry-related documentation in an electronic format, CBP intends, through the Automated Commercial Environment (ACE) and related technology, to allow for the submission of entry-related documentation through electronic imaging.

Comment: One commenter inquired whether the ability to reproduce entry data that is generated by an application-based software program, as opposed to data stored in an electronic Portable Document Format (PDF) or Tagged Image File (TIF) format, satisfies CBP’s electronic recordkeeping requirements.

CBP Response: Yes, but unless otherwise excepted, documents must be maintained in their original format for 120 days.

Comment: One commenter inquired whether a broker’s electronic (imaged file) documentation can be maintained on a server physically located outside the customs territory of the United States.

CBP Response: For purposes of complying with CBP’s broker recordkeeping requirements, a broker’s electronic documentation must be maintained on a server physically located within the customs territory of the United States wherein CBP has jurisdiction to issue a summons under 19 U.S.C. 1509(a)(2).

Comment: Two commenters recommended that CBP further amend 19 CFR 163.5(b)(2)(iii) by removing the requirement for express consignment brokers who are also serving as importers of record to maintain records in their original format for 120 days following the end of release or conditional release. The commenters stated that many brokers are the importer of record for numerous shipments and the 120-day recordkeeping requirement is burdensome. Additionally, removing this requirement would allow these brokers to manage their recordkeeping responsibilities in a systemic manner which parallels their day-to-day business practices.

CBP Response: CBP will not remove the requirement for brokers who are also serving as importers of record to

maintain records in their original format for the prescribed 120-day period. The intent of the proposed amendments is to eliminate duplicative record retention requirements, and not to alter the importer of record’s ultimate responsibility.

Comment: Two commenters noted that most large customs brokers operate nationally (in 42 districts) and are not limited to the specific district in which they are physically located. Unless a broker is able to obtain a waiver from CBP, he or she is faced with the burden of procuring 42 permit qualifiers. The commenters also stated that the recent promulgation of the Remote Location Filing regulations is indicative of the fact that modern business practices allow a customs broker to operate nationally regardless of their actual locations. In light of the above, the commenters suggested that CBP should revise the current regulations that require an individual licensed broker to be designated as a permit qualifier in each customs district. The commenters are of the view that having one national permit without local district permit qualifiers will have no impact on broker responsibilities or liability, as CBP can easily obtain required information and records without the need to have a person available to contact locally in each district.

CBP Response: The recommendation to revise the current regulations that require an individual licensed broker to be designated as a permit qualifier in each district is beyond the scope of this proposed rulemaking. CBP is, however, engaged in a comprehensive review of the role of brokers, and will consider the proposal in that context.

Comment: One commenter noted that there does not appear to be any reason to distinguish “packing lists” from the other types of records associated with an import transaction and, therefore, CBP should remove the existing exception in 19 CFR 163.5(b)(2)(iii) which excludes “packing lists” from the types of records that a broker must maintain for the requisite 120-day period. The commenter recommended that the final rule provide that the obligation for maintaining original records, including packing lists, rests with the importer of record in accordance with 19 U.S.C. 1509. At a minimum, the commenter suggested that the final rule clarify that the obligation to maintain packing lists in original form does not extend to brokers.

CBP Response: CBP notes that § 163.4(b)(2) requires, in pertinent part, that packing lists must be retained for a shorter 60-day, rather than a 120-day, period. It is further noted that the intent

of the proposed rulemaking is not to alter the scope of a broker’s recordkeeping requirements; therefore, the obligation to maintain packing lists will continue to apply.

Comment: One commenter suggested the following technical amendments to the final rule:

- The word “broker” should be removed from 19 CFR 111.23(a) in that there is no such thing as a “broker district.”
- Section 163.5(b)(3) has been modified to provide that changes to alternative storage procedures must be approved by Regulatory Audit in Charlotte, North Carolina. However, §§ 111.23(b)(2), 163.5(b)(1), 163.12(b)(2) and 163.12(c)(1) still require that approval be sought from Regulatory Audit in Miami. These locations should be harmonized.
- Several references to “Customs” throughout the cited sections should be changed to “CBP.”

CBP Response: CBP does not agree that the word “broker” should be deleted from 19 CFR 111.23(a). CBP still recognizes broker districts in the administration of broker permits even though districts and regions were eliminated in the agency reorganization of 1995.

The regulatory provisions cited by the commenter, in fact, currently reflect the Regulatory Audit office located in Charlotte, N.C., and do not need to be amended. See CBP Dec. 07–82 of October 19, 2007 (72 FR 59174).

When CBP proposes to amend a regulatory provision, it endeavors to change all outdated references in the section to “Customs” and replace it with either “CBP” or “customs,” as appropriate. The proposed rulemaking omitted one such reference in § 163.5(b)(2)(i), and this document corrects such omission.

Conclusion

After analysis of the comments and further review of the matter, CBP has determined to adopt as final, with the technical change noted above in § 163.5(b)(2)(i), and a clarification, the proposed rule published in the **Federal Register** (75 FR 13699) on March 23, 2010. The change to 19 CFR 111.23(a) clarifies that “the reasonable time period” within which a designated recordkeeping contact must make all records available to CBP is “30 calendar days, or such longer time as specified by CBP.”

The Regulatory Flexibility Act and Executive Order 12866

Because these amendments liberalize broker recordkeeping requirements and

place no new regulatory requirements on small entities to change their business practices, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Further, these amendments do not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The information collections contained in this rule have been previously submitted and approved by the Office of Management and Budget (OMB) and assigned OMB control numbers 1651-0076 and 1651-0034. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Signing Authority

This document is being issued in accordance with 19 CFR 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his or her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Licensing, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated in the preamble, parts 111 and 163 of title 19 of the CFR (19 CFR parts 111 and 163) are amended as set forth below.

PART 111—CUSTOMS BROKERS

■ 1. The authority citation for part 111 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

■ 2. Section 111.23 is revised to read as follows:

§ 111.23 Retention of records.

(a) *Place of retention.* A licensed customs broker may retain records relating to its customs transactions at any location within the customs

territory of the United States in accordance with the provisions of this part and part 163 of this chapter. Upon request by CBP to examine records, the designated recordkeeping contact identified in the broker's applicable permit application, in accordance with § 111.19(b)(6) of this chapter, must make all records available to CBP within 30 calendar days, or such longer time as specified by CBP, at the broker district that covers the CBP port to which the records relate.

(b) *Period of retention.* The records described in this section, other than powers of attorney, must be retained for at least 5 years after the date of entry. Powers of attorney must be retained until revoked, and revoked powers of attorney and letters of revocation must be retained for 5 years after the date of revocation or for 5 years after the date the client ceases to be an "active client" as defined in § 111.29(b)(2)(ii), whichever period is later. When merchandise is withdrawn from a bonded warehouse, records relating to the withdrawal must be retained for 5 years from the date of withdrawal of the last merchandise withdrawn under the entry.

PART 163—RECORDKEEPING

■ 3. The authority citation for part 163 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

■ 4. In § 163.5:

- a. Paragraph (a) is amended in the first sentence by removing the word "shall" and adding in its place the word "must", and in the second sentence by removing the word "Customs" and adding in its place the term "CBP";
- b. Paragraph (b)(2) introductory text is amended in the second sentence by removing the word "Customs" and adding in its place the term "CBP";
- c. Paragraph (b)(2)(i) is amended by removing the word "Customs" and adding in its place the term "CBP";
- d. Paragraph (b)(2)(iii) is revised;
- e. Paragraph (b)(2)(v) is amended by removing the word "Customs" and adding in its place the term "CBP";
- f. Paragraph (b)(2)(vi) is amended by removing the word "shall" and adding in its place the word "must";
- g. Paragraph (b)(3) is amended by removing the words "the Miami regulatory audit field office" and adding in their place the language, "Regulatory Audit, Office of International Trade, Customs and Border Protection, 2001 Cross Beam Drive, Charlotte, North Carolina 28217";
- h. Paragraph (b)(4) is amended by removing the words "shall be" and

adding in their place the word "are"; and

■ i. Paragraph (b)(5) is revised.

The revisions read as follows:

§ 163.5 Methods for storage of records.

* * * * *

(b) * * *

(2) * * *

(iii) Except in the case of packing lists (see § 163.4(b)(2)), entry records must be maintained by the importer in their original formats for a period of 120 calendar days from the end of the release or conditional release period, whichever is later, or, if a demand for return to CBP custody has been issued, for a period of 120 calendar days either from the date the goods are redelivered or from the date specified in the demand as the latest redelivery date if redelivery has not taken place. Customs brokers who are not serving as the importer of record and who maintain separate electronic records are exempted from this requirement. This exemption does not apply to any document that is required by law to be maintained as a paper record.

* * * * *

(5) *Failure to comply with alternative storage requirements.* If a person listed in § 163.2 uses an alternative storage method for records that is not in compliance with the conditions and requirements of this section, CBP may issue a written notice informing the person of the facts giving rise to the notice and directing that the alternative storage method must be discontinued in 30 calendar days unless the person provides written notice to the issuing CBP office within that time period that explains, to CBP's satisfaction, how compliance has been achieved. Failure to timely respond to CBP will result in CBP requiring discontinuance of the alternative storage method until a written statement explaining how compliance has been achieved has been received and accepted by CBP.

§ 163.12 [Amended]

■ 5. In § 163.12:

- a. Paragraph (a) is amended by removing the word "Customs" wherever it appears and adding in its place the term "CBP";
- b. Paragraph (b)(2) is amended: by removing the word "shall" wherever it appears and adding in its place the word "must", and; in the second sentence, by removing the words "Customs Recordkeeping" and adding in their place the words "CBP Recordkeeping" and removing the language "the Customs Electronic Bulletin Board (703-921-6155)" and adding in its place the language, "CBP's

Regulatory Audit Web site located at http://www.cbp.gov/xp/cgov/import/regulatory_audit_program/archive/compliance_assessment/;

■ c. Paragraph (b)(3) introductory text is amended: In the first, third and fourth sentences, by removing the word “Customs” wherever it appears and adding in its place the term “CBP”, and; in the second sentence, by removing the word “Customs” and adding in its place the words “all applicable”;

■ d. Paragraphs (b)(3)(iii), (iv), (v), and (vi) are amended by removing the word “Customs” wherever it appears and adding in its place the term “CBP”;

■ e. Paragraph (c)(1) is amended by removing the word “shall” wherever it appears and adding in its place the word “will”;

■ f. Paragraph (c)(2) is amended: By removing the word “Customs” and adding in its place the term “CBP”; by removing the word “Miami” and adding in its place the word “Charlotte”, and; by removing the word “shall” and adding in its place the word “will”;

■ g. Paragraph (d)(1) is amended: In the first sentence, by removing the words “Customs shall” and adding in their place the words “CBP will”, and; in the second sentence, by removing the word “Customs” and adding in its place the word “CBP”;

■ h. The introductory text to paragraph (d)(2) is amended by removing the word “shall” and adding in its place the word “must”; and

■ i. Paragraph (d)(3) is amended: By removing the word “shall” and adding in its place the word “must”; and, by removing the word “Customs” and adding in its place the term “CBP”.

David V. Aguilar,

Acting Commissioner, U.S. Customs and Border Protection.

Approved: June 4, 2012.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2012-13907 Filed 6-7-12; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2012-0066]

RIN 1625-AA08

Special Local Regulations; OPSAIL 2012 Connecticut, Niantic Bay, Long Island Sound, Thames River and New London Harbor, New London, CT

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations on the navigable waters of Niantic Bay, Long Island Sound, the Thames River and New London Harbor, New London, Connecticut for OPSAIL 2012 Connecticut (CT) activities. This action is necessary to provide for the safety of life on navigable waters during OPSAIL 2012 CT. This action will restrict vessel traffic in portions of Niantic Bay, Long Island Sound, the Thames River, and New London Harbor unless authorized by the Captain of the Port (COTP) Sector Long Island Sound (SLIS).

DATES: This rule is effective from 6 a.m. on July 6, 2012 to 5 p.m. on July 7, 2012.

This rule will be enforced during the following dates and times:

(1) Area 1, from 6 a.m. July 6, until 5 p.m. on July 7, 2012.

(2) Areas 3 and 4, from 7:30 a.m. until 5 p.m. on July 7, 2012.

(3) Areas 2 and 5, from 10 a.m. until 5 p.m. on July 7, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0066]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

COTP Captain of the Port
CT Connecticut
DHS Department of Homeland Security
FR Federal Register
SLIS Sector Long Island Sound

A. Regulatory History and Information

On March 19, 2012 the Coast Guard published a notice of proposed

rulemaking (NPRM) entitled “Special Local Regulations; OPSAIL 2012 Connecticut, Niantic Bay, Long Island Sound, Thames River and New London Harbor, New London, CT” in the **Federal Register** (77 FR 15981). 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**. The Coast Guard published and NPRM for this rule in March, but there was not sufficient time to publish this Final Rule more than thirty days prior to the effective date of the rule.

B. Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1233, which authorizes the Coast Guard to define special local regulations.

This temporary special local regulation is necessary to ensure the safety of vessels and spectators from hazards associated with OPSAIL 2012 CT.

C. Discussion of Comments, Changes and the Final Rule

No comments were received and this final rule is unchanged from the rule published in the NPRM.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this regulation prevents traffic from transiting a portion of Long Island Sound, the Thames River and New London Harbor during OPSAIL 2012 CT, the effect of this regulation will not be significant for the following reasons: During the limited time that the regulated areas will be in effect, mariners will be able to transit around some areas, and persons and vessels will still be able to enter, transit

through, anchor in, or remain within the regulated areas if authorized by the COTP Sector Long Island Sound (SLIS) or designated representative. Mariners will also be able to adjust their plans based on extensive advance notifications that will be made to the maritime community through Local Notice to Mariners, marine information broadcasts and New London area media. In addition, the sponsoring organization, Operation Sail, Inc., is planning to publish information on the event in local newspapers, internet sites pamphlets, and television and radio broadcasts.

These regulated areas have been narrowly tailored to impose the least impact on maritime interests yet provide the necessary level of safety.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This temporary rule might affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit through Niantic Bay, portions of Long Island Sound, the Thames River and New London Harbor during various times from July 6–7, 2012. Although these regulations apply to a substantial portion of Niantic Bay and New London Harbor, designated areas for viewing the “Parade of Sail” have been established to allow for maximum use of the waterways by commercial tour boats that usually operate in the affected areas. Vessels, including commercial traffic, will be able to transit around some designated areas, and persons and vessels would still be able to enter, transit through, anchor in, or remain within the regulated areas if authorized by the COTP SLIS or designated representative. Before the effective period, the Coast Guard will make notifications to the public through Local Notice to Mariners and Broadcast Notice to Mariners. In addition, the sponsoring organization, Operation Sail, Inc., is planning to publish information of the event in local newspapers, internet sites pamphlets, television and radio broadcasts.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or

more in any one year. Though this rule will not result in such an 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 M16475.1D, 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 that do not individually or cumulatively have a significant effect on the human

environment. This rule establishes temporary special local regulations. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under

ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233. Authority: 33 U.S.C. 1233.

■ 2. Add § 100.T01–0066 to read as follows:

§ 100.T01–0066 Special Local Regulations; OPSAIL 2012 Connecticut, Niantic Bay, Long Island Sound, Thames River and New London Harbor, New London, Connecticut.

(a) Regulated Areas.

(1) *Area 1:* All navigable waters of Niantic Bay and Long Island Sound within the following boundaries: Beginning at position 41°18'53" N, 072°11'48" W then to 41°18'53" N, 072°10'38" W then to 41°16'40" N, 072°10'38" W then to 41°16'40" N, 072°11'48" W then to point of origin 41°18'53" N, 072°11'48" W (NAD 83).

(2) *Area 2:* All navigable waters of the Thames River south of the railroad bridge and Long Island Sound within the following boundaries: Beginning on the east side of the Federal Channel at the Thames River Rail Road Bridge in the Port of New London 41°21'46" N, 072°05'14" W then southward along the east side of the Federal Channel to 41°17'38" N, 072°04'40" W (New London Harbor Channel Lighted Buoy "2" (LLNR 21790) then south west to 41°15'38" N, 072°08'22" W (Bartlett Reef Lighted Bell Buoy "4" (LLNR 21065)) then north to 41°16'28" N, 072°07'54" W (Bartlett Reef Lighted Buoy "1" (LLNR 21065)) then east to 41°17'07" N, 072°06'09" W then continuing east to 41°18'04" N, 072°04'50" W which meets the west side of the federal channel, then north along the west side of the federal channel to 41°21'46" N,

072°05'17" W (Thames River Railroad Bridge in the Port of New London), then east to the point of origin. (NAD 83).

(3) *Area 3:* All Navigable water of the Thames River within the following boundaries. Beginning at 41°18'21" N, 072°05'36" W then to 41°18'21" N, 072°05'1.5" W then to 41°18'57" N, 072°05'6" W then to point of origin. (NAD 83).

(4) *Area 4:* All waters of the Thames River within the following boundaries. Beginning at 41°19'03" N, 072°04'48" W then to 41°19'04" N, 072°04'33" W then to 41°18'42" N, 072°04'30" W then to 41°18'40" N, 072°04'45" W then to point of origin. (NAD 83).

(5) *Area 5:* All waters of the Thames River and New London Harbor within the following boundaries. Beginning at a point located on the west shore line of the Thames River 25 yards below the Thames River Railroad Bridge, 41°21'46" N, 072°05'23" W then east to 41°21'46" N, 072°05'17" W then south along the western limit of the federal navigation channel to 41°20'37" N, 072°05'8.7" W then west to 41°20'37" N, 072°05'31" W then following the shoreline north to the point of origin. (NAD 83).

(b) Special local regulations.

(1) In accordance with the general regulations is § 100.35 of this part, entering into, transiting through, anchoring or remaining within the regulated areas is prohibited unless authorized by the Captain of the Port (COTP) Sector Long Island Sound (SLIS), or designated representative.

(2) All persons and vessels are authorized by the COTP SLIS or designated representative to enter areas of this special local regulation in accordance with the following restrictions:

(i) *Area 1;* all vessels may transit at a slow no wake speed or a speed not to exceed 6 knots, whichever is less to maintain steerage way. Vessels transiting must not maneuver within 100 yards of a tall ship or an OPSAIL 2012 CT participating vessel.

(ii) *Area 3 & 4;* access is limited to vessels greater than 50 feet in length.

(iii) *Area 2 & 5;* access is limited to vessels Participating in the "Parade of Sail".

(3) All persons and vessels shall comply with the instructions of the COTP SLIS or designated representative. These designated representatives are comprised of commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing lights, or other means the operator of a vessel shall proceed as directed.

(4) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas must contact the COTP SLIS by telephone at (203) 468–4401, or designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the COTP SLIS or designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP SLIS or designated representative.

(5) The Coast Guard will provide notice of the regulated areas, prior to the event through the Local Notice to Mariners and Broadcast Notice to Mariners. Notice will also be provided by on-scene designated representatives.

(c) *Enforcement Period.* This section will be enforced during the following times.

(1) *Area 1,* from 6 a.m. July 6, until 5 p.m. on July 7, 2012.

(2) *Areas 3 and 4,* from 7:30 a.m. until 5 p.m. on July 7, 2012.

(3) *Areas 2 and 5,* from 10 a.m. until 5 p.m. on July 7, 2012.

Dated: May 25, 2012.

J.M. Vojvodich,

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

[FR Doc. 2012–13890 Filed 6–7–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

46 CFR Part 162

[Docket No. USCG–2001–10486]

RIN 1625–AA32

Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters

AGENCY: Coast Guard, DHS.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is correcting a final rule that appeared in the **Federal Register** of March 23, 2012 (77 FR 17254), entitled "Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters." Six technical errors were inadvertently published in the final rule that require correction, two in the preamble and four in the regulatory text. The corrections are necessary for readability and accuracy.

DATES: This correction is effective on June 21, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call or email Mr. John Morris, Project Manager, U.S. Coast Guard; telephone 202-372-1402, email *environmental_standards@uscg.mil*. If you have questions on viewing material on the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION: The Coast Guard is correcting a final rule that appeared in the **Federal Register** of March 23, 2012 (77 FR 17254), entitled "Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters." Six technical errors were inadvertently published in the final rule that require correction, two in the preamble and four in the regulatory text. The corrections are necessary for readability and accuracy.

The first preamble correction is to the *Discussion of Comments and Changes/Summary of Changes from the NPRM/Applicability* section (section V.A.3), where we revise our response to comments about non-seagoing vessel applicability by removing the words "U.S. Exclusive Economic Zone (EEZ)" and replacing them with "U.S. Exclusive Economic Zone and Canadian equivalent (EEZ; see 16 U.S.C. 4702)". This correction is needed to align the preamble text with the existing definition of EEZ in 33 CFR 151.1504. The omission of the reference to the Canadian equivalent was a technical error, as the Coast Guard did not intend to change the applicable definition of EEZ in the discussion of the final rule. Additionally, the word "U.S." is deleted from the abbreviation of EEZ in *I. Abbreviations*.

The second correction is to the *Environment* section (section VII.M) of the preamble, which incorrectly states that a separate Record of Decision is available in the docket where indicated under **ADDRESSES**. By reason of this being a rulemaking action under the Administrative Procedure Act, the final rule constitutes the Record of Decision and it was published on March 23, 2012, consistent with 40 CFR 1506.10(b).

The additional corrections are to the regulatory text. The first regulatory text corrections are to 33 CFR 151.1510(a)(1) and 151.1515(a). In those paragraphs, we delete the text "U.S." prefacing the words "Exclusive Economic Zone (EEZ)". These corrections are needed to align with the definition of EEZ applicable to this part, 33 CFR 151.1504. Two regulatory text corrections are

grammatical corrections required to clarify 33 CFR 151.2005(b), "Definitions" and 46 CFR 162.060-22(a), "Marking requirements". The final correction, to 46 CFR 162.060-42(a)(3), "Responsibilities for independent laboratories (ILs)", corrects a mistake which had directed independent laboratories to provide the estimated date for commencement of type-approval testing to the "Commandant (CG-52), Commercial Regulations and Standards Directorate". Notification should be provided to U.S. Coast Guard Marine Safety Center.

In FR doc 2012-6579 appearing on page 17254 in the issue of Friday, March 23, 2012, the following corrections are made:

1. On page 17254, in the third column, *Abbreviations* section, remove the word "U.S." from the abbreviation for "EEZ".

2. On page 17257, in the second column, in the last paragraph, remove the words "U.S. Exclusive Economic Zone (EEZ)" and add, in their place, the words "U.S. Exclusive Economic Zone and Canadian equivalent (EEZ; see 16 U.S.C. 4702)".

3. On page 17304, in the first column, correct the paragraph following "M. Environment" to read as follows: "We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with NEPA (42 U.S.C. 4321-4370f), and have concluded that this action may have a significant effect on the human environment. A Final Programmatic Environmental Impact Statement is available in the docket where indicated under **ADDRESSES**, and includes a summary of our actions to comply with NEPA".

§ 151.1510 [Corrected]

■ 4. On page 17304, in the third column, in the first sentence under § 151.1510(a)(1), after the words "waters beyond the" remove the text "U.S.".

§ 151.1515 [Corrected]

■ 5. On page 17306, in the first column, in the first sentence under § 151.1515(a), after the words "before entering the" remove the text "U.S.".

■ 6. On page 17307, in the first column, in the second paragraph, under § 151.2005(b), revise paragraph (2) of the definition of "Exchange" to read as follows:

§ 151.2005 Definitions.

* * * * *
(b) * * *
Exchange * * *

(2) *Empty/refill exchange* means to pump out the ballast water taken on in ports, estuarine, or territorial waters until the pump(s) lose suction, then refilling the ballast tank(s) with mid-ocean water.

* * * * *

§ 162.060-22 [Corrected]

■ 7. On page 17315, in the third column, in the third paragraph, under § 162.060-22(a), remove the word "for" and add, in its place, the word "under".

■ 8. On page 17320, in the second column, in the sixth paragraph, under § 162.060-42, revise paragraph (a)(3) to read as follows:

§ 162.060-42 Responsibilities for Independent Laboratories (ILs).

(a) * * *

(3) Upon determination that the BWMS is ready for testing, the independent laboratory will notify the Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593-7102, and provide the estimated date for commencement of type-approval testing.

* * * * *

Dated: June 4, 2012.
Kathryn A. Sinniger,
Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.
[FR Doc. 2012-13888 Filed 6-7-12; 8:45 am]
BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0466]

Safety Zones; Recurring Events in Captain of the Port New York Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce various safety zones in the Sector New York area of responsibility on various dates and times. This action is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks displays. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port (COTP).

DATES: The regulations for the safety zones described in 33 CFR 165.160 will

be enforced on the dates and times listed in the table below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Ensign Kimberly Farnsworth,

Coast Guard; telephone 718-354-4163, email Kimberly.A.Farnsworth@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone listed in 33 CFR 165.160 on the specified dates and times as indicated in Table 1

below. If the event is delayed by inclement weather, the regulation will be enforced on the rain date indicated in Table 1 below. These regulations were published in the **Federal Register** on November 9, 2011 (76 FR 69614).

TABLE 1

1. Bronx Salutes America Fireworks, Orchard Beach Safety Zone, 33 CFR 165.160(3.11).	<ul style="list-style-type: none"> • Launch site: All waters of Long Island Sound in an area bound by the following points: 40°51'43.5" N, 073°47'36.3" W; thence to 40°52'12.2" N, 073°47'13.6" W; thence to 40°52'02.5" N, 073°46'47.8" W; thence to 40°51'32.3" N, 073°47'09.9" W (NAD 1983), thence to the point of origin. • Date: June 29, 2012. • Time: 8:50 p.m.–10:12 p.m.
2. City of Newburgh Fireworks, Newburgh Hudson River Safety Zone, 33 CFR 165.160(5.12).	<ul style="list-style-type: none"> • Launch site: A barge located in approximate position 41°30'01.2" N, 073°59'42.5" W (NAD 1983), approximately 930 yards east of Newburgh, New York. • Date: July 4, 2012. • Time: 9 p.m.–10:30 p.m.

Under the provisions of 33 CFR 165.160, a vessel may not enter the regulated area unless given express permission from the COTP or the designated representative. Spectator vessels may transit outside the regulated area but may not anchor, block, loiter in, or impede the transit of other vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.160(a) and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide mariners with advanced notification of enforcement periods via the Local Notice to Mariners and marine information broadcasts. If the COTP determines that the 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 21, 2012.

G.P. Hitchen,

Captain, U.S. Coast Guard, Acting Captain of the Port New York.

[FR Doc. 2012-13889 Filed 6-7-12; 8:45 am]

BILLING CODE 9110-04-P

FEDERAL MARITIME COMMISSION

46 CFR Part 532

[Docket No. 11-22]

RIN 3072-AC38

Non-Vessel-Operating Common Carriers Negotiated Rate Arrangements; Tariff Filing Exemption

AGENCY: Federal Maritime Commission.

ACTION: Direct final rule; request for comments.

SUMMARY: In this direct final rule, the Federal Maritime Commission is revising the regulations which govern negotiated rate arrangements. The rule eliminates some recordkeeping requirements to make them less burdensome.

DATES: This rule is effective September 10, 2012 without further action, unless significant adverse comment is received by August 10, 2012. If adverse comment is received, the Federal Maritime Commission will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Submit comments to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573-0001, or email non-confidential comments to: Secretary@fmc.gov (email comments as attachments preferably in Microsoft Word or PDF).

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 N. Capitol Street NW., Washington, DC 20573-0001, (202) 523-5725, Fax (202) 523-0014, Email: Secretary@fmc.gov. Rebecca A. Fenneman, General Counsel, Federal Maritime Commission, 800 N. Capitol Street NW., Washington, DC 20573-0001, (202) 523-5740, Fax (202) 523-5738, Email: GeneralCounsel@fmc.gov.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 2011, the Federal Maritime Commission (Commission) issued a final rule, promulgating 46 CFR part 532, regulations which govern the exemption of licensed NVOCCs from

their tariff rate publication obligations when entering into a “negotiated rate arrangement” (NRA). Commission Docket No. 10-03, 76 FR 11351, effective April 18, 2011.¹ On December 20, 2011, the Commission issued a Notice of Inquiry (NOI), Commission Docket No. 11-22, seeking comments on ways to make NRAs more useful, including the possible extension of the ability to offer NRAs to foreign-based NVOCCs not licensed by the Commission. December 27, 2011 at 76 FR 80866. The record in Commission Docket No. 10-03 was incorporated into Docket No. 11-22. Comments were due by March 26, 2012. The Commission received 23 comments. Of those 23 comments, 16 came from ocean transportation intermediaries; 4 from U.S. trade associations; and 3 from foreign trade associations. A number of the commenters suggested eliminating some of the technical requirements of the rule. In particular, commenters suggested eliminating the requirement for the shipper’s title and address in their written assent to rates; eliminating the requirement that the bill of lading include a notice that a shipment is moving pursuant to an NRA; and eliminating the requirement that an NVOCC retain all associated records and written communications pertaining to an NRA. After consideration of these specific suggestions, the Commission has determined to adopt these suggestions and revise the regulation governing NRAs through a direct final

¹ On April 5, 2011, the Commission published a correction to its final rule clarifying that NRAs must be agreed to prior to receipt of the cargo and removing the requirement that NVOCCs indicate their intention to move cargo under NRAs on their Form FMC-1 on file with the Commission. 76 FR 19706.

rule. In a direct final rulemaking, an agency publishes a direct final rule in the **Federal Register** along with a statement that the rule will become effective unless the agency receives significant adverse comment within a specified period. The Commission is using a direct final rule for this rulemaking because it expects the rule to be noncontroversial and because the rule removes technical requirements and imposes no requirements or costs. The Commission will continue to consider other suggestions made by commenters and may further modify part 532 at a future date.

In accordance with the Paperwork Reduction Act of 1995, as amended, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072-0071. Revised estimated burdens of collection of information authorized by this direct final rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1995, as amended. The estimated annual burden for the estimated 3548 annual respondents is \$340,921. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Ronald D. Murphy, Managing Director, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, email: OMD@fmc.gov, or fax: (202) 523-3646; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Maritime Commission, 17th Street and Pennsylvania Avenue NW., Washington, DC 20503, email: OIRASubmission@OMB.EOP.GOV, or fax: (202) 395-5806.

List of Subjects in 46 CFR Part 532

Exports, Non-vessel-operating common carriers, Ocean transportation intermediaries.

Accordingly, the Federal Maritime Commission amends 46 CFR part 532 as follows:

PART 532—NVOCC NEGOTIATED RATE ARRANGEMENTS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 46 U.S.C. 40103.

■ 2. In § 532.5, revise paragraph (b) to read as follows:

§ 532.5 Requirements for NVOCC negotiated rate agreements.

* * * * *

(b) Contain the names of the parties and the names of the representatives agreeing to the NRA;

* * * * *

■ 3. Revise § 532.6 to read as follows:

§ 532.6 Notices.

An NVOCC wishing to invoke an exemption pursuant to this part must indicate that intention to the Commission and the public by a prominent notice in its rules tariff.

■ 4. Revise § 532.7 to read as follows:

§ 532.7 Recordkeeping and audit.

(a) An NVOCC invoking an exemption pursuant to this part must maintain original NRAs in an organized, readily accessible or retrievable manner for 5 years from the completion date of performance of the NRA by an NVOCC, in a format easily produced to the Commission.

(b) NRAs are subject to inspection and reproduction requests under § 515.31(g) of this chapter. An NVOCC shall produce the requested NRAs promptly in response to a Commission request. All records produced must be in English or be accompanied by a certified English translation.

(c) Failure to keep or timely produce original NRAs will disqualify an NVOCC from the operation of the exemption provided pursuant to this part, regardless of whether it has been invoked by notice as set forth above, and may result in a Commission finding of a violation of 46 U.S.C. 41104(1), 41104(2)(A) or other acts prohibited by the Shipping Act.

By the Commission.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2012-14005 Filed 6-7-12; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket Nos. 12-64 and 11-110; FCC 12-55]

Channel Spacing and Bandwidth Limitations for Certain Economic Area (EA)-based 800 MHz Specialized Mobile Radio (SMR) Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission amends its rules to allow Economic Area (EA)-based 800 MHz Specialized Mobile Radio (SMR)

licensees to exceed a legacy channel spacing and bandwidth limitation, subject to conditions to protect 800 MHz public safety licensees from harmful interference. Licensees are permitted to exceed the channel spacing and bandwidth limitation in the 813.5-824/858.5-869 MHz band segment in National Public Safety Planning Advisory Committee (NPSPAC) regions where 800 MHz reconfiguration is complete. In areas where 800 MHz reconfiguration is incomplete, EA-based 800 MHz licensees only are permitted to exceed the channel spacing and bandwidth limitation in the 813.5-821/858.5-866 MHz band segment. Any EA-based 800 MHz SMR licensee that intends to exceed the channel spacing and bandwidth limitation of the Commission's rules must provide 30 days written notice to public safety licensees with base stations in an affected NPSPAC region and within 113 kilometers (70 miles) of the border of an affected NPSPAC region. This rule change is necessary to allow EA-based 800 MHz SMR licensees to deploy advanced wireless services to effectively compete in the wireless marketplace.

DATES: Effective July 9, 2012.

FOR FURTHER INFORMATION CONTACT:

Brian Regan, Mobility Division, Wireless Telecommunications Bureau, brian.regan@fcc.gov, (202) 418-2849.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in WT Docket Nos. 12-64 and 11-110; FCC 12-55, adopted and released May 24, 2012. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY-B402, Washington, DC 20554, (202) 488-5300, facsimile (202) 488-5563, or via email at fcc@bcpiweb.com. The full text may also be downloaded at: www.fcc.gov. Alternative formats are available to persons with disabilities by sending an email to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Summary

I. Introduction and Background

1. As part of our ongoing efforts to reduce barriers to innovation and investment in new technologies and to promote greater spectrum efficiency, we adopt this *Report and Order* to amend a legacy regulatory requirement in part

90 and provide certain spectrum licensees with increased regulatory and technical flexibility to deploy advanced wireless services in portions of the 800 MHz band. By removing a legacy channelization scheme and bandwidth limitation, this *Report and Order* will allow Economic Area (EA)-based 800 MHz Specialized Mobile Radio (SMR) licensees in the 813.5–824/858.5–869 MHz portion of the 800 MHz band to more efficiently utilize their spectrum resources to deploy competitive wireless services. Consumers will benefit from this flexibility through improved access to advanced wireless services, including in rural, unserved, and underserved areas. We are also mindful of the need to protect 800 MHz public safety licensees from harmful interference, and take action in this *Report and Order* to help ensure that the flexibility provided to EA-based 800 MHz SMR licensees does not cause harmful interference to 800 MHz public safety licensees.

2. The Commission revised its part 90 rules to create a new geographic-licensing framework for 800 MHz SMR in 1995. In doing so, the Commission transitioned the 800 MHz SMR service from a site-by-site licensing process that required licensees to seek prior authorization to add or modify individual frequency channels and transmitter sites to a geographic-based licensing mechanism that provides licensees with the flexibility to add transmitters or modify operations within their licensed market and licensed spectrum as market conditions dictate.

3. The Commission determined that wide-area licensing would “give licensees the flexibility to use technologies that can operate on either contiguous or non-contiguous spectrum” and that large spectrum blocks were necessary for “broadband technologies such as CDMA and GSM.” With wide-area licenses, the Commission indicated licensees would be able to “compete effectively with other CMRS providers, such as cellular and broadband PCS systems.” Further, the Commission stated its intent in the Executive Summary of the *800 MHz SMR First Report and Order*, at 61 FR 6138, Feb. 16, 1996, that EA-based licensees would have “full discretion over channelization of available spectrum within the block.” The Commission also adopted an out-of-band emission (OOBE) requirement that applies to the outer channels of the spectrum block and to spectrum adjacent to interior channels used by incumbents.

4. In 2004, the Commission initiated a process to reconfigure the 800 MHz band in the *800 MHz Reconfiguration Report and Order*, at 69 FR 67823, Nov. 22, 2004, to “address the [then] ongoing and growing problem of interference to public safety communications in the 800 MHz band.” The interference problem was caused “by a fundamentally incompatible mix of two types of communications systems: Cellular-architecture multi-cell systems * * * and high-site non-cellular systems.” To provide immediate relief, the Commission implemented technical standards that defined unacceptable interference in the 800 MHz band, while also reconfiguring the band to separate commercial wireless systems from public safety and other high site systems. Under the reconfiguration plan, SMR and other cellular-system operators including Sprint Nextel were required to vacate the 806–817/851–862 MHz band segment and relocate to the 817–824/862–869 MHz band segment.

5. In part due to the reconfiguration of the 800 MHz band, Sprint Nextel holds the majority of EA-based 800 MHz SMR licenses, and reports that it “has or will soon have access to 14 MHz of spectrum in the ESMR band * * * across much of the nation.” In June 2010, Sprint Nextel announced its Network Vision initiative, under which it will “deploy next-generation base station technology that will operate across all of Sprint’s licensed spectrum.” As part of its Network Vision initiative, Sprint Nextel reports it will incorporate its 800 MHz SMR spectrum into its CDMA network and forthcoming LTE deployment. However, Sprint Nextel is unable to aggregate its EA-based 800 MHz SMR channels to deploy CDMA or LTE because of the channel spacing and bandwidth limitation in § 90.209 of the Commission’s rules. Sprint Nextel reports that CDMA requires contiguous spectrum and occupies a 1.25 MHz bandwidth, and that other wireless carriers are deploying LTE using 10 megahertz or 20 megahertz channel pairs. Specifically, § 90.209 limits EA-based 800 MHz SMR licensees to 25 kHz channels with a bandwidth of 20 kHz. Therefore, in June 2011, Sprint Nextel filed a petition for declaratory ruling, or rulemaking in the alternative, that would allow EA-based 800 MHz SMR licensees (commonly referred to as Enhanced SMR or ESMR) to exceed the channel spacing and bandwidth limitation under § 90.209. The Wireless Telecommunications Bureau released a *Public Notice*, WT Docket No. 11–110,

DA 11–1152, June 30, 2011, seeking comment on Sprint Nextel’s petition.

6. Prior to Sprint Nextel filing the petition, and subsequently while the petition has been pending, the Commission has granted waivers and special temporary authorizations to allow Sprint Nextel to deploy and test CDMA in several markets on its EA-based 800 MHz SMR licenses. Sprint Nextel filed for additional waivers in March 2012, and the Wireless Telecommunications Bureau issued a *Public Notice*, WT Docket No. 12–82, DA 12–506, Mar. 30, 2012, seeking comment on the request.

7. Based on the record developed in response to the *Public Notice* seeking comment on Sprint’s petition for declaratory ruling or rulemaking in the alternative and our analysis of the relevant part 90 rules and the underlying 800 MHz proceeding, we concluded that while the Commission may have intended to provide EA-based 800 MHz SMR licensees with discretion over channelization within their channel blocks, the Commission did not amend the applicable channel spacing and bandwidth limitation in § 90.209 to allow licensees to exercise such discretion. We therefore denied Sprint Nextel’s request for a declaratory ruling and issued a *Notice of Proposed Rulemaking*, (NPRM) at 77 FR 18991, Mar. 29, 2012, proposing to allow EA-based 800 MHz SMR licensees to exceed the channel spacing and bandwidth limitation in § 90.209, subject to proposed conditions to protect against potential harmful interference with 800 MHz public safety licensees.

8. Commenters generally support our proposal to provide flexibility to EA-based 800 MHz SMR licensees to exceed the channel spacing and bandwidth limitation in § 90.209. Similarly, many commenters support or do not oppose the proposed conditions to protect 800 MHz public safety licensees from harmful interference. As discussed below, we adopt the proposals from the NPRM with a minor modification.

I. Report and Order

9. We amend § 90.209 of the Commission’s rules to allow EA-based 800 MHz SMR licensees operating in the 813.5–824/858.5–869 MHz portion of the 800 MHz band to provide wireless services across aggregated channels, without unnecessary bandwidth or channelization limitations. We note that, pursuant to § 90.614(c) of the Commission’s rules, the band segment 813.5–817/858.5–862 MHz is available for SMR operations only in the Southeastern United States. We conclude that the public interest will be

served by allowing EA-based 800 MHz SMR licensees to exceed the existing channel spacing and bandwidth limitation in § 90.209, subject to conditions designed to protect neighboring public safety operations. We find strong support in the record for this conclusion. As Motorola Solutions, Inc. asserts, the proposals in the *NPRM* “strike the right balance * * * by allowing EA-based 800 MHz SMR licensees to introduce more advanced wideband technologies on their licensed spectrum in situations where there is little risk to public [safety] operations.”

10. We also find that the proposals from the *NPRM* will balance the benefits of providing channel spacing and bandwidth flexibility to EA-based 800 MHz SMR licensees with the need to continue to prevent harmful interference to 800 MHz public safety licensees. As described below, the record shows that with the flexibility we adopt today, EA-based 800 MHz SMR licensees will be able to invest in the deployment of new wireless technologies, such as CDMA and LTE, while incurring little additional compliance costs. The record also shows that consumers will benefit from access to these advanced technologies. Further, the record demonstrates little additional costs to 800 MHz public safety licensees from such operation relative to the status quo, which may be incurred through increased monitoring for harmful interference for a time following an EA-based 800 MHz SMR licensee’s transition to a wideband technology. We find that, based on the record, the minimal costs incurred by EA-based 800 MHz SMR licensees or 800 MHz public safety licensees are far outweighed by the benefits gained through the efficient utilization of spectrum resources and the deployment and availability of advanced wireless services.

11. Below we explain the conditions under which EA-based 800 MHz SMR licensees may exceed the channel spacing and bandwidth limitation in § 90.209, take steps to protect 800 MHz public safety licensees from harmful interference, and discuss the continued applicability and sufficiency of other part 90 rules. We also discuss and decline to adopt additional protections proposed by commenters and decline to take other actions that we find are outside of the scope of this proceeding.

A. Channel Spacing and Bandwidth Flexibility for EA-Based 800 MHz SMR Licensees

12. We find that there are substantial benefits to revising our part 90 rule regarding channel spacing and

bandwidth limits. The record demonstrates that providing EA-based 800 MHz SMR licensees the flexibility to exceed the channel spacing and bandwidth limitation in § 90.209 effectively eliminates a barrier to the deployment of advanced wireless technologies, promotes spectrum efficiency, and improves regulatory parity between commercial wireless licensees, to consumers’ benefit. Under this rule change, EA-based 800 MHz SMR licensees will no longer be forced to comply with an inefficient channelization scheme that prevents licensees from utilizing multiple contiguous channels to provide service. With flexibility regarding channelization and bandwidth utilization, as Sprint Nextel and SouthernLINC Wireless (SouthernLINC) assert, EA-based 800 MHz SMR licensees will be able to deploy CDMA, LTE, and other advanced wireless technologies. Licensees will therefore be able to transition networks deployed using EA-based 800 MHz SMR licenses from legacy narrowband technologies to 3G as well as other advanced technologies including LTE, in order to better compete in the commercial wireless marketplace. We agree with Sprint Nextel that this will allow EA-based 800 MHz SMR licensees to “respond to consumer demand for innovative wireless services” including, as SouthernLINC argues, through the deployment of advanced wireless services to “rural, unserved, and underserved areas.” Southern also argues that when SouthernLINC transitions its network to more advanced wireless technologies, SouthernLINC will be able to provide innovative services to Southern Company Services’ electric company affiliates.

13. Based on the record, we therefore find that it is in the public interest to amend § 90.209 to allow EA-based 800 MHz SMR licensees to exceed the channel spacing and bandwidth limitation in § 90.209 in the 813.5–824/858.5–869 MHz band segment in National Public Safety Planning Advisory Committee (NPSPAC) regions where all 800 MHz public safety licensees in the region have completed band reconfiguration. In NPSPAC regions where reconfiguration is incomplete, we amend § 90.209 to allow EA-based 800 MHz SMR licensees to exceed the channel spacing and bandwidth limitation only in the 813.5–821/858.5–866 MHz band segment. Consistent with this *Report and Order*, EA-based 800 MHz SMR licensees will only be able to exceed the channel

spacing and bandwidth limitation utilizing frequencies in 821–824/866–869 MHz once 800 MHz public safety licensees have vacated this portion of the 800 MHz band in a given NPSPAC region. Upon all 800 MHz public safety licensees in a region completing band reconfiguration, EA-based 800 MHz SMR licensees in the 821–824/866–869 MHz band would then be allowed to exceed the channel spacing and bandwidth limitation. As noted, pursuant to § 90.614(c), the band segment 813.5–817/858.5–862 MHz is available for SMR operations only in the Southeastern United States.

B. Protection of 800 MHz Public Safety Licensees

14. We recognize that the affected portion of the 800 MHz band is currently subject to an ongoing reconfiguration process to protect 800 MHz public safety users from interference from incompatible commercial networks. We seek to ensure that the progress made to protect public safety licensees from interference is not affected by the flexibility we provide today, and adopt additional protections for 800 MHz public safety licensees.

15. We find based on the record that the 30-day notification condition we proposed in the *NPRM*, with a minor modification, will help protect 800 MHz public safety licensees from the risk of harmful interference. We require all EA-based 800 MHz SMR licensees that seek to exceed the channel spacing and bandwidth limitation in § 90.209 to provide at least 30 days written notice to public safety licensees with base stations in a NPSPAC region where the EA-based 800 MHz SMR licensee intends to exceed the channel spacing and bandwidth limitation, and to public safety licensees with base stations within 113 kilometers (70 miles) of an affected NPSPAC region border. Further, pursuant to a request by Concepts to Operations, Inc. (CTO), we modify our original proposal to require that the notice include the estimated date on which the EA-based 800 MHz SMR licensee will begin operations that exceed the channel spacing and bandwidth limitation. We find that by requiring EA-based 800 MHz SMR licensees to include the estimated date of operation in the notice, 800 MHz public safety licensees will be better able to monitor their networks for harmful interference on and around the date of a SMR licensee’s expected transition from operations within the channel spacing and bandwidth limitation of § 90.209 to operations that

exceed the channel spacing and bandwidth limitation.

16. We agree with commenters that the 30-day notice requirement will allow EA-based 800 MHz SMR licensees to use their spectrum more efficiently, while continuing to protect 800 MHz public safety licensees. Pursuant to this notice requirement, in the event that an 800 MHz public safety licensee experiences harmful interference subsequent to receiving the required notice from an EA-based 800 MHz SMR licensee, the public safety licensee can more quickly identify or eliminate EA-based 800 MHz SMR operations as the source of interference. While this requirement will result in certain costs to EA-based licensees who must identify and timely notify affected public safety entities, we find that the resulting benefits—efficient resolution of interference to a public safety entity—offsets such costs. As SouthernLINC states, this condition “will impose only a modest burden on ESMR licensees and will ensure that 800 MHz public safety licensees are fully informed, thus making it easier to swiftly resolve any issues or concerns that may arise.”

17. The Association of Public-Safety Communications Officials-International, Inc. (APCO) and CTO suggest additional conditions that they argue will help protect 800 MHz public safety licensees from harmful interference caused by EA-based 800 MHz SMR licensees that exceed the channel spacing and bandwidth limitation. APCO urges us to require EA-based 800 MHz SMR licensees that seek to exceed the channel spacing and bandwidth limitation in NPSPAC regions bordering Mexico to provide 30 days prior written notification to all public safety licensees in the border area, and that such notice should include a 24-hour contact number in case interference occurs.

18. We decline to modify the notice requirement as requested by APCO. APCO describes a scenario in which an EA-based 800 MHz SMR licensee exceeds the channel spacing and bandwidth limitation in a NPSPAC region that includes the Mexico border area, and is operating co-channel with an 800 MHz public safety licensee with a base station in the Mexico border area within the same NPSPAC region. In this scenario, the EA-based 800 MHz SMR licensee would be required under this *Report and Order* to transmit the 30-day notification to the public safety licensee in the Mexico border area because the licensees would be in the same NPSPAC region. We also note that, as described below, EA-based 800 MHz SMR licensees will still be obligated to meet all other technical requirements under

Part 90, including co-channel separation distances, further protecting 800 MHz public safety licensees operating in the Mexico border area. We find that the notice requirement adopted herein is sufficient to provide additional protection to all 800 MHz public safety licensees from any harmful interference caused by wideband EA-based 800 MHz SMR operations, and find no reason to modify the notice requirement for 800 MHz public safety operations in the Mexico border area.

19. Further, with respect to APCO's request that the notice be accompanied by a 24-hour contact number, Sprint Nextel notes that the 24-hour reporting capability is currently available on the CMRS/public safety interference reporting Web site, required by the *800 MHz Reconfiguration Report and Order*, in order to implement the interference resolution procedures set forth in § 90.674 of the Commission's rules. Under that procedure, EA-based 800 MHz SMR licensees are required to respond to any notification of harmful interference reported by public safety licensees to that Web site within 24 hours. Although the procedure in § 90.674 is not identical to APCO's proposal, we find that it is adequate to address APCO's concerns, as this Web site will enable public safety licensees to report any harmful interference events at any time, 24 hours a day, and licensees are required to respond to any notification of harmful interference within 24 hours of receipt. Further, we do not anticipate that permitting EA-based 800 MHz SMR licensees to operate with wider channel bandwidths than currently permitted under § 90.209 will result in an increase in harmful interference to public safety licensees. Accordingly, we decline to impose additional, largely duplicative requirements on EA-based 800 MHz SMR licensees.

20. CTO urges us to adopt an additional condition requiring EA-based 800 MHz SMR licensees to transmit a second notice to affected 800 MHz public safety licensees that would include the date on which operations will begin, the specific locations of antenna sites, and effective radiated power (ERP) for each antenna site. CTO argues that the additional notice would ensure that public safety entities continue to be notified of changes near their operations. While we find it appropriate to require licensees to include the approximate date of operation in their notifications, we decline to adopt the additional notice suggested by CTO. The notice requirement we adopt today is designed to provide notice to public safety

licensees so that they may monitor their networks for any increase in harmful interference caused by EA-based 800 MHz SMR licensees that exceed the standard channel spacing and bandwidth limitation and take appropriate steps to initiate a process to remedy such interference should it occur. A notification requirement that includes antenna location or ERP would not further this goal. Therefore, we find that adopting a second notice requirement would result in little added benefit to public safety entities while imposing undue costs on EA-based 800 MHz SMR licensees.

21. The *NPRM* also sought comment on proposals by the National Public Safety Telecommunications Council (NPSTC) and APCO seeking to impose a one megahertz separation between public safety operations and EA-based 800 MHz SMR operations that exceed the channel spacing and bandwidth limitation. In response to the *NPRM*, however, APCO acknowledges that the one megahertz separation is not warranted as the use of 1.25 MHz CDMA channels will result in a de facto buffer of one megahertz. We therefore decline to adopt these proposed conditions.

22. We conclude that the 30-day notice condition, in combination with the limitation preventing EA-based 800 MHz SMR licensees from exceeding the channel spacing and bandwidth limitation in NPSPAC regions where reconfiguration is incomplete, adequately protects 800 MHz public safety licensees from harmful interference.

C. Applicability and Sufficiency of Existing Part 90 Rules

23. We note that, while we find that the 30-day notice requirement and the continued application of the channel spacing and bandwidth limitation in 821–824/866–869 MHz in NPSPAC regions where reconfiguration is incomplete will help protect public safety operations from harmful interference, these measures are supplements to the existing technical rules in part 90 governing EA-based 800 MHz SMR operations. We continue to believe that our current rules provide appropriate safeguards against harmful interference, and we emphasize that, in providing greater flexibility with respect to the channel spacing and bandwidth limitation, we are not removing or revising any other technical rules that enable licensees to coexist within the 800 MHz band.

24. To the contrary, EA-based 800 MHz SMR licensees subject to this *Report and Order* must continue to

comply with all other applicable rules in part 90. For example, licensees must continue to meet the OOB requirement in § 90.691 on the outer channels of the licensee's block and the interior channels of the licensee's block adjacent to channels occupied by incumbent licensees. EA-based 800 MHz SMR licensees also must abide by strict protections against unacceptable interference to non-cellular 800 MHz licensees under § 90.672. SouthernLINC argues this rule effectively establishes an even more stringent out-of-band emission requirement than § 90.691. As noted, EA-based 800 MHz SMR licensees must continue to meet the co-channel separation requirements in § 90.621. Additionally, EA-based 800 MHz SMR licensees are strictly responsible for abating any unacceptable interference under § 90.673, and must comply with the interference resolution procedures under § 90.674.

25. The Enterprise Wireless Alliance (EWA) states its assumption that because the Commission will allow EA-based 800 MHz SMR licensees to exceed the channel spacing and bandwidth requirement in 813.5–824/858.5–869 MHz, such operation will not “present interference concerns for future users of the Guard Band spectrum [817–818/861–862 MHz] either.” The *NPRM* limited the applicability of the proposals to EA-based 800 MHz SMR operations and the record demonstrates no specific concern regarding potential interference issues to hypothetical future users of the guard band. To the extent that the guard band is licensed in the future, the Commission will establish applicable technical and service rules as necessary at that time.

26. EWA also suggests we clarify the applicability of the rule change adopted in this *Report and Order* in the Canada border area, because the existing protection from EA-based 800 MHz SMR licensees to adjacent site-based systems “has always been calculated on a frequency-specific, co-channel contour basis.” We reiterate that EA-based 800 MHz licensees that exceed the channel spacing and bandwidth limitation are required to continue to comply with all other applicable Part 90 rules, including co-channel separation requirements. As Sprint Nextel acknowledges, any action permitting operations on bandwidths greater than 25 kHz does not change the interference protection requirements applicable to public safety and other non-ESMR licensees in and adjacent to the U.S.-Canada border areas. EA-based 800 MHz SMR licensees must continue to comply with part 90 rules regarding operation in the Canada and Mexico

border areas, including any international agreements.

27. Several commenters agree that, as a general matter, EA-based 800 MHz SMR licensees' continued compliance with the part 90 rules will serve to protect all other 800 MHz licensees from harmful interference. For example, SouthernLINC argues that “the ongoing obligation of 800 MHz ESMR licensees to operate in strict compliance with these rules will continue to serve as yet another form of protection from interference for 800 MHz public safety licensee.” RCA—The Competitive Carriers Association notes that the Commission “has done much to ensure 800 MHz public safety licensees receive ample protection from broadband operations,” specifically citing EA-based 800 MHz SMR licensees' obligation to abate interference to public safety systems and other 800 MHz licensees.

28. In this regard, Sprint Nextel argues that it has taken steps beyond what the Commission's rules require to minimize the risk of interference to public safety licensees. Sprint Nextel asserts that it will incorporate “extremely tight” OOB requirements into its CDMA equipment to minimize the risk of harmful interference in areas where reconfiguration is complete, as well as provide aggressive OOB roll-off protection for public safety systems operating in 821–824/866–869 MHz. Sprint Nextel also asserts that numerous tests confirm that its CDMA deployment “should further reduce the already-low risk of intermodulation interference to 800 MHz band public safety systems.”

29. A group of nine public safety entities (Public Safety Licensees) argues that the technical analysis provided by Sprint Nextel on the record is an “Intermodulation Interference test,” and that without filtering specifications, the Public Safety Licensees are unable to verify Sprint Nextel's claimed OOB protections. The Public Safety Licensees argue that without certainty regarding OOB levels, the Commission should require a greater demonstration of non-interference before revising the channel spacing and bandwidth limitation. In response, Sprint Nextel states that it has previously provided detailed information regarding its OOB base station emissions mask requirements, as well as statements from each of its three equipment vendors affirming that Sprint Nextel's base stations are being designed to meet that mask. Sprint Nextel argues that the risk of interference to public safety or other non-ESMR 800 MHz operators from Sprint Nextel's planned 800 MHz broadband operations will be

the same or less than its current iDEN deployment.

30. We find no basis to conclude that EA-based 800 MHz SMR operations using bandwidths wider than 25 kHz must be subject to more stringent technical requirements than our rules in part 90 currently impose. We believe that our existing part 90 technical rules are sufficient to protect 800 MHz public safety licensees or other 800 MHz licensees from harmful interference from EA-based 800 MHz SMR operations that exceed the channel spacing and bandwidth limitation in § 90.209. We believe that revising the part 90 channel spacing and bandwidth limitation is unlikely to cause 800 MHz public safety licensees to experience increased harmful intermodulation interference due in part to the fact that, other things being equal, the use of wider channels generally spreads the available power across a much wider bandwidth than narrowband technologies, thereby lowering the level of intermodulation interference that might occur. As Sprint Nextel affirms on the record, its CDMA operations may decrease intermodulation interference relative to its iDEN operations. We note that Sprint Nextel is permitted under waiver or special temporary authority to exceed the channel spacing and bandwidth limitation prescribed by § 90.209 in nine different markets covering large population centers. Sprint Nextel has been able to exceed the channel spacing or bandwidth limitation in five of the markets for 11 months. We have not received any complaints of interference from any 800 MHz licensee as a result of Sprint Nextel's operations in any of the markets to date. Accordingly, we believe 800 MHz public safety licensees will not be subject to increased harmful interference when EA-based 800 MHz SMR licensees comply with or exceed the protections under existing technical requirements in part 90.

31. The Public Safety Licensees also assert that the Commission should proactively ensure that interference will not occur, rather than have 800 MHz licensees rely on the interference abatement process in § 90.673 if interference occurs. They argue that, although the interference may be resolved, the public safety licensee is stuck with the costs of finding, investigating, and participating in resolving interference under § 90.673. As a general matter, our part 90 rules are designed to proactively limit the possibility of harmful interference. Section 90.673 was created to further protect public safety licensees in the unforeseen event that harmful

interference does occur, and we find no reason to revisit this rule in this *Report and Order*. Absent information showing that 800 MHz public safety licensees will experience harmful interference as a result of this rule change, and such interference will result in significant costs, we find the measures taken in this *Report and Order* reasonably balance the interests of EA-based 800 MHz SMR licensees and 800 MHz public safety entities.

D. Other Issues

32. Finally, CTO and Thomas Michael Roskos, Jr. (Roskos) suggest we afford additional flexibility to licensees other than EA-based 800 MHz SMR licensees. CTO urges us to “treat all [800 MHz commercial] licensee’s [sic] equally and to develop plans which allow ‘contiguous use of spectrum’ to licensees to be able to provide similar and competing services in the Band.” Roskos argues that we should find that any licensee under part 90 with contiguous spectrum should be able to aggregate the channels and use them on a wideband basis so long as the operations do not raise OOB above an unacceptable level. We find insufficient record support for these requests, and we decline to expand the scope of this *Report and Order*. As explained herein, this *Report and Order* is based upon the specific proposals in the *NPRM* and the record developed in response to the *NPRM*, and applies only to EA-based 800 MHz SMR operations in the 813.5–824/858.5–869 MHz segment of the 800 MHz band.

E. Conclusion

33. We find that the record strongly supports our decision to provide channel spacing and bandwidth flexibility to EA-based 800 MHz SMR licensees, and that such flexibility will promote the deployment of advanced wireless technologies. The record demonstrates that the minimal costs incurred by EA-based 800 MHz SMR licensees and 800 MHz public safety licensees are far outweighed by the benefits generated through the elimination of this legacy rule, including improving spectrum efficiency and the availability of wireless broadband. We also find that the existing protections in our rules, coupled with the new protections added through this *Report and Order* are sufficient to limit the potential for harmful interference caused by EA-based 800 MHz SMR licensee operations at greater than 25 kHz channels with greater than 20 kHz bandwidth.

III. Procedural Matters

A. Final Regulatory Flexibility Analysis

34. As required by the Regulatory Flexibility Act of 1980, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document.

B. Final Paperwork Reduction Act Analysis

35. This document adopts new or revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). The requirements were submitted to the Office of Management and Budget (OMB) for review under sec. 3507 of the PRA. The Commission published notice of the information collection in the **Federal Register**, 77 FR 18991, Mar. 29, 2012, and invited comment on the new information collection that we adopt in this document. The requirements will not go into effect until OMB has approved the requirements and the Commission has published a notice announcing the effective date of the information collection requirements. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

C. Congressional Review Act

36. The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

IV. Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was included in the *Notice of Proposed Rulemaking* in WT Docket Nos. 11–110 and 12–64. The Commission sought written public comment on the proposals in these dockets, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

37. The rule adopted in this *Report and Order* eliminates a legacy channel spacing and bandwidth limitation governing Economic Area (EA)-based 800 MHz specialized mobile radio (SMR) licensees. This rule provides the

licensees with the flexibility to deploy competitive wireless services, while also continuing to protect 800 MHz public safety licensees and other 800 MHz licensees from harmful interference.

38. The rule allows EA-based 800 MHz SMR licensees in the 813.5–824/858.5–869 MHz band segment to exceed the channel spacing and bandwidth limits in § 90.209 of the Commission’s rules, subject to conditions. EA-based 800 MHz SMR licensees may exceed the channel spacing and bandwidth limitation in the 813.5–824/858.5–869 MHz band segment of the 800 MHz band in National Public Safety Planning Advisory Committee (NPSPAC) regions where 800 MHz reconfiguration is complete. In NPSPAC regions where 800 MHz reconfiguration is incomplete, EA-based 800 MHz licensees may exceed the channel spacing and bandwidth limitation only in 813.5–821/858.5–866 MHz. Upon all 800 MHz public safety licensees in a region completing band reconfiguration, EA-based 800 MHz SMR licensees in 821–824/866–869 MHz may also exceed the channel spacing and bandwidth limitation. We note that, pursuant to § 90.614(c) of the Commission’s rules, the band segment 813.5–817/858.5–862 MHz is available for SMR operations only in the Southeastern United States. We also require EA-based 800 MHz SMR licensees to provide 30 days written notice to 800 MHz public safety licensees with base stations in a NPSPAC region where an EA-based 800 MHz SMR licensee intends to exceed the channel spacing and bandwidth limitation, and to public safety licensees with base stations within 113 kilometers (70 miles) of an affected NPSPAC region border. Finally, we require such notice to include the estimated date the EA-based 800 MHz SMR licensee’s operations will exceed the channel spacing requirement and bandwidth limitation.

39. We believe this rule will reduce barriers to innovation and investment and allow EA-based 800 MHz SMR licensees to deploy competitive wireless services, to consumers’ benefit. The record demonstrates support for the rule change, and demonstrates that it will result in significant benefits while imposing minimal costs on EA-based 800 MHz SMR licensees, 800 MHz public safety licensees, or other 800 MHz licensees

B. Statement of Significant Issues Raised by Public Comments in Response to the IRFA

40. There were no public comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

41. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration, and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

42. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. A small-business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

43. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. In addition, a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the

United States. We estimate that, of this total, as many as 88,506 entities may qualify as "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

44. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had 999 or fewer employees, and 15 had 1,000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

45. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than \$15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than \$3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in

the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

46. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders that won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

47. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

48. The rule provides regulatory flexibility to all EA-based 800 MHz SMR licensees. The rule will impose limited reporting or recordkeeping requirements to the extent an EA-based 800 MHz SMR licensee seeks to exceed the channel spacing and bandwidth limitation in § 90.209 of the Commission's rules. In such cases, the licensee must provide 30 days advanced written notice to all public safety licensees with a base station in an affected NPSPAC region and within 113 kilometers (70 miles) of the border of an affected NPSPAC region. This notice must include the estimated date that the EA-based 800 MHz SMR licensee's operations will exceed the channel spacing and bandwidth limitation. Otherwise, the rule will impose only a small compliance burden.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

49. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

50. The *Report and Order* is deregulatory in nature and imposes only a minor compliance requirement on all affected entities, including small entities. In recognition of the resources available to small entities, and in the interest of simplified compliance obligations, the *Report and Order* does not mandate any specific form or manner in which entities must comply with the reporting requirement. Specifically, the *Report and Order* requires EA-based 800 MHz SMR licensees to provide written notice to all public safety licensees with a base station in an affected NPSPAC region and within 113 kilometers (70 miles) of the border of an affected NPSPAC region if the licensee intends to exceed the channel spacing and bandwidth limitation. This notice must include the estimated date that the EA-based 800 MHz SMR licensee's operations will exceed the channel spacing and bandwidth limitation. Licensees have the flexibility to provide written notice through whatever means the licensee chooses. We believe this notice is necessary to ensure that public safety licensees are aware of the operation and can actively monitor for any interference issues that may arise. While we strive to provide flexibility to small entities, because we believe that protection of public safety licensees is

essential and in the public interest, we do not adopt any exemption for small entities.

G. Federal Rules That May Duplicate, Overlap, or Conflict With the Rules

51. None.

V. Ordering Clauses

52. Pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 301, 302, 303, 307, and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302a, 303, 307, and 308, this *Report and Order* is adopted and that part 90 of the Commission's rules, 47 CFR part 90, is amended as set forth herein.

53. The rules adopted herein will become effective July 9, 2012.

54. The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

Business and industry, Common carriers, Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

For the reasons set forth in the preamble, the Federal Communications Commission amends part 90 of Title 47 of the Code of Federal Regulations (CFR) as set forth below:

PART 90—PRIVATE LAND MOBILE RADIO SERVICE

■ 1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. Section 90.209 is amended by adding paragraph (b)(7) to read as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(b) * * *

(7) Economic Area (EA)-based licensees in frequencies 817–824/862–869 MHz (813.5–824/858.5–869 MHz in the counties listed in § 90.614(c)) may exceed the standard channel spacing and authorized bandwidth listed in paragraph (b)(5) of this section in any National Public Safety Planning Advisory Committee Region when all 800 MHz public safety licensees in the Region have completed band reconfiguration consistent with this part. In any National Public Safety Planning Advisory Committee Region where the 800 MHz band reconfiguration is incomplete, EA-based licensees in frequencies 817–821/862–866 MHz (813.5–821/858.5–866 MHz in the counties listed in § 90.614(c)) may exceed the standard channel spacing and authorized bandwidth listed in paragraph (b)(5) of this section. Upon all 800 MHz public safety licensees in a National Public Safety Planning Advisory Committee Region completing band reconfiguration, EA-based 800 MHz SMR licensees in the 821–824/866–869 MHz band may exceed the channel spacing and authorized bandwidth in paragraph (b)(5) of this section. Licensees authorized to exceed the standard channel spacing and authorized bandwidth under this paragraph must provide at least 30 days written notice prior to initiating such service in the bands listed herein to every 800 MHz public safety licensee with a base station in an affected National Public Safety Planning Advisory Committee Region, and every 800 MHz public safety licensee with a base station within 113 kilometers (70 miles) of an affected National Public Safety Planning Advisory Committee Region. Such notice shall include the estimated date upon which the EA-based 800 MHz SMR licensee intends to begin operations that exceed the channel spacing and authorized bandwidth in paragraph (b)(5) of this section.

[FR Doc. 2012–13872 Filed 6–7–12; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 77, No. 111

Friday, June 8, 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.

Dated: June 5, 2012.

Brian Grosner,
General Manager.

[FR Doc. 2012-13978 Filed 6-7-12; 8:45 am]

BILLING CODE 3670-01-P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

Proposed FOIA Fee Schedule Update

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the **SUPPLEMENTARY INFORMATION** to the Board's proposed FOIA Fee Schedule Update published in the **Federal Register** of June 1, 2012. The document contained incorrect dates and references.

FOR FURTHER INFORMATION CONTACT: Brian Grosner, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004-2901, (202) 694-7060.

Correction

In proposed rule FR Doc. 2012-13295, dated June 1, 2012 on page 32433 in the third column, the **SUPPLEMENTARY INFORMATION** section should read:

SUPPLEMENTARY INFORMATION: The FOIA requires each Federal agency covered by the Act to specify a schedule of fees applicable to processing of requests for agency records. 5 U.S.C. 552(a)(4)(A)(i). Pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations, the Board's General Manager will update the FOIA Fee Schedule once every 12 months. Previous Fee Schedule Updates were published in the **Federal Register** and went into effect, most recently, on July 22, 2011, 76 FR 43819. The Board's proposed fee schedule is consistent with the guidance. The components of the proposed fees (hourly charges for search and review and charges for copies of requested documents) are based upon the Board's specific cost.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 906

[Docket. No 101019524-2112-01]

RIN 0648-BA36

National Appeals Office Rules of Procedure

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would establish procedures governing the National Appeals Office (NAO), a division of NMFS' Office of Management and Budget within NOAA. NAO's central mission is to provide an efficient means of adjudicating appeals by providing due process and consistency to NMFS' administrative decisions. This proposed rule would establish a process by which NMFS could review, and if necessary correct, decisions about certain limited access privilege programs under Section 303A of the Magnuson-Stevens Fishery Conservation and Management Act. The proposed procedures could also be used to adjudicate appeals from other offices that incorporate these rules into their regulations or otherwise notify potential appellants of the procedures' applicability to their proceedings.

DATES: NMFS invites interested persons to submit comments on this proposed rule. To ensure consideration, comments must be in writing and must be received by July 9, 2012.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2011-0266, by one of the following methods:

- *Electronic Submission:* Submit all electronic public comments via Federal e-Rulemaking Portal at www.regulations.gov. To submit comments via the e-Rulemaking Portal,

first click the "submit a comment" icon, then enter NOAA-NMFS-2011-0266 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.

- *Mail:* Submit written comments to Steven Goodman, National Appeals Office, Office of Management and Budget, NMFS, 1315 East West Hwy., Room 9553, Silver Spring, MD 20910.

- *Fax:* 301-713-2384; Attn: Steven Goodman.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Steven Goodman, National Appeals Office, Office of Management & Budget, NMFS, 1315 East West Hwy., Room 9553, Silver Spring, MD 20910; nmfs.nao.contact@noaa.gov; (301) 427-8774. (This is not a toll-free number.) Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

Background

In 2007, Congress added section 303A to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Section 303A authorizes limited access privilege programs (LAPP) and requires NMFS to "include an appeals process for administrative review of the Secretary's decisions regarding initial

allocation of limited access privileges.” Most of the appeals processes currently used by NMFS pre-date the new MSA requirement. Further, the current infrastructure for LAPP appeals does not achieve optimum economies of scale, or efficient use of resources.

LAPPs may provide benefits to certain members of the public, while excluding others. Thus, a transparent, unbiased and clear appeals process is essential. LAPP applicants across the country should be provided with a uniform level of due process and consistent procedures for filing and deciding appeals. Further, a robust administrative appeals process provides a means for an agency to make corrections and avoid costly litigation. Accordingly, NMFS is proposing to adopt procedural regulations at 15 CFR part 906, which would designate NAO, a division within NMFS Office of Management and Budget, as adjudicator for all future appeals arising under section 303A of the MSA. NAO may also be used for other Department of Commerce adjudications if the proposed regulations are adopted by regulation or other means and potential appellants are given notice. For example, other programs that may opt into the NAO process may include the Alaska Charter Halibut Limited Access Program or the North Pacific Groundfish Observer Program.

NAO adjudicates initial administrative determinations, defined in the proposed rule as agency actions that directly and adversely affect an appellant. Typically, although not exclusively, NAO proceedings are for appeals of denials of permits or other limited access privileges. The proposed rule does not encompass proceedings made available pursuant to 15 CFR part 904. The regulations at 15 CFR part 904 are for administrative proceedings over cases involving a Notice of Violation and Assessment of civil penalty, permit sanctions, written warnings, or seizure and forfeiture of property for violating 34 statutes NOAA enforces. The regulations codified at 15 CFR part 904 provide distinct procedures, including a different administrative process that includes the agency as a party to an appeal.

The proposed action should avoid future unnecessary costs and redundancies through a centralized administrative appeals process for review of initial administrative determinations. A centralized system for adjudicating appeals is more cost effective than duplicating the appeals function in each region. Historically, administrative appeals were processed by NMFS’ regional offices. Each NMFS

region has had a different structure and process for resolving appeals.

The proposed action will promote consistency in decision making and responsiveness to due process considerations. A centralized office will use experienced, full-time adjudicators to decide appeals, and programs would benefit from their collective experience and institutional memory. A cadre of experienced and well-trained appellate officers would free other employees to use their time performing duties within their area of expertise. Under the current proposal, NAO could adjudicate appeals in one location. This will allow for economies of scale and freeing-up of resources for use in regional offices.

Typically, NAO will be used for informal administrative appeals. The proposed rule allows flexibility in determining what type and how many pre-hearing conferences are needed. An appellate officer has the discretion to hold a scheduling and/or pre-hearing conference if he or she thinks one is needed to materially advance the proceeding. An appellate officer’s discretion in determining whether to hold a scheduling and/or pre-hearing conference will be guided by the following: settlement, if allowed under applicable law; clarification of the issues under review; stipulations; hearing(s) date, time, and location; identification of witnesses for the hearing(s); development of the NAO case record, and; other matters that may aid in the disposition of the proceedings.

Hearings are also held at the discretion of an appellate officer or if the appellate officer considers such hearing will materially advance his or her evaluation of the issues under appeal. In determining whether to hold a hearing, an appellate officer’s discretion will be guided by whether the appellate officer believes oral testimony is required to resolve a material issue of fact or whether oral presentation is needed to probe a party’s position on a material issue of law. Conferences and hearings may be in person, but more likely, they will be held by telephone or by other electronic means. The rule does not bar face-to-face hearings, but it is not intended to require expenditure of funds in order for an appellant to participate, or at its discretion, the agency to participate, in a hearing.

The proposed regulations address operations as well as events that occur during the course of adjudicating an appeal filed with NAO. The proposed rule provides who may file, how and when to initiate an appeal, and what constitutes the agency record and transmittal for inclusion in the NAO

case record for the appeal. During a hearing and while the record is open, the appellate officer determines whether additional evidence should be admitted in the NAO case record. The proposed rule prohibits ex parte communications, but clarifies that non-substantive communications or communications about procedural matters are permissible. The proposed rule establishes time frames and deadlines for actions to ensure a reasonably expeditious review, and while that may be modified, that would not be the norm.

NAO will produce written decisions upholding or reversing the administrative determination under review. The proposed rule establishes parameters for written decisions. The appellant has the burden of proving by a preponderance of the evidence that he or she should prevail. Thus it is incumbent upon the appellant to garner and present evidence to support his or her claim.

Generally, under the proposed rule a decision issued by NAO becomes final 30 days after issuance. The effective date of the final decision is subject to delay for reconsideration by NAO, or review by a Regional Administrator of NMFS or other appropriate official. NAO will follow applicable federal law and policy which may include publishing NAO and Regional Administrator decisions on NAO’s Web site.

Classifications

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This regulation does not create any new regulatory requirements, but instead codifies procedural rules for certain administrative adjudication proceedings. The proposed rule would not create any new obligations for small entities; rather, it would ensure a standardized and centralized appeals process for decisions regarding initial allocation of limited access privileges. As a result, any potential economic impact on small entities would be nominal. While it is possible that a substantial number of small entities could participate in the adjudication proceedings, the procedures being established here would not have a significant economic impact on those entities. Implementing standardized rules could actually reduce the

economic burden on small entities by providing procedural certainty to the parties participating in the proceedings.

Because this proposed rule, if enacted, would not have a significant impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 15 CFR Part 906

Administrative appeals,
Administrative practice and procedure,
Fisheries.

Dated: June 4, 2012.

Alan D. Risenhoover,

*Acting Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

For reasons stated in the preamble, NMFS proposes to add 15 CFR part 906 as follows:

PART 906—NATIONAL APPEALS OFFICE RULES OF PROCEDURE

Sec.

- 906.1 Purpose and scope.
- 906.2 Definitions.
- 906.3 Requesting an appeal and agency record.
- 906.4 General filing requirements.
- 906.5 Service.
- 906.6 Ex parte communications.
- 906.7 Disqualification of appellate officer.
- 906.8 Scheduling and pre-hearing conferences.
- 906.9 Exhibits.
- 906.10 Evidence.
- 906.11 Hearing.
- 906.12 Closing the evidentiary portion of the NAO case record.
- 906.13 Failure to appear.
- 906.14 Burden of proof.
- 906.15 Decisions.
- 906.16 Reconsideration.
- 906.17 Review by the Regional Administrator.
- 906.18 Implementation of final decisions.

Authority: 16 U.S.C. 1801 et seq.; 16 U.S.C. 1374, 1375 & 1416; 16 U.S.C. 1540; 16 U.S.C. 773f; 16 U.S.C. 973f; 16 U.S.C. 1174; 16 U.S.C. 2437; 16 U.S.C. 4013; 16 U.S.C. 5507; 16 U.S.C. 7009; 16 U.S.C. 3637; 16 U.S.C. 5103 & 5106; 16 U.S.C. 5154 & 5158; 16 U.S.C. 6905, and; 16 U.S.C. 5010.

§ 906.1 Purpose and scope.

(a) This part sets forth the procedures governing proceedings before the National Appeals Office (NAO). These procedures provide standard rules of practice for administrative adjudications by NAO.

(b) NAO will adjudicate appeals of initial administrative determinations in limited access privilege programs

developed under section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and approved after the effective date of these regulations. Those appeals are informal proceedings.

(c) The procedures contained in this part may be incorporated by reference in rules or regulations other than those promulgated pursuant to section 303A of the MSA. The Secretary may also request that NAO adjudicate appeals in any matter in controversy that requires findings of fact and conclusions of law, and other quasi-judicial matters that the Secretary deems appropriate, consistent with existing regulations. The Secretary shall provide notice to potential appellants and to any affected party in these other matters through regulations or actual notice.

§ 906.2 Definitions.

Agency record means all material and information, including electronic, the office that issued the initial administrative determination relied on or considered in reaching its decision, or which otherwise is related to the initial administrative determination.

Appeal means an appellant's petition to appeal an initial administrative determination and all administrative processes of the National Appeals Office related thereto.

Appellant means a person who receives an initial administrative determination and appeals it to the National Appeals Office.

Appellate officer means an individual designated by the Chief of the National Appeals Office to adjudicate the appeal. The term may include the Chief of the National Appeals Office.

Day means calendar day unless otherwise specified by the Chief of the National Appeals Office. When computing any time period specified under these rules, count every day, including intermediate Saturdays, Sundays, and legal holidays.

Department or *DOC* means the Department of Commerce.

Ex parte communication means any oral or written communication about the merits of a pending appeal between one party and the National Appeals Office with respect to which reasonable prior notice to all parties is not given. However, ex parte communication does not include inquiries regarding procedures, scheduling, and status.

Initial Administrative Determination or *IAD* means a determination made by an official of the National Marine Fisheries Service that directly and adversely affects a person's ability to hold, acquire, use, or be issued a limited access privilege. The term also includes

determinations issued pursuant to other federal law, for which review has been assigned to the National Appeals Office by the Secretary.

NAO means the National Appeals Office, an adjudicatory body within the Office of Management and Budget, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce. The term generally means all NAO personnel, including appellate officers.

NAO case record means the Agency record and all additional documents and other materials related to an appeal and maintained by NAO in a case file.

NMFS means the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

National Oceanic and Atmospheric Administration or *NOAA* means the National Oceanic and Atmospheric Administration, Department of Commerce.

Party means a person who files a petition for appeal with NAO. It can also mean an office that issued the IAD if that office participates in the NAO appeal.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, or local, or foreign government or entity of any such government.

Regional Administrator means the administrator of one of six regions of NMFS: Northeast, Southeast, Northwest, Southwest, Alaska, or Pacific Islands. The term also includes an official with similar authority within the DOC, such as the Director of NMFS' Office of Sustainable Fisheries.

Representative means an individual properly authorized by an Appellant in writing to act for the Appellant in conjunction with an appeal pending in NAO. The representative does not need to be a licensed attorney.

Secretary means the Secretary of Commerce or a designee.

§ 906.3 Requesting an appeal and agency record.

(a) *Who May File.* Any person who receives an initial administrative determination.

(b) *Petition to Appeal.* (1) To request an appeal, a person shall submit a written petition of appeal to NAO.

(2) The petition shall include a copy of the initial administrative determination the person wishes to appeal.

(3) In the petition, the person shall state how the initial administrative determination directly and adversely affects him or her, why he or she believes the initial administrative determination is wrong, and whether he or she requests a hearing or prefers that an appellate officer make a decision based on the NAO case record and without a hearing.

(i) Arguments not raised by the person in his or her petition to appeal will be deemed waived.

(ii) The petition may include additional documentation in support of the appeal.

(4) If a person requests a hearing, the written request must include a concise statement raising genuine and substantial issues of a material fact or law that cannot be resolved based on the documentary evidence.

(5) In the petition, a person shall state whether the person has a representative, and if so, the name, address, and telephone number for the representative.

(c) *Address of record.* In the petition the person shall identify the address of record. Documents directed to the appellant will be mailed to the address of record, unless the appellant provides NAO and other parties with any changes to his or her address in writing.

(1) The address of record may include a representative's address.

(2) NAO bears no responsibility if the appellant or his or her representative does not receive documents because appellant or his or her representative changes his or her address without proper notification to NAO.

(3) NAO bears no responsibility if the appellant or his or her representative fail to retrieve documents upon notification from the United States Postal Service or commercial carrier.

(4) NAO will presume that documents addressed to an address of record and properly mailed or given to a commercial carrier for delivery are received.

(d) *Place of filing.* The petition must be transmitted via facsimile. The facsimile number is: 301-713-2384. If the person filing the petition does not have access to a fax machine, he or she may file the petition by mail or commercial carrier to Chief, National Appeals Office, 1315 East-West Hwy., Room 9552, Silver Spring, MD 20910.

(e) *Time limitations.* A petition must be filed within 45 days after the date the initial administrative determination is issued unless a shorter or longer filing timeframe is explicitly specified in the regulations governing the initial administrative determination.

(f) *Agency record.* (1) Within 20 days of receipt of the copy of the petition to appeal, the office that issued the initial administrative determination that is the subject of the appeal shall transmit the agency record to NAO.

(2) The office that issued the initial administrative determination shall organize the pages of the agency record in chronological order.

(g) *Agency participation in appeal.* The office responsible for the initial administrative determination shall have 20 days from the date it receives a copy of the petition to appeal to provide NAO with written notice that it will be a party to the appeal.

§ 906.4 General filing requirements.

(a) *Date of filing.* Filing refers to providing documents to NAO.

(1) All documents filed on behalf of an appellant or related to an appeal shall be submitted to NAO via facsimile.

(2) If the person filing does not have access to a fax machine, he or she may file by regular mail or commercial carrier to Chief, National Appeals Office, 1315 East-West Hwy., Room 9552, Silver Spring, MD 20910.

(3) A document transmitted to NAO is considered filed upon receipt of the entire submission by 5 p.m. Eastern Time at NAO.

(b) *Copies.* At the time of filing a submission to NAO, the filing party shall serve a copy thereof on every other party, unless otherwise provided for in these rules.

(c) *Retention.* All submissions to NAO become part of a NAO case record.

(d) *Computation of time.* When computing any time period specified under these rules, count every day, including intermediate Saturdays, Sundays, and legal holidays. If the date that ordinarily would be the last day for filing with NAO falls on a Saturday, Sunday, or Federal holiday, or a day NAO is closed, the filing period will include the first NAO workday after that date.

(e) *Extension of time.* (1) When a submission is required to be filed within a prescribed time, a party may request, in writing, an extension of time to file the submission, citing the specific reason or reasons for the need of an extension of time. A party may not request an extension of time to file the submission after the deadline to file the submission has passed.

(2) NAO may grant the extension if an appellate officer determines good cause for an extension of time has been established by the party.

§ 906.5 Service.

(a) Service refers to providing documents to parties to an appeal. (1)

Service of documents may be made by first class mail (postage prepaid), facsimile, or commercial carrier, or by personal delivery to a party's address of record.

(2) Service of documents will be considered effective upon the date of postmark (or as otherwise shown for government-franked mail), facsimile transmission, delivery to a commercial carrier, or upon personal delivery.

(b) A party shall serve a copy of all documents to all other parties and shall file a copy of all documents with NAO the same business day.

(c) NAO may serve documents by electronic mail.

§ 906.6 Ex parte communications.

(a) Communication with NAO, including appellate officers, concerning procedures, scheduling, and status is permissible.

(b) Ex parte communication between NAO and the parties about the merits of a pending appeal is not permissible unless all parties have been given reasonable notice and an opportunity to participate in the communication.

(c) If NAO receives an ex parte communication, NAO shall document the communication and any responses thereto in the NAO case record. If the ex parte communication was in writing, NAO shall place a copy of the communication in the NAO case record. If the ex parte communication was oral, NAO shall prepare a memorandum stating the substance of the oral communication, which will then be included in the NAO case record. NAO will provide copies of any such materials included in the NAO case record under this paragraph to the parties to the appeal.

(d) NAO may require a party to show cause why such party's claim or interest in the appeal should not be dismissed, denied, disregarded, or otherwise adversely affected because of an ex parte communication as described in paragraphs (b) and (c) of this section.

(e) This rule may be suspended by NAO during an alternative dispute resolution process.

§ 906.7 Disqualification of appellate officer.

(a) An appellate officer shall disqualify him or herself if the appellate officer has a perceived or actual conflict of interest, a perceived or actual prejudice or bias, for other ethical reasons, or based on principles found in the American Bar Association Model Code of Judicial Conduct for Administrative Law Judges.

(b) Any party may request an appellate officer, at any time before the

filing of the appellate officer's decision, to withdraw on the ground of personal bias or disqualification, by filing a written motion with the appellate officer setting forth in detail the matters alleged to constitute grounds for disqualification.

(c) The appellate officer, orally or in writing, shall grant or deny the motion based on the American Bar Association Model Code of Judicial Conduct for Federal Administrative Law Judges and other applicable law or policy. If the motion is granted, the appellate officer will disqualify himself or herself and withdraw from the proceeding. If the motion is denied, the appellate officer will state the grounds for his or her ruling and proceed with his or her review.

§ 906.8 Scheduling and pre-hearing conferences.

(a) NAO may convene a scheduling and/or pre-hearing conference if, for example, an appellate officer in his or her discretion finds a conference will materially advance the proceeding.

(b) NAO shall notify the parties in writing 10 days prior to a conference unless the Chief of NAO orders a shorter period of time for providing notice or conducting a conference.

(c) The following will guide an appellate officer in determining whether to exercise his or her discretion to hold a scheduling and/or pre-hearing conference.

- (1) Settlement, if possible under applicable law;
- (2) Clarifying the issues under review;
- (3) Stipulations;
- (4) Hearing(s) date, time, and location;
- (5) Identifying witnesses for the hearing(s);
- (6) Development of the NAO case record, and;
- (7) Other matters that may aid in the disposition of the proceedings.

(d) NAO may record the conference.

(e) *Format.* At the discretion of the appellate officer, conferences may be conducted by telephone, in person, or by teleconference or similar electronic means.

(f) NAO may issue an order showing the matters disposed of in the conference and may include in the order other matters related to the appeal.

§ 906.9 Exhibits.

(a) The parties shall mark all exhibits in consecutive order in whole Arabic numbers and with a designation identifying the party submitting the exhibit(s).

(b) Parties shall exchange all exhibits that will be offered at the hearing at least 10 days before the hearing.

(c) Parties shall provide all exhibit(s) to NAO at least 10 days before the hearing.

(d) NAO may modify the timeframe for exchanging or submitting exhibits if an appellate officer determines good cause exists.

(e) NAO may deny the admission into evidence of exhibits that are not marked and exchanged pursuant to this rule.

(f) Each exhibit offered in evidence or marked for identification shall be filed and retained in the NAO case record.

§ 906.10 Evidence.

(a) The Federal Rules of Evidence do not apply to NAO proceedings.

(b) NAO will decide whether to admit evidence into the NAO case record.

(1) An appellate officer may exclude unduly repetitious, irrelevant, and immaterial evidence. An appellate officer may also exclude evidence to avoid undue prejudice, confusion of the issues, undue delay, waste of time, or needless presentation of cumulative evidence.

(2) An appellate officer may consider hearsay evidence.

(c) Copies of documents may be offered as evidence, provided they are of equal legibility and quality as the originals, and such copies shall have the same force and effect as if they were originals. If an appellate officer so directs, a party shall submit original documents to the appellate officer.

(d) An appellate officer may take official notice of Federal or State public records and of any matter of which courts may take judicial notice.

(e) An appellate officer may contact the program office that issued the initial administrative determination in the case before the appellate officer in order to obtain the interpretation(s) of the law and regulation(s) made by the program office and applied to the facts in the case. The program office will provide to NAO the interpretation(s) of the law and regulation(s) made by that office in the case.

§ 906.11 Hearing.

(a) *Procedures.* (1) An appellate officer in his or her discretion may order a hearing taking into account the information provided by an Appellant pursuant to § 906.3(b)(3) or if an appellate officer considers that a hearing will materially advance his or her evaluation of the issues under appeal. In exercising his or her discretion, an appellate officer may consider whether oral testimony is required to resolve a material issue of fact or whether oral presentation is needed to probe a party's position on a material issue of law. If an appellate officer determines that a

hearing is not necessary, then the appellate officer will base his or her decision on the NAO case record. In the absence of a hearing an appellate officer may, at his or her discretion, permit the parties to submit additional materials for consideration.

(2) If an appellate officer convenes a hearing, the hearing will be conducted in the manner determined by NAO most likely to obtain the facts relevant to the matter or matters at issue.

(3) NAO shall schedule the date, time and place for the hearing. NAO will notify the parties in writing of the hearing date, time and place at least 10 days prior to the hearing unless the Chief of NAO orders a shorter period for providing notice or conducting the hearing.

(4) At the hearing, all testimony will be under oath or affirmation administered by an appellate officer. In the event a party or a witness refuses to be sworn or refuses to answer a question, an appellate officer may state for the record any inference drawn from such refusal.

(5) An appellate officer may question the parties and the witnesses.

(6) An appellate officer will allow time for parties to present argument, question witnesses and other parties, and introduce evidence.

(7) Parties may not compel discovery or the testimony of any witness.

(b) *Recording.* An appellate officer may record the hearing.

(c) *Format.* At the discretion of NAO, hearings may be conducted by telephone, in person, or by teleconference or similar electronic means.

§ 906.12 Closing the evidentiary portion of the NAO case record.

(a) At the conclusion of the NAO proceedings, an appellate officer will establish the date upon which the evidentiary portion of the NAO case record will close. Once an appellate officer closes the evidentiary portion of the NAO case record, with or without a hearing, no further submissions or argument will be accepted into the NAO case record.

(b) NAO in its discretion may reopen the evidentiary portion of the NAO case record or request additional information from the parties at anytime.

§ 906.13 Failure to appear.

If any party fails to appear at a pre-hearing conference or hearing after proper notice, an appellate officer may:

- (a) Dismiss the case, or;
- (b) Deem the failure of a party to appear after proper notice a waiver of any right to a hearing and consent to the

making of a decision based on the NAO case record.

§ 906.14 Burden of proof.

On issues of fact, the appellant bears the burden of proving he or she should prevail by a preponderance of the evidence. Preponderance of the evidence is the relevant evidence in the NAO case record, considered as a whole, that a reasonable person would accept as sufficient to find a contested fact is more likely than not. Appellant has the obligation to obtain and present evidence to support the claims in his or her petition.

§ 906.15 Decisions.

(a) After an appellate officer closes the evidentiary portion of the NAO case record, NAO will issue a written decision that is based on the NAO case record. In making a decision, NAO shall determine whether the appellant has shown by a preponderance of the evidence that the initial administrative determination is inconsistent with applicable laws and regulations. In making a decision, NAO shall give deference to the reasonable interpretation(s) of applicable ambiguous laws and regulations made by the office issuing in the initial administrative determination.

(b) At any time before a decision is implemented pursuant to § 906.18, NAO may issue a corrected decision.

(c) NAO shall serve a copy of its decision upon the appellant and the Regional Administrator.

(d) Except as provided in §§ 906.16 and 906.17, NAO's decision takes effect 30 days after the date it is issued and, upon taking effect, is the final decision of the Department for the purposes of judicial review.

§ 906.16 Reconsideration.

(a) Any party may file a motion for reconsideration of NAO's decision. The request must be filed with NAO within 10 calendar days after service of NAO's decision.

(b) The motion must be in writing and contain a detailed statement of an error of fact or law material to the decision.

(c) If an appellate officer grants the motion for reconsideration, then NAO will stay the effective date of its decision under reconsideration review.

(d) In response to a motion for reconsideration, NAO will either:

(1) Reject the motion because it does not meet the criteria of paragraph (a) or (b) of this section; or

(2) Issue a revised decision which will take effect 30 days after it is issued and is the final decision of the Department for the purposes of judicial review,

unless the Regional Administrator remands, reverses or modifies it pursuant to § 906.17.

§ 906.17 Review by the Regional Administrator.

(a) Regional Administrator authority and procedures. (1) A decision issued pursuant to § 906.15 or revised decision issued pursuant to § 906.16 is subject to review by the Regional Administrator. After 10 days of the date of the decision issued by NAO, the Regional Administrator may remand, reverse, or modify NAO's decision. In reviewing NAO's findings of fact, the Regional Administrator may only consider the evidentiary record including arguments, claims, evidence of record and other documents of record which were before NAO when it rendered its decision.

(2) The Regional Administrator must provide a written decision explaining why NAO's decision has been remanded, reversed, or modified. The Regional Administrator must serve a copy of the remanded, reversed or modified decision on NAO and the appellant promptly.

(b) The Regional Administrator's written decision to reverse or modify NAO's decision is the final decision of the Department for the purposes of judicial review.

(c) If the Regional Administrator does not remand, reverse, or modify NAO's decision under paragraphs (a) and (b) of this section, NAO's decision is the final decision of the Department for the purposes of judicial review.

§ 906.18 Implementation of final decisions.

The final decision shall be implemented by the office that issued the initial administrative determination within 30 days after issuance of the final decision to the extent practicable and consistent with program regulations.

[FR Doc. 2012-13979 Filed 6-7-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB-2012-0004; Notice No. 129]

RIN 1513-AB46

Proposed Establishment of the Indiana Uplands Viticultural Area and Modification of the Ohio River Valley Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the approximately 4,800-square mile "Indiana Uplands" viticultural area in south-central Indiana and proposes to modify the boundary of the established Ohio River Valley viticultural area, which would result in the elimination of a potential overlap with the proposed Indiana Uplands viticultural area. These proposals would result in an approximately 1,530 square mile region no longer being part of the Ohio River Valley viticultural area as the affected region would be included in the new Indiana Uplands viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on these proposals.

DATES: TTB must receive written comments on or before August 7, 2012.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- <http://www.regulations.gov> (via the online comment form for this notice as posted within Docket No. TTB-2012-0004 at "Regulations.gov," the Federal e-rulemaking portal);

- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412; or

- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments TTB receives about this proposal at <http://www.regulations.gov> within Docket No. TTB-2012-0004. A direct link to this docket is posted on the TTB Web site at http://www.ttb.gov/wine/wine_rulemaking.shtml under Notice No. 129. You also may view copies of this notice, all related petitions, maps or other supporting materials, and any comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. Please call 202-453-2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Elisabeth C. Kann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G St. NW.,

Box 12, Washington, DC 20005; phone 202-453-1039, ext. 002.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120-01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas and lists the approved American viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and a delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of American viticultural areas. Such petitions must include the following:

- Evidence that the area within the proposed viticultural area boundary is nationally or locally known by the viticultural area name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed viticultural area;
- A narrative description of the features of the proposed viticultural area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make it distinctive and distinguish it from adjacent areas outside the proposed viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed viticultural area, with the boundary of the proposed viticultural area clearly drawn thereon; and
- A detailed narrative description of the proposed viticultural area boundary based on USGS map markings.

Indiana Uplands Petition

Jim Butler of Butler Winery in Bloomington, Indiana submitted a petition to establish the approximately 4,800-square mile Indiana Uplands American viticultural area in south-central Indiana. The proposed Indiana Uplands viticultural area contains 19 vineyards with approximately 200 acres under cultivation, 2 planned vineyards of 15 to 20 acres each, and 17 wineries; the existing and planned vineyards are geographically distributed throughout the proposed viticultural area, according to a map submitted with the petition. Unless otherwise noted, all information and data set forth below are from the petition for the proposed Indiana Uplands viticultural area and its supporting exhibits.

Spanning 110 miles north to south beginning at the line that separates Morgan and Monroe Counties, the proposed Indiana Uplands viticultural area extends south to the Ohio River at the Kentucky border. The proposed viticultural area extends approximately 63 miles east to west at its widest point, from Clark County to Martin County.

Nineteen Indiana counties are located partially or totally within the proposed viticultural area: Monroe, Brown, Morgan, Owens, Greene, Lawrence, Bartholomew, Orange, Washington, Floyd, Harrison, Perry, Crawford, Jackson, Martin, Daviess, Dubois, Scott, and Spencer.

TTB notes that approximately 1,530 square miles in the southern portion of the proposed Indiana Uplands viticultural area is currently within the approximately 26,000-square mile Ohio River Valley viticultural area (27 CFR 9.78). The Ohio River Valley viticultural area encompasses the broad valley surrounding the Ohio River in Indiana, Kentucky, Ohio, and part of West Virginia; see T.D. ATF-144, published in the **Federal Register** (48 FR 40377) on September 7, 1983. This issue is addressed in more detail later in this preamble.

Name Evidence

The "Indiana Uplands" geographic name was first commonly used for the region in which the proposed viticultural area is located beginning in the 1920s, and today that region is still referred to as the "Indiana Uplands." For example, Paul Harris, the founder of Rotary International, wrote that "[w]e had never even thought it possible that there could be country of such remarkable scenic interest so near to Chicago and yet so little advertised. Surely the much-heralded Berkshire hills have nothing on this wonderful stretch of Indiana uplands" ("A Sentimental Journey through Hoosierdom," Rotary Globe History Fellowship, 1924, available at www.whatpaulharriswrote.org). A 1976 article from National Geographic magazine relates the story of the "Uplanders," the earliest white settlers in the area, and the map from that article highlights the Indiana Uplands area ("Indiana's Uplands," in "Indiana's Self-Reliant Uplanders," James Alexander, National Geographic, March 1976).

Further, some publications have recognized the distinctiveness of the Indiana Uplands region as compared to the surrounding areas. As stated in a visitors' brochure, "Bloomington is nestled in the hills of the Indiana Uplands. These unglaciated hills extend from north of Bloomington southward to the Ohio River" (Monroe County Convention and Visitors Bureau brochure, undated). [TTB notes that Bloomington is located in the north-central portion of the proposed viticultural area, as shown on the Bloomington USGS map.] An article in the Bloomington Herald Times similarly

states that the Indiana Uplands area contains the unglaciated plateau geography of southern Indiana that begins south of Martinsville and extends to the Ohio River at the northern border of the State of Kentucky (“State of Wine: New designation aimed at creating tourist destinations for area wineries,” *Bloomington Herald Times*, July 4, 2004). That same article discusses the Indiana Uplands Wine Trail, which was organized in 2003 and founded by 7 wineries located within the proposed Indiana Uplands viticultural area.

Boundary Evidence

History of Viticulture in the Proposed Indiana Uplands Viticultural Area

Between 1843 and 1846, Simon Huber planted vineyards and orchards in Starlight, Floyd County, Indiana, and he commercially produced wine until the early 1900s (Ted Huber, in an April 2006 interview with the petitioner). During that same era, five miles south of the Huber vineyard, “Pop” Stumler also grew grapes and made and marketed wine. Each winemaker produced approximately 1,000 gallons of wine annually. The 1880 census reported that 26,000 gallons of wine were produced within the Indiana Uplands region that year, which constituted approximately one quarter of the wine produced in Indiana. Winemaking in the region continued in the 1890s and early 1900s, with John Sacksteder producing 10,000 gallons of wine annually in Leavenworth, Perry County, Indiana (Richard Sacksteder, in a January 2002 letter to the petitioner), which included the ceremonial wine for the Roman Catholic Diocese of Kentucky.

Prohibition halted the commercial production of wine in the Indiana Uplands region, but grape growing in the region regained popularity beginning in the 1960s. In 1966, grapevines were planted at the Oliver Winery northwest of Bloomington; in 1971, grapevines were planted at the Easley Winery at Cape Sandy near the Ohio River and the Possum Trot Winery near Unionville; and, in 1987, the Huber family started replanting grapevines.

Proposed Boundary Line of the Proposed Indiana Uplands Viticultural Area

The proposed Indiana Uplands viticultural area encompasses a plateau landform that contains elevations between 200 and 600 feet above the surrounding regions; the proposed boundary line generally follows the contour lines at the base of the plateau. Where the edges of the plateau lack

sharp changes in elevation, or where contour lines greatly meander, the proposed boundary line follows features such as county borders, roads, railroad tracks, and rivers, or follows straight lines between points found on the appropriate USGS maps. The proposed Indiana Uplands viticultural area contains three physiographic divisions: the Crawford Upland, the Norman Upland, and the Mitchell Plateau (“Map of Indiana Showing Physiographic Divisions,” Henry H. Gray, *Indiana Geological Survey*, 2001).

The western portion of the boundary line of the proposed Indiana Uplands viticultural area approximates the boundary between the physiographic regions of the Crawford Upland on the Indiana Uplands plateau within the proposed viticultural area and the Boonville Hills and Wabash Lowland to the west outside of the proposed viticultural area (*id.*). The northern portion of the boundary line marks the separation of the Indiana Uplands plateau from the Central Till Plain Region of central Indiana (*id.*). The eastern portion of the proposed boundary line divides the Norman Uplands immediately inside the eastern portion of the proposed Indiana Uplands viticultural area from the Scottsburg Lowland of southeastern Indiana (“Map of Indiana Showing Bedrock Physiographic Units” in “Natural Features of Indiana,” Alton A. Lindsey, editor, *Indiana Academy of Science*, Indiana State Library, 1966). The southern boundary line follows the northern bank of the Ohio River, which separates Indiana from Kentucky, westward from New Albany to the boundary’s beginning point at Troy, Indiana.

Specifically, the proposed Indiana Uplands viticultural area boundary begins at the confluence of the Anderson River with the Ohio River at Troy, then proceeds north-northwest in a straight line to the junction of State Roads 62 and 162, north of Santa Claus. It then follows State Road 162 north to Jasper, then U.S. 231 north to Bloomfield, where it then largely follows the 180-meter contour line northeast along the White River flood plain to the southwest corner of Morgan County. The proposed boundary then follows the 200-meter contour line easterly along the White River and Indian Creek flood plains to State Road 135. The boundary then follows the Brown County line to the county’s northeastern corner.

The proposed Indiana Uplands viticultural area boundary then proceeds south along several straight lines and State Road 58 to just past the

Bartholomew–Jackson county line (passing east of Harrison, Grandview, and Lutheran Lakes), then follows the 200-meter contour line, U.S. 50, and State Road 235 to Medora. The boundary then proceeds southwest along a railroad to Sparksville, then runs east to Millport, then southeasterly to Pumpkin Center, then follows a straight line south to Old State Road 56, then follows that road and S. Bloomington Trail to Leota, and then continues in a straight line to Interstate 65 at Underwood. The proposed boundary then proceeds south-southwest in a straight line to State Route 60 at Carwood, and then follows State Routes 60 and 111 south to St. Joseph, where it then proceeds southerly along straight lines through Bald Knob and Lost Knob before proceeding south in a straight line, passing along the western edge of New Albany, to the confluence of French Creek with the Ohio River in Franklin Township, just southwest of New Albany. The proposed boundary then follows the Indiana shoreline of the Ohio River westward (downstream) to its beginning point at the mouth of the Anderson River at Troy.

Note: TTB made several modifications to the petitioned-for boundary in order to use more easily-located features that appear on the USGS maps used to determine the boundaries of both the proposed Indiana Uplands viticultural area and the established Ohio River viticultural area, and to more closely conform the proposed boundary to the base of the Indiana Uplands plateau. The Indiana Uplands petitioner has agreed to the suggested changes.

Distinguishing Features

The distinguishing features of the proposed Indiana Uplands viticultural area include its geology, topography, comparatively high plateau elevations, thin residual soils mantled with loess, and a distinctively cool growing season climate. In contrast to the proposed viticultural area, the surrounding regions outside of it have lower elevations, evidence of repeated glacial advances, and different soils and topography. In addition, the surrounding regions to the east, south, and west of the Indiana Uplands plateau have a warmer growing season climate.

Geology

The underlying bedrock of the proposed Indiana Uplands viticultural area is a factor that contributes to its uniqueness as a grape-growing area because the bedrock influences the area’s distinctive topography, climate, and soils. The bedrock, which was formed in a shallow inland sea during

the Mississippian period approximately 345 to 325 million years ago, is composed of layers of limestone, shale, and sandstone that tilt west-southwesterly and descend 25 to 30 feet in elevation per mile. Based on its topographic tilt, the bedrock near the surface is more recent from east to west across the region.

During the Illinoian glacial advance, glaciers advanced up to and proceeded around the proposed Indiana Uplands viticultural area on its west, north, and east sides, leaving relatively higher elevations on the plateau landform as compared to the rest of Indiana. Over time, the plateau remained free from glacial advances due to the height of the plateau. Several studies that attempted to define the perimeter of the glacier boundary line surrounding the Indiana Uplands region produced somewhat differing results; as a result, the boundary line of the proposed Indiana Uplands viticultural area follows a conservative estimate of glacial advances and conforms to the physiographic units of the region ("Physiography of Eastern United States," Nevin Fenneman, McGraw-Hill Book Co., 1938).

Due to the lack of glaciations in the region, the topography of the proposed Indiana Uplands viticultural area strongly reflects the structure of its bedrock. As a result, the landforms within the Indiana Uplands plateau region were primarily created by the weathering and stream erosion of the bedrock, which created the steep valleys and high ridges that are common throughout the area. Although the Indiana Uplands region was generally not glaciated, there was some glacial intrusion around the edges of the plateau, resulting in a thin layer of glacial drift over the bedrock in those areas.

Topography

The proposed Indiana Uplands viticultural area plateau landscape contains numerous creeks that feed into lakes and rivers, according to the USGS maps. The terrain is generally hilly throughout the region, especially in the rural forests, parks, and wilderness areas. In addition, according to the USGS maps, steep ridges predominate along much of the boundary line, marking where the plateau descends to the surrounding lower elevations. At the approximate center of the proposed Indiana Uplands viticultural area are the Hoosier National Forest and Monroe Lake, which are surrounded by other forests, parks, lakes, and recreation areas, according to the USGS maps.

According to USGS maps, the plateau that comprises the proposed Indiana Uplands viticultural area gradually descends from an elevation of 1,033 feet in the northeast corner to an elevation of 358 feet in the southwest corner, although glacial till deposits moderate some differences in elevations along the proposed boundary line. The Ohio River bluffs rise to a height of 600 feet above the water line in some areas within the proposed viticultural area.

As shown in the below table, which TTB created based on data and USGS maps submitted with the petition, elevations generally are higher within the proposed viticultural area than in the surrounding areas.

ELEVATIONS RELATIVE TO THE INDIANA UPLANDS

Area	Location	Feet
Bloomington	Within north	789
Paoli	Within central	720
Doolittle Mill	Within south	656
Martinsville	Outside north	623
Scottsburg	Outside east	557
Louisville	Outside southeast	460
Huntingburg	Outside west	525

Elevations in the northeast portion of the Indiana Uplands plateau generally reach 850 to 950 feet, and the Knobstone Escarpment, which defines part of the eastern and northern portions of the proposed boundary line, reaches an elevation of approximately 1,000 feet, according to USGS maps. Elevations in the southeast portion of the proposed Indiana Uplands viticultural area generally vary between 450 and 600 feet. The lowest point in the proposed viticultural area is at an elevation of 358 feet at the confluence of the Anderson and Ohio Rivers in the southwestern corner of the proposed viticultural area, according to USGS maps.

As noted above, there are three physiographic units within the proposed Indiana Uplands viticultural area: The Norman Upland, the Mitchell Plateau, and the Crawford Upland ("Natural Features of Indiana," *supra*). Each of these physiographic units is underlain by different rock materials of different ages (including shale, limestone, and sandstone) that have different rates of erosion, resulting in a variety of landforms within the Indiana Uplands region: The Norman Uplands in the eastern portion of the proposed viticultural area is generally characterized by flat-topped ridges with steep slopes that form deep V-shaped valleys and strong relief; the Mitchell Plateau in the center ranges from relatively steep topography drained by surface streams to undulating plains

with sinkholes for underground drainage; and the Crawford Upland in the west resembles the Norman Upland but with greater local relief of 350–500 feet (*id.*, pp. 77–78).

By contrast, the surrounding areas to the east, north, and west contain different physiographic units, which similarly affect the topography and soils in those areas. The Illinoian glacial advance stopped before reaching the Boonville Hills to the southwest of the Indiana Uplands, where windblown sand and silt cover the predominant undulating topography. The wider valleys of the Boonville Hills are characterized by island-like masses of bedrock covering several square miles that rise 100 to 150 feet above the surrounding areas.

To the east of the proposed viticultural area, relatively nonresistant late Devonian and early Mississippian shales underlie the low relief of the Scottsburg Lowland, with elevations below the proposed viticultural area ranging from approximately 750 feet to the northeast of the proposed viticultural area to 500 feet to the southeast of the proposed viticultural area. The northern portion of the Scottsburg Lowland is partially filled with up to 150 feet of glacial drift, which reduces the elevation differential compared to the Indiana Uplands plateau to 150 feet in that area.

The area to the north of the Indiana Uplands area, recently designated as the Martinsville Hills, contains thick glacial deposits that nearly obscure the general form of the bedrock units ("Natural Features of Indiana," *supra*). The Wabash Lowland, a broad lowland with an average elevation of 500 feet and a partial blanket of glacial till, is located to the west of the proposed viticultural area. Although the same three physiographic units of the Indiana Uplands area—the Norman Upland, the Mitchell Plateau, and the Crawford Upland—generally extend south into Kentucky, the region to the south of the Indiana Uplands plateau is separated from the proposed viticultural area by the Ohio River Valley ("Handbook of Indiana Geology," C.A. Mallot, Publication 21, part 2, Indiana Department of Conservation, 1922).

Soils

The proposed Indiana Uplands viticultural area contains soils formed predominantly in discontinuous loess over weathered sandstone, shale, or limestone ("Map of the Soils Regions of Indiana," in "Adaptability of Tillage-Planting Systems of Indiana Soils," G.C. Steinhardt, D.R. Griffith, and J.V. Mannering, Agronomy Department,

Cooperative Extension Service, Purdue University, 1990). The thin residual soils formed in loess overlying the parent material contrast with the surrounding glacial deposits to the west, north, and east of the Indiana Uplands plateau.

The predominant soil types in the proposed Indiana Uplands viticultural area belong to the red-yellow podzolic soil group ("Natural Features of Indiana," *supra*, pp. 65–66). These soils are more common on the unglaciated Indiana Uplands than in other areas of Indiana, and the subsoil of these soils varies from red through yellowish-red and a brighter yellowish-brown silt loam to silty clay loam. Due to the relatively low fertility of these soils, applications of lime and fertilizer and good vineyard management practices are needed in this area.

The erosion rate of the soils in the Indiana Uplands region exceeds that of soils located in other areas of Indiana ("Climate of Indiana," S.S. Visser, Science Series No. 13, Indiana University Publications, 1944, pp. 373–374). Erosion is a significant problem in the Indiana Uplands region due to: (1) Its commonly steep, rugged terrain; (2) the greater incidence of heavy rains than in other areas of the state; and (3) poor farming practices in the 1800s. These factors have caused a depletion in the quantity of topsoil in the ridges and hilltops in the region, which results in a significant decrease in the potential productivity of the soils in the proposed Indiana Uplands viticultural area for general agricultural purposes.

Two general soil associations formed in the region encompassed by the proposed Indiana Uplands viticultural area ("Natural Features of Indiana," *supra*, pp. 77–80). One soil association, consisting of Zanesville, Tilsit, Wellston, Gilpin, Berks, Montevallo, Ramsey, and Muskingum soils, is located on the Norman Upland on the east side of the Indiana Uplands plateau and on the Crawford Upland on the west side. The second soil association consists of Frederick, Bewleyville, and Crider soils, which are located on the Mitchell Plateau in the middle of the Indiana Uplands region.

To the east of the proposed Indiana Uplands viticultural area, the soils formed in moderately thick loess over weathered loamy glacial till ("Natural Features of Indiana," *supra*, pp. 83–84). The predominant soils include the well-drained Cincinnati and Hickory soils, the moderately well-drained Ross and Moyne soils, and the poorly drained Avonburg soils. To the west and north of the proposed Indiana Uplands viticultural area, the soils of the western

lobe of the Illinoian Till Plain range from thick to moderately thick loess deposits over weathered loamy glacial till ("Natural Features of Indiana," *supra*, pp. 81–82). The well drained-Cincinnati soils, the moderately well-drained Ave soils, and the poorly drained Vigo soils are predominant in these areas. Only to the south of the proposed Indiana Uplands viticultural area, across the Ohio River in Kentucky, are adjacent soils similar to those on the Indiana Uplands.

Although the thin, acidic, and in some places poorly drained soils of the Indiana Uplands region are not suited to most types of farming without liming, deep plowing, or installation of tile drainage in areas with hardpans, these soils are not incompatible with grape growing. As Albert J. Winkler stated, "[t]he largest vines and the heaviest crops are produced on deep, fertile soils. The quality of fruit is better, although the yields are usually lower, on soils of lower fertility or soils limited in depth by hardpan, rocks, or clay strata" ("General Viticulture," Albert J. Winkler, University of California Press, 1974, p. 71). Similarly, although the soils in the proposed Indiana Uplands viticultural area are thinner and less productive than those in surrounding regions, the petitioner notes that they should produce quality fruit and wines of a distinctive character.

Climate

The elevations and topography of the proposed Indiana Uplands viticultural area contribute to the unique climatic conditions within the proposed viticultural area. Cold air drainage from vineyards on the hilltops and ridges of the elevated plateau landform flows as much as 350 feet to the valleys below, creating air movement, limiting frost accumulation in the vineyards, and extending the growing season in spring and fall. In addition, the hilltops and ridges in the area catch breezes that keep the fruit dry and free of fungus and mildew. Consequently, as described below, air temperature and precipitation are distinguishing climatic features of the proposed Indiana Uplands viticultural area.

Temperature: Summer and winter temperatures in the proposed Indiana Uplands viticultural area normally are cooler than those in areas to the east, south, and west of the plateau. The cooler temperatures result in lower total accumulated growing degree days (GDD)¹ during the growing season

¹ In the Winkler climate classification system, heat accumulation during the grape-growing season measured in GDD defines climatic regions

(April through October), as compared to most surrounding areas.

As shown in the below table, which TTB prepared based on data and a map submitted with the petition, temperatures and GDDs on the Indiana Uplands plateau are generally lower than in most areas outside the plateau; only the adjacent northwest area has cooler growing conditions. According to this data, most of the proposed viticultural area is located in climatic region III, with some region IV areas on the western and southern margins. By contrast, the surrounding areas outside of the proposed viticultural area generally are in region IV.

ANNUAL GROWING DEGREE DAYS AND CLIMATIC REGIONS OF LOCATIONS WITHIN AND OUTSIDE OF THE INDIANA UPLANDS, 1961–90 *

Location of weather station	Annual growing degree days	Climatic region
Within north-central ..	3,405	III
Within central	3,318	III
Within south-central ..	3,426	III
Outside northwest	3,227	III
Outside west	3,889	IV
Outside northeast	3,536	IV
Outside east	3,554	IV
Outside south	3,597	IV

*Based on National Climatic Data Center (NCDC) data, as represented in "Indiana and Kentucky Growing Degree Days" map, Jim Butler, unpublished, 2007, submitted with the petition.

Precipitation: The comparatively high level of precipitation in the proposed Indiana Uplands viticultural area results from moist air masses flowing from the southwest and passing over the Indiana Uplands plateau. The proposed Indiana Uplands viticultural area receives more annual rainfall than other regions of Indiana, as shown in the table below, which TTB prepared based on data submitted with the petition.

ANNUAL RAINFALL WITHIN AND OUTSIDE OF THE PROPOSED VITICULTURAL AREA *

Region of Indiana	Inches
Locations within the proposed viticultural area	47

("General Viticulture," A.J. Winkler, University of California Press, 1974, pp. 61–64). One degree day accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, the minimum temperature required for grapevine growth. Climatic region I has less than 2,500 GDD per year; region II, 2,501 to 3,000; region III, 3,001 to 3,500; region IV, 3,501 to 4,000; and region V, 4,001 or more.

ANNUAL RAINFALL WITHIN AND OUTSIDE OF THE PROPOSED VITICULTURAL AREA *—Continued

Region of Indiana	Inches
Outside, southern part of the State	44
Outside, central part of the State	42
Outside, northeastern part of the State	37

*Based on NCDC data for Indiana for 1971–2000 (<http://www.ncdc.noaa.gov/oa/ncdc.html>), submitted with the petition.

As previously noted, over time, the heavier precipitation in the region has contributed to greater soil erosion on the Indiana Uplands plateau than in other parts of the state as well as an increased breakdown of organic material in the soil. The increased precipitation does not negatively affect grape-growing in the region, however, because the heaviest precipitation occurs from November through May (according to data from the National Climactic Data Center (1971–2000)). The annual rainfall in the proposed Indiana Uplands viticultural area is approximately the same from June through October as compared to the rest of Indiana, resulting in relatively dry soils for the important grape ripening months of August, September, and October.

TTB Determination Regarding the Proposed Indiana Uplands Viticultural Area

TTB concludes that the petition to establish the approximately 4,800-square mile Indiana Uplands viticultural area merits consideration and public comment as invited in this notice. Consistent with 27 CFR 9.12(b), however, TTB considered whether the features of the portion of the proposed Indiana Uplands viticultural area that overlaps the established Ohio River viticultural area are so clearly distinguished from the larger Ohio River Valley viticultural area that wine produced from grapes grown within the overlap area should no longer be entitled to use the name of the Ohio River Valley viticultural area as an appellation of origin or in a brand name if the proposed Indiana Uplands viticultural area is established. Accordingly, the following sections of this preamble: (1) Provide an overview of the existing Ohio River Valley viticultural area; (2) contrast the distinguishing features of the Ohio River Valley viticultural area to those of the proposed Indiana Uplands viticultural area; and (3) discuss a proposed modification of the boundary of the Ohio River Valley viticultural area.

Overview of the Ohio River Valley Viticultural Area

According to T.D. ATF–144, the currently established approximately 26,000-square mile Ohio River Valley viticultural area includes extensive valley areas on both sides of the Ohio River, covering portions of Indiana, Kentucky, Ohio, and West Virginia, extending from Valley Grove, West Virginia to the convergence of the Kentucky, Illinois, and Indiana state lines at the confluence of the Wabash and Ohio Rivers. In Indiana, the boundary line of the Ohio River Valley viticultural area runs diagonally northeast-to-southwest, and in some areas the boundary line extends approximately 32 miles northward from the Ohio River, as shown on USGS maps.

TTB notes that the 943-mile-long Ohio River starts at the confluence of the Allegheny and Monongahela Rivers at Point State Park in Pittsburgh, Pennsylvania and flows generally southwest, joining the Mississippi River at Cairo, Illinois. According to T.D. ATF–144, the Ohio River Valley viticultural area is characterized by a distinctive rainfall pattern that includes accumulations in excess of 2.5 inches within a 24-hour period each month, except in October. T.D. ATF–144 further states that the moderate to slow permeability of the dominant, gray-brown podzolic soils and the general topography of the valley result in rapid runoff during intensive rains.

In addition, according to T.D. ATF–144, winds that originate in the Gulf of Mexico travel up the river valley from the Mississippi Valley, resulting in a more moderate climate with less dramatic temperature extremes during the growing season than other areas of similar latitude. The petition for the establishment of the Ohio River Valley viticultural area (ORV petition) notes that the riverine climate and upstream winds help prevent excessive moisture from damaging crops, and the surrounding areas protect the river valley against weather extremes. Vineyards in the Ohio River Valley region are commonly located on hillsides that absorb the sun’s warmth and provide optimum growing conditions, according to the ORV petition.

Differences in Distinguishing Features

Based on TTB’s review of the evidence and other information provided in the ORV petition and the petition and evidence submitted in support of the proposed Indiana Uplands viticultural area, the geology,

topography, soils, and climate of each area are distinguishable.

Geology

Although T.D. ATF–144 does not specifically address the geology of the Ohio River Valley viticultural area, the geological history of the Ohio River Valley region was discussed in the ORV petition. According to the ORV petition, the Ohio River was created by the impact of glaciers in the Ohio region during the last Ice Age. Prior to the Ice Age, there were only other rivers and streams in the Ohio area, with high ridges located between segments of what became the Ohio River. The ORV petition explains that glaciers later blocked the northward flow of rivers in the region, causing them to form large inland glacial lakes. Eventually, the dammed up lakes reached elevations that caused the water to start eroding new, southwesterly channels. Then, as the great ice sheet began to melt during the Ice Age thaw, enormous amounts of water were released into the lakes of Ohio, and the resulting torrent of water, ice, sand, gravel, and boulders sculpted wide creek beds and crushed the glacial lake dams. The ORV petition states that this deluge further deepened and widened the new river valley to approximately the current shape and location of the Ohio River.

In contrast, as noted above, the proposed Indiana Uplands viticultural area encompasses a continuous plateau of unglaciated bedrock. As described in the Indiana Uplands petition, the Indiana Uplands plateau formed 345 to 325 million years ago from an inland sea, and, during the last Ice Age, the elevated, bedrock-controlled plateau deflected repeated glaciations from the west, north, and east. These glaciations reached only to the edges of the plateau, and largely did not affect the Indiana Uplands region. The terrain of the Indiana Uplands plateau generally was formed by weathering and stream erosion, in contrast to the glacial effects that created the Ohio River Valley.

Topography

Based on a review of the ORV petition, the petition for the proposed Indiana Uplands viticultural area, and the relevant USGS maps, TTB believes that the topography within the Ohio River Valley viticultural area also differs from that within the proposed Indiana Uplands viticultural area. The currently approved 26,000-square mile Ohio River Valley viticultural area is characterized by a long river with many tributaries and an expansive valley; in contrast, the 4,800-square mile proposed Indiana Uplands viticultural area is

characterized by a rural and hilly plateau landform.

Soils

T.D. ATF-144, the ORV petition, and the petition for the proposed Indiana Uplands viticultural area provide evidence that the predominant soils within the Ohio River Valley viticultural area are significantly different from those in the Indiana Uplands plateau. According to T.D. ATF-144, gray-brown podzolic soils are predominant on the ridges, hills, and slopes of the Ohio River Valley viticultural area. After intensive rainfall, the slow to moderate permeability of these soils and the valley topography cause rapid runoff and prevent a flood hazard.

In contrast, red-yellow podzolic soils predominate within the proposed Indiana Uplands viticultural area, according to the Indiana Uplands petition. These soils formed in discontinuous loess over weathered sandstone, shale, and limestone, and have moderate permeability. In addition, the Indiana Uplands petition states that the soil types found in the proposed Indiana Uplands viticultural area are more common on the unglaciated Indiana Uplands plateau than they are in surrounding areas, and they have a higher erosion rate than soils in other, more glaciated areas of Indiana.

Climate

The climate within the Ohio River Valley viticultural area also appears to differ from that of the proposed Indiana Uplands viticultural area. According to T.D. ATF-144, the Ohio River Valley viticultural area climate is characterized by a distinctive rainfall pattern (called “Ohio Type”) and is influenced by wind. In the “Ohio Type” climate, the Ohio River Valley can receive accumulations in excess of 2.5 inches within a 24-hour period each month, except in October. Such rainfalls would cause a severe flood hazard but for the moderate to slow permeability of the predominant soils and the geography of the river valley, which permits rapid runoff after intensive rainfall. T.D. ATF-144 also states that the climate of the Ohio River Valley viticultural area is further distinguished by winds that originate in the Gulf of Mexico, travel northeast through the Mississippi River Valley, and pass through the Ohio River Valley. As a result, the climate within a few miles of the river is more moderate and has less dramatic temperature extremes during the growing season as compared to other areas of similar latitude.

According to the Indiana Uplands petition, the average annual precipitation in the proposed Indiana Uplands viticultural area is 47 inches, which is higher than in other areas of Indiana. However, this represents 13 inches less precipitation annually than the Ohio River Valley viticultural area, according to TTB research using the long-term database of the Midwestern Regional Climate Center (MRCC) in cooperation with the Illinois State Water Survey and National Climatic Data Center. TTB further notes that the Indiana Uplands plateau does not appear to be affected by the consistent wind pattern and the “Ohio Type” rainfall pattern that characterize the weather of the Ohio River Valley viticultural area.

In addition, as shown in the below table, growing season temperatures are generally significantly lower on the Indiana Uplands plateau than in the Ohio River Valley viticultural area.

Area	GDD	Winkler climatic region
Indiana Uplands plateau	3,383	III
Ohio River Valley AVA* (average)	4,018	V

*The 3,383 GDD average is based on the data from the Indiana Uplands petition discussed above; the 4,018 GDD average is derived from MRCC statistics for Evansville, Illinois (4,063 degrees), Owensboro (4,154 degrees) and Louisville, Kentucky (4,115 degrees), and Cincinnati, Ohio (3,741 degrees), all within the Ohio River Valley viticultural area.

Proposed Modification of the Ohio River Valley Viticultural Area Boundary

Based on the evidence summarized above, TTB believes that there are significant differences between the distinguishing features of the Ohio River Valley viticultural area and those of the proposed Indiana Uplands viticultural area. In addition, the Indiana Uplands petition presents evidence that the geology, soils, topography, and climate of the proposed viticultural area are largely consistent throughout the proposed Indiana Uplands viticultural area—including the area that is currently within the Ohio River Valley viticultural area—and are distinctive when compared to the large Ohio River Valley viticultural area.

Accordingly, TTB believes that there is a valid basis to conclude that the features of that portion of the proposed Indiana Uplands viticultural area that is currently within the Ohio River Valley viticultural area are sufficiently distinct from those of the larger Ohio River

Valley viticultural area as to no longer warrant the inclusion of that portion within the boundary of the Ohio River Valley viticultural area. TTB therefore proposes the modification of the boundary of the Ohio River Valley viticultural area so as not to include the 1,538-square mile area that would overlap the proposed Indiana Uplands viticultural area if the Indiana Uplands viticultural area were to be established as proposed in the petition.

The petitioner for the proposed Indiana Uplands viticultural area has advised TTB that he supports the proposed modification of the boundary of the Ohio River Valley viticultural area. In communications with TTB, the Indiana Uplands petitioner agreed that there are significant differences between the two areas as regards the distinguishing features, and he concluded that a modification of the boundary of the Ohio River Valley viticultural area would be warranted if the proposed Indiana Uplands viticultural area is established.

At TTB’s request, the petitioner obtained letters from the 11 wineries and vineyards that would be affected by the proposed modification of the Ohio River Valley viticultural area, all of which indicate agreement with the proposed modification. In their letters, the vineyard owners also indicate their willingness to no longer to use “Ohio River Valley” as an appellation of origin for wine produced from their grapes if the boundary is modified as proposed in this notice.

Description of Proposed Modification of Ohio River Valley Viticultural Area Boundary

The portion of the proposed Indiana Uplands viticultural area that is currently within the Ohio River Valley viticultural area extends, at the widest points, approximately 53 miles east-to-west and 42 miles north-to-south. Seven Indiana counties are partially or totally within the area affected by the proposed modification of the Ohio River Valley viticultural area: Washington, Clark, Floyd, Harrison, Perry, Crawford, Scott, and Spencer Counties.

The USGS maps used to define the Ohio River Valley viticultural area are regional maps on a scale of 1:250,000 feet. The maps used to define the Indiana Uplands viticultural area petition are on a scale of 1:100,000 meters on 30- x 60-minute quadrangles. For consistency, the description of the proposed Ohio River Valley viticultural area boundary modification is presented in the below paragraph in the same manner and direction as the existing

boundary description for that area in 27 CFR 9.78.

The beginning point of the proposed modification of the Ohio River Valley viticultural area is on the Vincennes map where State Road 162 diverges northerly from U.S. Route 460 (locally known today as State Road 62) in Spencer County, Indiana. From that point, the proposed concurrent boundary line for the Indiana Uplands-Ohio River Valley viticultural areas follows a straight line south-southeast onto the Evansville map to the confluence of the Anderson River with the Ohio River just west of Troy, Indiana. The concurrent boundary line then continues generally eastward (upstream) along the Indiana shoreline of the Ohio River, crosses over and back on the Vincennes map, and onto the Louisville map, to the mouth of French Creek in Franklin Township, Floyd County, Indiana (just downstream from New Albany).

The concurrent boundary line then follows a straight line north through Lost Knob and Bald Knob to St. Joseph on State Road 111, where it then follows State Road 111 and 60 north to Carwood, Indiana, and then goes north-easterly in a straight line to the Interstate 65 exit for Underwood, Indiana. From Underwood, the concurrent boundary proceeds northwest in a straight line to the crossroads village of Leota. At Leota, the Ohio River Valley viticultural area boundary line turns to the northeast and continues in a straight line to New Marion in Ripley County, Indiana, while the proposed Indiana Uplands boundary proceeds west and then north to Pumpkin Center and then northwesterly toward Millport on the Muscatatuck River, which is, at this point, concurrent with the boundary between Jackson and Washington Counties, Indiana.

For the reasons stated above, TTB believes that the proposed modification of the boundary of the Ohio River Valley viticultural area also merits consideration and public comment as invited in this notice. The proposed modification of the boundary of the Ohio River Valley viticultural area would only take effect upon the establishment of the proposed Indiana Uplands viticultural area.

Boundary Description

See the narrative boundary description of the petitioned-for Indiana Uplands viticultural area and the proposed modification of the Ohio River Valley viticultural area boundary in the proposed regulatory texts published at the end of this notice.

Maps

The Indiana Uplands petitioner provided the required maps, and TTB lists them below in the proposed regulatory text.

Impact on Current Wine Labels

General

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If this proposed viticultural area is established, its name, "Indiana Uplands," will be recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the proposed regulation clarifies this point.

TTB does not believe that any single part of the proposed viticultural area name standing alone, that is, "Indiana" or "Uplands," would have viticultural significance in relation to this proposed viticultural area because "Indiana," standing alone, is locally and nationally known as referring to the State of Indiana, which is already a term of viticultural significance as an appellation of origin under 27 CFR 4.25(a)(1)(ii), which provides that a State is an American appellation of origin, and under 27 CFR 4.39(i)(3), which states that "[a] name has viticultural significance when it is the name of a state * * *", and because the term "uplands" refers to a common geographical landform found in many locations in the United States and internationally.

If this proposed regulatory text is adopted as a final rule, wine bottlers using "Indiana Uplands" in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use "Indiana Uplands" as an appellation of origin.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other viticulturally significant term appears in another reference on the

label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Transition Period

If the proposals to establish the Indiana Uplands viticultural area and to modify the boundary of the Ohio River Valley viticultural area are adopted as a final rule, a transition rule will apply to labels for wines produced from grapes grown in the area removed from the Ohio River Valley viticultural area. A label containing the words "Ohio River Valley" in the brand name or as an appellation of origin may be used on wine bottled within two years from the effective date of the final rule, provided that such label was approved prior to the effective date of the final rule and that the wine conforms to the standards for use of the label set forth in 27 CFR 4.25 or 4.39(i) in effect prior to the final rule. At the end of this two-year transition period, if a wine is no longer eligible for labeling with the Ohio River Valley viticultural area name (e.g., it is primarily produced from grapes grown in the area removed from the Ohio River Valley viticultural area), then a label containing the words "Ohio River Valley" in the brand name or as an appellation of origin would not be permitted on the bottle. TTB believes that the two-year period should provide affected label holders with adequate time to use up any old labels. This transition period is described in the proposed regulatory text for the Ohio River Valley viticultural area published at the end of this notice. TTB notes that wine eligible for labeling with the Ohio River Valley viticultural area name under the proposed new boundary of the Ohio River Valley viticultural area will not be affected by this two-year transition period.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether TTB should establish the proposed Indiana Uplands viticultural area and modify the boundary of the Ohio River Valley viticultural area. TTB is also interested in receiving comments on the sufficiency and accuracy of evidence for the Indiana Uplands name, boundary, geology, topography, soils, climate, and other required information submitted in support of the petition. TTB is

especially interested in comments on the appropriateness of the proposed modification of the Ohio River Valley viticultural area boundary, including comments on whether the distinguishing features of that portion of the proposed Indiana Uplands viticultural area that would have created an overlap are sufficiently distinct from the rest of the Ohio River Valley viticultural area to warrant the proposed boundary modification. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Indiana Uplands viticultural area on wine labels that include the words “Indiana Uplands” as discussed above under “Impact on Current Wine Labels,” TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. Also, those industry members with wine labels potentially affected by the modification of the Ohio River Valley viticultural area boundary are encouraged to submit comments. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any negative economic impact that approval of the proposed viticultural area or boundary modification will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid any conflicts, for example, by adopting a modified or different name or boundary for either viticultural area.

Submitting Comments

You may submit comments on this notice by using one of the following three methods:

- **Federal e-Rulemaking Portal:** You may send comments via the online comment form posted with this notice in Docket No. TTB–2012–0004 on “Regulations.gov,” the Federal e-rulemaking portal, at <http://www.regulations.gov>. A direct link to that docket is available under Notice No. 129 on the TTB Web site at http://www.ttb.gov/wine/wine_rulemaking.shtml. Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on “User Guide” under “How to Use this Site.”

- **U.S. Mail:** You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

- **Hand Delivery/Courier:** You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 129 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity’s name as well as your name and position title. If you comment via <http://www.regulations.gov>, please enter the entity’s name in the “Organization” blank of the comment form. If you comment via mail or hand delivery/courier, please submit your entity’s comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, TTB will post, and you may view, copies of this notice, selected supporting materials, and any electronic or mailed comments TTB receives about this proposal. A direct link to the Regulations.gov docket containing this notice and the posted comments received on it is available on the TTB Web site at http://www.ttb.gov/wine/wine_rulemaking.shtml under Notice No. 129. You may also reach the docket containing this notice and the posted comments received on it through the Regulations.gov search page at <http://www.regulations.gov>. For instructions on how to use Regulations.gov, visit the site and click on “User Guide” under “How to Use this Site.”

All posted comments will display the commenter’s name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments

or material that TTB considers unsuitable for posting.

You also may view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Box 12, Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor’s efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Elisabeth C. Kann of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Amend section 9.78 by:

- Revising the introductory paragraph of paragraph (c) and paragraphs (c)(5) and (c)(6);
- Redesignating paragraphs (c)(7) through (c)(21) as paragraphs (c)(11) through (c)(25); and
- Adding new paragraphs (c)(7), (c)(8), (c)(9), (c)(10), and (d).

The revisions and additions read as follows:

§ 9.78 Ohio River Valley.

* * * * *

(c) *Boundary.* The Ohio River Valley viticultural area is located in portions of Indiana, Ohio, West Virginia, and Kentucky. The boundary description in paragraphs (c)(1) through (c)(24) of this section includes for each point, in parentheses, the name of the map sheet(s) on which the point can be found.

* * * * *

(5) The boundary proceeds in a straight line southeasterly to the confluence of the Anderson River with the Ohio River at Troy, Indiana (Evansville map).

(6) The boundary proceeds generally eastward along the Indiana shoreline of the Ohio River (Evansville and Vincennes maps) to the mouth of French Creek in Franklin Township, Floyd County, Indiana (Louisville map).

(7) From the mouth of French Creek, the boundary proceeds northerly in a straight line to the peak of Lost Knob, then continues north-northeasterly in a straight line through the peak of Bald Knob to the junction of State Route 111 and a road locally known as W. St. Joe Road at St. Joseph in New Albany Township, Floyd County, Indiana (Louisville map).

(8) The boundary then proceeds north on State Route 111 to State Route 60 at Bennettsville in Clark County, Indiana, then westerly on State Route 60 to Carwood, and then northerly in a straight line to the point where the Clark-Scott county line crosses Interstate 65 at Underwood, Indiana (Louisville map).

(9) The boundary proceeds northwesterly in a straight line to Leota in Scott County, Indiana (Louisville map).

(10) The boundary proceeds in a straight northeast line to the town of New Marion in Ripley County, Indiana (Cincinnati map).

* * * * *

(d) *Transition period.* A label containing the words "Ohio River Valley" in the brand name or as an appellation of origin approved prior to [effective date of the final rule] may be used on wine bottled before [date 2 years from effective date of the final rule] if the wine conforms to the standards for use of the label set forth in § 4.25 or § 4.39(i) of this chapter in effect prior to [effective date of this final rule].

3. Subpart C is amended by adding § 9.____ to read as follows:

§ 9.____ Indiana Uplands.

(a) *Name.* The name of the viticultural area described in this section is "Indiana Uplands". For purposes of part 4 of this chapter, "Indiana Uplands" is a term of viticultural significance.

(b) *Approved maps.* The six United States Geological Survey 1:100,000-scale metric topographic maps used to determine the boundary of the Indiana Uplands viticultural area are titled:

(1) Tell City, Indiana-Kentucky, 1991;

(2) Jasper, Indiana-Kentucky, 1994;

(3) Bedford, Indiana, 1990;

(4) Bloomington, Indiana, 1986;

Photoinspected 1988;
(5) Madison, Indiana-Kentucky, 1990; and

(6) Louisville, Kentucky-Indiana, 1986.

(c) *Boundary.* The Indiana Uplands viticultural area is located in south-central Indiana. The boundary of the Indiana Uplands viticultural area is as described below:

(1) The beginning point is on the Tell City map at the confluence of the Anderson River with the Ohio River near Troy in Perry County. From the beginning point, proceed north-northwesterly in a straight line, crossing to the Jasper map, to the intersection of State Roads 62 and 162, approximately 3.5 miles north of Santa Claus; then

(2) Proceed north on State Road 162 to its intersection with U.S. Route 231 in Jasper; then

(3) Proceed north on U.S. Route 231, crossing to the Bedford map and the Bloomington map, to the intersection of U.S. Route 231 with the 180-meter contour line in Bloomfield, approximately 0.3 mile south of State Road 54; then

(4) From the west side of State Road 54, proceed northerly along the meandering 180-meter contour line, and, after crossing the Owen-Greene county boundary line, continue northeasterly along the contour line to its intersection with the Monroe-Owen county boundary line approximately 1 mile south of the confluence of Big Creek and the White River; then

(5) Proceed north, then northeasterly, and then south along the Monroe-Owen county boundary line to its intersection with the 200-meter contour line, approximately 0.3 mile south of the White River; then

(6) Proceed easterly along the meandering 200-meter contour line to its intersection with State Road 135, south of Morgantown and approximately 0.8 mile north of the Morgan-Brown county boundary line; then

(7) Proceed south on State Road 135 to the Morgan-Brown county boundary line; then

(8) Proceed east along the Brown-Johnson county boundary line to its intersection with the Brown-Bartholomew county boundary line; then

(9) Proceed south-southeasterly in a straight line to the intersection of State Road 46 and a road locally known as N. County Club Road, approximately 1 mile north of Harrison Lake in western Bartholomew County; then

(10) Proceed south-southwesterly in a straight line to the intersection of State Road 58 and the Bartholomew-Jackson county boundary line; then

(11) Proceed east along the Bartholomew-Jackson county boundary line for approximately 0.4 mile to the county boundary line's first intersection with the meandering 200-meter contour line after crossing Buck Creek in northwestern Jackson County; then

(12) Proceed easterly then southwesterly along the meandering 200-meter contour line, crossing to the Bedford map, to the intersection of the contour line with U.S. Route 50; then

(13) Proceed east on U.S. Route 50 to its intersection with State Road 235; then

(14) Proceed south on State Road 235 to its intersection with the railroad tracks in Medora; then

(15) Proceed southwesterly along the railroad tracks to their closest approach to the bridge over the East Fork of the White River located approximately 0.5 miles east (upstream) of Sparksville (locally known as the Sparks Ferry Road bridge); then

(16) Proceed easterly along the East Fork of the White River and then the Muscatatuck River to the State Road 135 bridge over the Muscatatuck River at Millport; then

(17) Proceed easterly in a straight line to the confluence of the Cammie Thomas Ditch with the Muscatatuck River, located on the northern boundary of Washington County; then

(18) Proceed southeasterly in a straight line, crossing to the Madison map, to the intersection of two roads locally known as E. Pull Tight Road and N. Pumpkin Center East Road at Pumpkin Center in Gibson Township, Washington County; then

(19) Proceed due south in a straight line for approximately 4.5 miles to the line's intersection with a road locally known as E. Old State Road 56; then

(20) Proceed easterly and then northeasterly on E. Old State Road 56 to its intersection with a road locally known in Scott County as S. Bloomington Trail, and then continue

southeasterly on S. Bloomington Trail to its intersection with a road locally known as W. Leota Road at Leota; then

(21) Proceed southeasterly in a straight line to the intersection of Interstate 65 and the Scott-Clark counties boundary line at Underwood; then

(22) Proceed south-southwesterly in a straight line, crossing to the Louisville map, to the intersection of State Road 60 and a road known locally as Carwood Road at Carwood in Clark County; then

(23) Proceed southeasterly on State Road 60 to its intersection with State Road 111 at Bennettsville; then

(24) Proceed southerly on State Road 111 for approximately 1.8 miles to its intersection with a road locally known as W. St. Joe Road at St. Joseph; then

(25) Proceed south-southwesterly in a straight line to the 266-meter elevation point on Bald Knob, then continue south-southwesterly in a straight line to the 276-meter elevation point on Lost Knob; then

(26) Proceed southerly in a straight line to the confluence of French Creek with the Ohio River in eastern Franklin Township, Floyd County; then

(27) Proceed (downstream) along the Indiana shoreline of the Ohio River, crossing back and forth between the Tell City and Jasper maps, returning to the beginning point.

Signed: June 1, 2012.

John J. Manfreda,
Administrator.

[FR Doc. 2012-13865 Filed 6-7-12; 8:45 am]

BILLING CODE 4810-31-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[EB Docket No. 04-296; DA 12-834]

Petition Filed by American Cable Association for Partial Reconsideration of the Commission's Emergency Alert System Fifth Report and Order; Announces Schedule for Pleading Cycle

AGENCY: Federal Communications Commission.

ACTION: Petition for partial reconsideration.

SUMMARY: In this document, the Federal Communication Commission's (Commission) Public Safety and Homeland Security Bureau (Bureau) gives notice that the American Cable Association (ACA) has filed a petition for partial reconsideration of the Commission's Emergency Alert System

(EAS) *Fifth Report and Order*, and announces a schedule for the pleading cycle.

DATES: Oppositions/Comments are due on or before June 25, 2012 and replies are due on or before July 3, 2012.

ADDRESSES: You may submit comments, identified by EB Docket No. 04-296 by any of the following methods:

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

- *Federal Communications Commission's Web site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- *People with Disabilities:* Contact the Commission to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW., Washington DC 20554.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Gregory M. Cooke, Associate Chief, Policy Division, Public Safety and Homeland Security Bureau, at (202) 418-2351, or by email at gregory.cooke@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice in EB Docket No. 04-296, DA 12-834, released on May 25, 2012. This document is available to the public at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0525/DA-12-834A1.doc.

Synopsis of the Public Notice

1. On April 23, 2012, the Commission received a petition filed by the ACA for partial reconsideration of that portion of the Commission's *EAS Fifth Report and Order* (77 FR 16688, March 22, 2012) "requiring operators of cable systems lacking physical * * * broadband Internet connections to seek waivers under the Commission's standard procedures." ACA proposes that the Commission establish a streamlined waiver process for cable systems that serve less than 501 subscribers, subject to a showing of compliance with specified conditions, and that waivers obtained through this process last at least one year. By the Public Notice, the Commission establishes a pleading cycle for oppositions and replies in response to the petition as indicated above. In addition, the Commission invites comment on a number of specific questions related to the petition as described below.

Background

2. The *Fifth Report and Order* will require all EAS Participants to convert EAS messages formatted in the Common Alerting Protocol (CAP) into messages that comply with EAS Protocol requirements, and to monitor the Federal Emergency Management Agency's Integrated Public Alert and Warning System (IPAWS) for federal CAP-formatted alert messages using whatever interface technology is appropriate. The Commission noted that "the primary method of distributing CAP messages will be via a broadband Internet connection." Accordingly, the Commission also decided in the *Fifth Report and Order* that "the physical unavailability of a broadband Internet service offers a presumption in favor of a waiver." The Commission noted that this presumption would primarily benefit smaller EAS Participants, for whom obtaining CAP capable EAS equipment would be a relatively larger financial commitment. However, the Commission also determined that such a waiver "likely would not exceed six months," with an option of renewal, given that broadband Internet access "may become available at some point after a waiver has been granted, and that alternate means of distributing CAP alert messages, such as satellite delivery, may also become available."

3. In its Petition, ACA argues that the Commission's foregoing presumption would "not provide meaningful relief for * * * small operators" due to the "need to devote significant administrative resources to preparing waiver requests." ACA argues that to

ameliorate this concern the Commission should implement a streamlined waiver process for systems serving fewer than 501 subscribers, requiring a “waiver request certification * * * signed by a company representative or officer responsible for its truthfulness, [which] should include the following: * * *

- A statement that the cable operator currently does not have physical access to a wireline broadband connection at the system head-end.

- A statement that obtaining physical access to a wireline broadband connection would require costs in excess of a provider’s normal installation drop fee (i.e. special construction costs or line extension fees).”

ACA argues that “[w]aivers granted pursuant to this process should be granted for at least a period of one year, with renewal years available, or until the operator: (i) Obtains broadband Internet service at the system headend; or (ii) can obtain broadband Internet service without incurring additional construction or set-up fees, such as line extension charges.”

Discussion

4. The Commission seeks comment on ACA’s Petition. It also seeks comment on several specific issues. First, it notes that the its *Fifth Report and Order* nowhere states that a *wireline* broadband connection is necessary to comply with the Commission’s requirement that EAS Participants be able to receive CAP-formatted alerts by June 30, 2012. Accordingly, it seeks comment whether any presumption in favor of granting a waiver based on lack of physical access to broadband should be limited to an EAS Participant’s lack of physical access to a wireline broadband connection, as ACA requests. Stated differently, would an EAS Participant’s physical access to, for example, a wireless or satellite broadband connection provide sufficient bandwidth for purposes of complying with the relevant requirements of the *Fifth Report and Order*?

5. The Commission also seeks comment on ACA’s suggestion that the Commission should, at least in part, consider the costs to EAS Participants of obtaining broadband Internet access service when assessing whether to grant waiver relief. If so, how should the Commission weigh such cost in this assessment? For example, ACA requests that the Commission waive CAP compliance for cable systems serving fewer than 501 subscribers if the cost of broadband access is “in excess of a

provider’s normal installation drop fee (i.e. special construction costs or line extension fees).” Is this the proper criterion for such an assessment? If not, what specific costs should the Commission consider to make such an assessment? Should such an assessment be dependent on the financial condition of the petitioner? If so, what standard should the Commission use for assessing whether a waiver is warranted based on financial condition? How much and what kind of information about a petitioner’s financial condition should be submitted in support of a waiver request? Should information as to where the waiver applicant is in its EAS equipment replacement cycle be a factor in the Commission’s analysis? Should factual statements in the waiver request be certified by a corporate officer, rather than some other representative? Does the proposed one-year period for waivers, terminable once broadband access becomes available without “additional construction or set-up fees,” adequately address the Commission’s concerns about changing circumstances? Would a six-month reporting condition, attesting to the continuing compliance with the original conditions, be a better way of addressing those concerns without adding unnecessary costs?

6. Finally, in its petition, ACA proposes that those filing a waiver certification include “[a]n affirmation that the operator understands it must continue to operate its legacy EAS equipment.” Is this criterion sufficient to ensure that subscribers remain able to receive timely and accurate EAS alerts? Should the Commission, for example, require that the waiver certification include an affirmation that the cable operator continues to operate legacy EAS equipment that is capable of receiving and transmitting the Emergency Action Notification?

Procedural Matters

A. Ex Parte Presentations

7. This matter is subject to the “permit-but-disclose” provisions of the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2)

summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission’s rules. In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

B. Comment Filing Procedures

8. Interested parties may file oppositions and other comments and reply comments on or before the dates indicated on the first page of this document. All pleadings must reference EB Docket No. 04–296. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers*: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the

Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

9. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

10. Address all filings to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street SW., Room TW-A325, Washington, DC 20554. Parties should also send a copy of their filings to Gregory Cooke, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission, Room 7-A744, 445 12th Street SW., Washington, DC 20554, or by email to Gregory.Cooke@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554, (202) 488-5300, or via email to fcc@bcpiweb.com.

11. Documents in EB Docket No. 04-296 are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY-A257, Washington, DC 20554. The documents are available for purchase from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, email fcc@bcpiweb.com. These documents are also available for viewing on the Commission's Web site at <http://www.fcc.gov/cgb/ecfs>.

Federal Communications Commission.

Lisa M. Fowlkes,

Deputy Chief, Public Safety and Homeland Security Bureau.

[FR Doc. 2012-13901 Filed 6-7-12; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 12-130, RM-11662; DA 12-815]

Television Broadcasting Services; Greenville, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by ION Media Greenville License, Inc. ("ION"), the licensee of station WEPX-TV, channel 51, Greenville, North Carolina, requesting the substitution of channel 26 for channel 51 at Greenville. After the Commission instituted a freeze on the acceptance of rulemaking petitions by full power television stations requesting channel substitutions in May 2011, it later announced that it would lift the freeze to accept petitions for rulemaking filed by full power television stations seeking to relocate from channel 51 pursuant to a voluntary relocation agreement with Lower 700 MHz A Block licensees. ION has entered into a voluntary relocation agreement and further states that the proposed channel 26 facility will increase the net total population served by the station by over 100,000 persons, which will serve the public interest.

DATES: Comments must be filed on or before July 9, 2012, and reply comments on or before July 23, 2012.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: John R. Feore, Jr., Esq., Dow Lohnes PLLC, 1200 New Hampshire Avenue NW., Suite 800, Washington, DC 20036-6802.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, joyce.bernstein@fcc.gov, Media Bureau, (202) 418-1647.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 12-130, adopted May 23, 2012, and released May 25, 2012. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street SW., Washington, DC, 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/

or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via email www.BCPIWEB.com. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

For information regarding proper filing procedures for comments, see §§ 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

David J. Brown,

Associate Chief, Video Division, Media Bureau.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under North Carolina is amended by

removing channel 51 and adding channel 26 at Greenville.

[FR Doc. 2012-13864 Filed 6-7-12; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA-2012-0078]

RIN 2127-AL19

Make Inoperative Exemptions; Retrofit On-Off Switches for Air Bags

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: There is a NHTSA regulation that permits motor vehicle dealers and repair businesses to install retrofit on-off switches for air bags in vehicles owned by or used by persons whose request for a switch has been approved by the agency. This regulation is only available for motor vehicles manufactured before September 1, 2012. In this document, the agency proposes to extend the availability of this regulation for three additional years, so that it would apply to motor vehicles manufactured before September 1, 2015.

DATES: Comments must be received on or before July 9, 2012.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

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

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202-366-9324.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process,

see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. 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 discussion below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Ms. Carla Rush, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202-366-4583, fax 202-493-2739).

For legal issues: Mr. Edward Glancy, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202-366-2992, fax 202-366-3820).

SUPPLEMENTARY INFORMATION:

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- II. Agency Analysis and Proposal
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I. Background

To prevent or mitigate the risk of injuries or fatalities in frontal crashes, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant crash protection" (49 CFR 571.208), requires that vehicles be equipped with seat belts and frontal air bags.

In the 1990s, while air bags proved to be highly effective in reducing fatalities from frontal crashes, they were found to cause a small number of fatalities, especially to unrestrained, out-of-position children, in relatively low speed crashes. It was shown that the majority of these fatalities occurred because the occupants were very close to or made contact with the air bag when it started to deploy.¹ The other cause of the air bag fatalities at the time was the aggressive design of some air bags.

To address this problem, NHTSA developed a plan that included an array

of immediate, interim and long-term measures. The immediate and interim measures focused on behavioral changes and relatively modest technological changes (e.g., consumer education on air bags and the importance of seat belts and putting children in the rear; amending FMVSS No. 208 to allow for a limited time a sled test option for expediting the depowering of air bags, etc.). The long-term measures focused on more significant technological changes, i.e., advanced air bag technologies.

As one of the interim measures, on November 21, 1997, NHTSA published in the **Federal Register** (62 FR 62406) a final rule permitting motor vehicle dealers and repair businesses to install retrofit on-off switches for frontal air bags in vehicles owned by or used by persons whose request for a switch had been approved by the agency (subpart B of 49 CFR part 595). This rule provided a limited exemption from a statutory provision that generally prohibits motor vehicle dealers and repair businesses from making inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable FMVSS.²

Under the procedures set forth in the 1997 rule, vehicle owners can request a retrofit air bag on-off switch by completing an agency request form (Appendix B of Part 595) and submitting the form to the agency. Owners must certify that they have read the information brochure, in Appendix A of Part 595, discussing air bag safety and risks. The brochure describes the steps that the vast majority of people can take to minimize the risk of serious injuries from air bags while preserving the benefits of air bags, without going to the expense of buying an on-off switch. The agency developed the brochure to enable owners to determine whether they are, or a user of their vehicle is, in one of the groups of people at risk of a serious air bag injury and to make a careful, informed decision about requesting an on-off switch.³ Owners

² The "make inoperative" provision is at 49 U.S.C. 30122.

³ At NHTSA's request, an expert panel of physicians convened to formulate recommendations on specific medical indications for air bag deactivation. The panel concluded that air bags are effective lifesavers and that a medical condition does not warrant turning off an air bag unless the condition makes it impossible for a person to maintain an adequate distance from the air bag. Specifically, the panel recommended disconnecting an air bag if a safe sitting distance or position cannot be maintained by a: driver or front passenger because of scoliosis, osteoporosis/arthritis; driver because of achondroplasia; or passenger because of Down syndrome and atlantoaxial instability. The panel also warranted

¹ See preamble to agency final rule on advanced air bags, 65 FR 30680, 30682-83, May 12, 2000.

also must certify that they or another user of their vehicle is a member of one of the risk groups. Since the risk groups for drivers are different from those for passengers, a separate certification must be made on the request form for each frontal air bag to be equipped with a retrofit air bag on-off switch.

If NHTSA approves a request, the agency will send the owner a letter authorizing the installation of one or more on-off switches in the owner's vehicle. The owner may give the authorization letter to a dealer or repair business, which may then install an on-off switch for the driver or passenger air bag or both, as approved by the agency. The retrofit air bag on-off switch must meet certain criteria, such as being equipped with a telltale light to alert vehicle occupants when an air bag has been turned off. The dealer or repair business must then fill in information about itself and its installation in a form in the letter and return the form to the agency.

In the November 1997 air bag on-off switch final rule, the agency indicated that it believed, based on safety considerations, that it should prohibit dealers and repair businesses from retrofitting advanced air bag vehicles with on-off switches, but that it would address this issue in the forthcoming rulemaking on advanced air bags (62 FR at 62432-33).

On May 12, 2000, NHTSA published in the **Federal Register** (65 FR 30680) its final rule to require advanced frontal air bags. The rule required that future air bags be designed to reduce the risk of serious air bag-induced injuries compared to then-current air bags, particularly for small-statured women and young children; and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology. To achieve these goals, it added a wide variety of new requirements, test procedures, and injury criteria, using an assortment of new test dummies.

In the preamble to the May 2000 advanced air bag final rule, the agency decided to continue the exemption procedures for retrofit air bag on-off switches for vehicles manufactured through August 31, 2012. This provided time to allow manufacturers to perfect the suppression and low-risk

deployment systems for air bags in all of their vehicles. It also provided a number of years to verify the reliability of advanced air bags based on real-world experience.

NHTSA also indicated in the advanced air bag final rule that there would be a need for deactivation of some sort (via on-off switch or permanently) for at-risk individuals who cannot be accommodated through sensors or other suppression technology (such as handicapped individuals or individuals with certain medical conditions). The agency stated at that time that it believed such needs could be best accommodated through the authorization system for deactivation of air bags in current use by NHTSA (65 FR at 30722).

Also, on February 27, 2001, NHTSA published a final rule in the **Federal Register** (66 FR 12638) providing a limited exemption from the make inoperative prohibition, covering various provisions in a number of safety standards, to facilitate the mobility of persons with disabilities. The exemption permits repair businesses to modify certain types of federally required safety equipment and features, under specified circumstances. This disability exemption, which is in subpart C of part 595, permits the installation of air bag on-off switches or the permanent disconnection of air bags in certain, significantly more limited circumstances than provided for in subpart B of that part.

II. Agency Analysis and Proposal

Since the introduction of advanced air bags, and even before that time, air bag-related fatalities have significantly declined. There have not been any confirmed air-bag-related child fatalities in model year 2004 or later vehicles. There have been two confirmed air-bag-related adult fatalities in model year 2004 or later vehicles.⁴

However, as NHTSA recognized in the preamble to the advanced air bag final rule, there may still be a need for deactivation of air bags (via a switch or permanent deactivation) beyond September 1, 2012, for at-risk individuals who cannot be accommodated through the advanced air bag technology. Therefore, the agency has decided that it may be appropriate to propose extending the on-off switch provisions of Part 595

subpart B, for some risk groups despite the presence of advanced air bag technology.

To permit the agency time to thoroughly evaluate this issue, and potentially conduct rulemaking for an updated version of subpart B, we are proposing to extend the current subpart B provisions for three years. As discussed above, the regulation currently permits motor vehicle dealers and repair businesses, for motor vehicles manufactured before September 1, 2012, to install retrofit on-off switches for air bags in vehicles owned by or used by persons whose request for a switch has been approved by the agency. We are proposing to extend that date so the provision would apply to motor vehicles manufactured before September 1, 2015.

With the proposed three year extension, the agency plans to evaluate several aspects of the air bag on-off switch rule. Mainly, the agency will evaluate the criteria for granting the retrofit on-off switches (at-risk groups) in light of the existence of advanced air bag technology, and the retrofit switch brochures and forms that were included in part 595. The agency will also consider other topics that have arisen over the years such as our continued use of prosecutorial discretion for circumstances not covered by part 595 (e.g., the application of retrofit switches for emergency and law enforcement vehicles).

Given the imminence of the September 1, 2012 date, it would not be possible for us to complete the necessary evaluation and possible rulemaking before that time. We are therefore proposing the three-year extension, to maintain the current procedures during this time period. This will avoid a situation where retrofit on-off switches would not be available for vehicles manufactured during this time period, while the agency is considering further rulemaking that could permanently allow retrofit on-off air bag switches in specified circumstances. The agency expects to be able to fully analyze the issues surrounding such a rulemaking within those three additional years.

We have tentatively concluded that a three-year extension is in the interest of motor vehicle safety. This extension would prevent a potential gap in the regulation and avoid any complications and confusion that could arise if the subpart B exemption for retrofit on-off air bag switches were allowed to sunset and then, later on, the agency decided to maintain the exemption (in some form) permanently.

the disconnection of air bags if the need for wheelchair related modifications made it necessary or if there is a medical condition that requires an infant or child to be placed in the front passenger seat for monitoring purposes. (The Ronald Reagan Institute of Emergency Medicine Department of Emergency Medicine and The National Crash Analysis Center, "National Conference on Medical Indications for Air Bag Disconnection," July 16-18, 1997.)

⁴ "Counts of Frontal Air Bag Related Fatalities and Seriously Injured Persons," Special Crash Investigations, DOT HS 811 104, January 2009. We note that although this report identifies three confirmed air-bag-related adult fatalities in model year 2004 or later vehicles it has come to our attention that one of these cases was miscoded.

III. Shortened Comment Period

Given the short time period between now and the September 1, 2012 date, we are providing a 30-day comment period. We believe this shortened comment period is appropriate because we are proposing a relatively short-term extension of an existing exemption.

IV. Rulemaking Analyses and Notices

A. Executive Order (E.O.) 12866, E.O. 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Orders 12866 and 13563, and the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979). This action was not reviewed by the Office of Management and Budget under these executive orders. It is not considered to be significant under the Department's regulatory policies and procedures.

This document proposes to delay the sunset date of an existing exemption for retrofit on-off switches for frontal air bags. They are currently available, under specified circumstances, for vehicles manufactured before September 1, 2012. We are proposing to extend that date so that they will be available for vehicles manufactured before September 1, 2015.

The proposed rule would not require a motor vehicle manufacturer, dealer or repair business to take any action or bear any costs except in instances in which a dealer or repair business agrees to install an on-off switch for an air bag. For consumers, the purchasing and installation of on-off switches is permissive, not prescriptive.

When an eligible consumer obtains the agency's authorization for the installation of a retrofit on-off switch and a dealer or repair business agrees to install the switch, there will be costs associated with that action. The agency estimates that the installation of an on-off switch would typically require less than one hour of shop time, at the average national labor rate of approximately \$80 per hour. NHTSA estimates that the cost of an air bag on-off switch for one seating position is \$51 to \$84 and the cost of an on-off switch for two seating positions is \$68 to \$101. The agency estimates that approximately 500 air bag on-off switch requests are received and authorized annually. However, we are uncertain about how many people actually pay to get them installed after we authorize it. Given the relatively low number of vehicle owners who will ultimately get the retrofit air bag on-off switches installed and the above estimated costs,

the annual net economic impact of the actions taken under this proposed rule will not exceed \$100 million per year.

Moreover, given the above, the fact that this has been a longstanding exemption available for consumers and since the agency is merely proposing to extend the availability of this exemption for an additional three years of vehicle production, the impacts are so minimal that a full regulatory evaluation is not needed.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. I hereby certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposal would merely extend the sunset provision in Part 595.5. No other changes are being proposed in this document. Small organizations and small governmental units will not be significantly affected since the potential cost impacts associated with this action will be insignificant.

C. Executive Order 13132 (Federalism)

NHTSA has examined today's proposed rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposed rule would 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." Today's proposed rule would not impose any additional requirements. Instead, it would delay the sunset date of an existing exemption for retrofit on-off switches for frontal air bags, thereby lessening burdens on the exempted entities.

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: when a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable

to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance. However, this provision is not relevant to this proposed rule as this proposal does not involve the establishing, amending or revoking of a Federal motor vehicle safety standard.

The express preemption provision described above is subject to a savings clause under which "[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law." 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this proposed rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (e.g., the language and structure of the regulatory text) and objectives of today's proposed rule and finds that this proposed rule would increase flexibility for certain exempted entities. As such, NHTSA does not intend that this proposed rule would preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that would be established by today's proposed rule. Establishment of a higher standard by means of State tort law would not conflict with the exemption proposed here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action. Further, we are unaware of any State law or action that would prohibit the actions that this proposed exemption would permit.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation, with base year of 1995). UMRA also requires an agency issuing a final rule subject to the Act to select the "least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule." If made final, this proposed rule will not result in a Federal mandate that will likely result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation, with base year of 1995).

E. National Environmental Policy Act

NHTSA has analyzed this proposed rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

F. Executive Order 12778 (Civil Justice Reform)

When promulgating a regulation, agencies are required under Executive Order 12988 to make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed,

circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this proposed rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

G. Paperwork Reduction Act (PRA)

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Several of the conditions placed by this exemption from the make inoperative prohibition are considered to be information collection requirements as defined by the OMB in 5 CFR part 1320. Specifically, this exemption from the make inoperative prohibition for motor vehicle dealers and repair businesses is conditioned upon vehicle owners filling out and submitting a request form to the agency, obtaining an authorization letter from the agency and then presenting the letter to a dealer or repair business. The exemption is also conditioned upon the dealer or repair business filling in information about itself and the installation of the retrofit on-off switch in the form provided for that purpose in the authorization letter and then returning the form to NHTSA. These information collection requirements in Part 595 have been approved by OMB (OMB Number: 2127-0588) through June 30, 2013, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq). NHTSA will request an extension of this approval in a timely manner.

H. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104-113), all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy

objectives or activities determined by the agencies and departments. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the International Organization for Standardization (ISO) and the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. There are no voluntary consensus standards developed by voluntary consensus standards bodies pertaining to this NPRM.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please write to us with your views.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) 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. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

K. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register**

published on April 11, 2000 (65 FR 19477).

V. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to the Docket at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging into <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at <http://www.whitehouse.gov/omb/fedreg/reproducible.html>.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket

Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see

the comments on the Internet. To read the comments on the Internet, go to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 595

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 595 as follows.

PART 595—MAKE INOPERATIVE EXEMPTIONS

1. The authority citation for part 595 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.50.

2. Amend § 595.5 by revising paragraph (a) to read as follows:

§ 595.5 Requirements.

(a) Beginning January 19, 1998, a dealer or motor vehicle repair business may modify a motor vehicle manufactured before September 1, 2015 by installing an on-off switch that allows an occupant of the vehicle to turn off an air bag in that vehicle, subject to the conditions in paragraphs (b)(1) through (5) of this section.

* * * * *

Issued on: May 30, 2012.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2012-13957 Filed 6-7-12; 8:45 am]

BILLING CODE 4910-59-P

Notices

Federal Register

Vol. 77, No. 111

Friday, June 8, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 4, 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) 720-8681.

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.

Rural Utilities Service

Title: Advance of Loan Funds and Budgetary Control and Related Burdens.

OMB Control Number: 0572-0015.

Summary of Collection: The Rural Utilities Service (RUS) is authorized by the Rural Electrification Act (RE Act) of 1936, as amended, "to make loans in several States and territories of the United States for rural electrification and for the purpose of furnishing and improving electric and telephone service in rural areas and to assist electric borrowers to implement demand side management, energy conservation programs, and on-grid and off-grid renewable energy systems." Borrowers will provide the agency with information that supports the use of the funds as well as identify the type of projects for which they will use the funds.

Need and Use of the Information: RUS electric borrowers will submit RUS form 595 and 219. Form 595, Financial Requirement & Expenditure Statement, to request an advance of loan funds remaining for an existing approved loan and to report on the expenditure of previously advanced loan funds. Form 219, Inventory of Work Orders, serves as a connecting line and provides an audit trail that verifies the evidence supporting the propriety of expenditures for construction of retirement projects that supports the advance of funds. The information collected will ensure that loan funds are expended and advanced for RUS approved budget process and amounts. Failure to collect proper information could result in improper determinations of eligibility or improper use of funds.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 650.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 15,745.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012-13897 Filed 6-7-12; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 4, 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) 720-8681.

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30-Day Federal Register Notice

Rural Business Cooperative Service

Title: 7 CFR Part 1980-E, Business and Industry Loan Program.

OMB Control Number: 0570-0014.

Summary of Collection: Section 310B of the Consolidated Farm and Rural

Development Act (Con Act), legislated in 1972 the Business and Industry (B&I) program. The purpose of the program is to improve, develop, or finance businesses, industries, and employment and improve the economic and environmental climate in rural communities, including pollution abatement and control. This purpose is achieved through bolstering the existing private credit structure by making direct loans, thereby providing lasting community benefits. The B&I program is administered by the Agency through Rural Development State and sub-State Offices serving the State.

7 CFR part 1980–E, in conjunction with 7 CFR part 1942–A, and other regulations, is currently used only for making B&I Direct Loans. 7 CFR part 1951–E is used for servicing B&I Direct and Community Facility loans. All reporting and recordkeeping burden estimates for making and servicing B&I Guaranteed Loans have been moved to the B&I Guaranteed Loan Program regulations, 7 CFR parts 4279–A and B and 4287–B. Consequently, only a fraction of the total reporting and recordkeeping burden for making and servicing B&I Direct Loans is reflected in this document.

Need and Use of the Information: RD will collect the minimum information needed from loan applicants and commercial lenders to make determinations regarding program eligibility, the current financial condition of a business and loan security as required by the Con Act. The majority of the information is collected only once and the agency monitors the progress of the business through the analysis of annual borrower financial statements and visits to the borrower.

Description of Respondents: Individuals or households; State, Local or Tribal Government.

Number of Respondents: 152.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 835.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–13898 Filed 6–7–12; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 4, 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), New Executive Office Building, Washington, DC; *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 publication of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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.

National Agriculture Statistics Service

Title: Childhood Injury, and Adult Occupational Injury Surveys; Minority Farm Operator, Youth and Adult Injury Survey.

OMB Control Number: 0535–0235.

Summary of Collection: The primary function of the National Agricultural Statistics Services (NASS) is to prepare and issue state and national estimates of crop and livestock production under the authority of 7 U.S.C 2204(a). In a cooperative agreement with the National Institute of Occupational Safety Health (NIOSH), a division of the Center for Disease Controls, NASS will conduct a series of farm related injury and safety surveys. In 2012 (reference year 2011) data will be collected for both a childhood injury and adult occupational injury survey. In 2014 NASS plans to

conduct the Minority Farm Operator, Youth and Adult Injury Survey. Together the surveys are designed to: (1) Provide estimates of childhood nonfatal injury incidence rates, annual injury frequencies, and descriptive injury information for children under the age of 20 living on, working on, or visiting on farming operations in the U.S.; and (2) provide estimates of the annual occupational adult nonfatal injury incidence rates, annual occupational injury frequencies and descriptive injury information for farm operators and their employees 20 years of age or older.

Need and Use of the Information: Data from these surveys will provide a source of consistent information that NIOSH can use to target funds appropriated by Congress for the prevention of childhood agricultural injuries and adult occupational injuries. No source of data on childhood injuries or adult occupational farm injuries exists that covers all aspects of the agricultural production sector. If this information is not collected, NIOSH's ability to track and evaluate the impact of its injury prevention efforts will decrease.

Description of Respondents: Farms.

Number of Respondents: 33,334.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 9,333.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–13899 Filed 6–7–12; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 4, 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) 720-8681.

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.

Rural Housing Service

Title: 7 CFR 1944-I, "Self-Help Technical Assistance Grants".

OMB Control Number: 0575-0043.

Summary of Collection: This regulation sets forth the policies and procedures and delegates the authority for providing technical assistance funds to eligible applicants to finance programs of technical and supervisory assistance for the Mutual and Self-Help Housing (MSH) program, as authorized under Public Law 90-448, section 523 of the "Housing Act of 1949". The MSH program affords low-income families the opportunity for home ownership by providing funds to non-profit organizations for supervisory and technical assistance to the homebuilding families. Rural Housing Service (RHS) will collect information from non-profit organizations that want to develop a Self-Help program in their area to increase the availability of affordable housing. The information is collected at the local, district and state levels. The information requested by RHS includes financial and organizational information about the non-profit organization.

Need and Use of the Information: RHS needs this information to determine if the organization is capable of successfully carrying out the requirements of the Self-Help program. The information is collected on an as requested or needed basis. RHS has reviewed the program's need for the

collection of information versus the burden placed on the public.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 140.

Frequency of Responses: Recordkeeping; Reporting: Monthly, Annually.

Total Burden Hours: 3,787.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012-13871 Filed 6-7-12; 8:45 am]

BILLING CODE 3410-XT-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities; Proposed Collection; Comment Request: Determining Eligibility for Free and Reduced Price Meals and Free Milk

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection. This collection is a revision of a currently approved collection for determining eligibility for free and reduced price meals and free milk in schools as stated in 7 CFR Part 245. These federal requirements affect eligibility under the National School Lunch Program, School Breakfast Program, and the Special Milk Program and are also applicable to the Child and Adult Care Food Program and the Summer Food Service Program when individual eligibility must be established. The current approval for the information collection burden associated with 7 CFR Part 245 expires on March 31, 2013. The revisions being requested are from rulemaking and are also from revisions made to a form associated with this information collection.

DATES: Written comments must be submitted by August 7, 2012.

ADDRESSES: 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 that

were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Jon Garcia, Acting Branch Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302. 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.

All written comment(s) will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Jon Garcia at (703) 305-2600.

SUPPLEMENTARY INFORMATION:

Title: Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools—7 CFR Part 245.

OMB Number: 0584-0026.

Expiration Date: March 31, 2013.

Type of Request: Revision of a currently approved collection.

Form Number: FNS-742.

Abstract: The Food and Nutrition Service administers the National School Lunch Program, the School Breakfast Program, and the Special Milk Program as mandated by the Richard B. Russell National School Lunch Act (NSLA), as amended (42 U.S.C. 1751, *et seq.*), and the Child Nutrition Act of 1966, as amended (42 U.S.C. 1771, *et seq.*). As provided in 7 CFR Part 245, schools participating in these meal programs must make free and reduced price meals available to eligible children. Similarly, all schools and institutions participating in the free milk option of the Special Milk Program must make free milk available for eligible children. This information collection obtains eligibility information for free and reduced price meals and free milk and also incorporates verification procedures as required to confirm eligibility. FNS uses form FNS-742, titled "School Food

Authority Verification Summary Report,” for State agencies to report data on verification of eligibility to FNS as required by 7 CFR 245.6a(h). All State agencies report this data electronically to FNS. The FNS-742 form has been recently revised and the title slightly modified (refer to Appendix A at the end of this notice). The estimated time for completion has been increased to 45 minutes per School Food Authority response; therefore, the previously approved reporting burden hours have increased by 5,215 hours for this form.

In addition, this information collection is also requesting a revision in the burden hours due to rulemaking. The revision is based on the implementation of an interim final rule titled, “Direct Certification and

Certification of Homeless, Migrant and Runaway Children for Free School Meals,” published April 25, 2011, **Federal Register**, Vol. 76, No. 79, pp. 22785–22802, which incorporates into 7 CFR part 245 provisions from the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108–265, concerning the direct certification of children receiving Supplemental Nutrition Assistance Program (SNAP) benefits and also the certification of certain children who are homeless, runaway, or migratory. The revisions decrease the total approved reporting burden by – 113,070 hours due to a reduction in household reporting burden as well as increase the total approved recordkeeping burden by 5 hours for State agencies.

Affected Public: Individuals/ Households, School Food Authorities, and State Agencies.

Estimated Number of Respondents: 8,303,871.

Estimated Number of Responses per Respondent: 2.2350528.

Estimated Total Annual Responses: 18,559,590.

Estimated Time per Response: 0.05202604.

Estimated Total Annual Burden on Respondents: 965,582.

Current OMB Inventory: 1,073,432.

Difference (Burden Revisions Requested): – 107,850.

Refer to the following tables for estimated total annual reporting and recordkeeping burden per each type of respondent:

TABLE 1—REPORTING

(a) Affected public	(b) Form no.	(c) Estimated no. respondents	(d) Estimated no. responses per respondent	(e) Estimated total annual responses (c × d)	(f) Estimated hours per response	(g) Estimated total annual burden hours (e × f)
Reporting Burden:						
State Agencies	* 742	56	5.79	324	1.163	377
School Food Authorities	* 742	20,858	483.1047	10,076,598	0.0283325	285,495
Individuals/Households	N/A	8,262,043	1.0232267	8,453,943	0.0796859	673,660
Total		8,282,957	2.237228	18,530,865	0.0514988	959,532

* Form FNS-742 does not incur all of the burden associated with the affected respondents.

TABLE 2—RECORDKEEPING

(a) Affected public	(b) Form no.	(c) Estimated no. respondents	(d) Estimated no. responses per respondent	(e) Estimated total annual responses (c × d)	(f) Estimated hours per response	(g) Estimated total annual burden hours (e × f)
Recordkeeping Burden:						
State Agencies	* 742	56	120.98	6,775	0.2483	1,682
School Food Authorities	N/A	20,858	1.05235	21,950	0.199	4,368
Total		20,914	1.3735	49,639	0.21062	6,050

* Form FNS-742 does not incur all of the burden associated with the affected respondents.

Estimated Total Reporting and Recordkeeping Burden: 965,582 hours.

Dated: June 4, 2012.
Robin D. Bailey, Jr.,
Acting Administrator, Food and Nutrition Service.

Attachment

BILLING CODE 3410-30-P

Appendix A

Proposed Revision of FNS-742 School Food Authority Verification Collection Report

SAMPLE VERSION

OMB APPROVED NO. 0584-0026
Expiration Date: XX/XX/XXXX

Department of Agriculture, Food and Nutrition Service School Food Authority (SFA) Verification Collection Report				
State agencies must report the information on this form ANNUALLY for each SFA with schools operating the National School Lunch Program (NSLP) and/or the School Breakfast Program (SBP). All SFAs, including SFAs with all schools exempt from verification requirements, must complete applicable sections.				
According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number. The valid OMB number for this collection is 0584-0026. The time required to complete this information collection is 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed and complete and review the information collection.				
State Agency Name:	SFA ID#:	Type of SFA: <input type="checkbox"/> Public <input type="checkbox"/> Nonprofit/Private	School Year: From: 20 To: 20	
SFA Name:	SFA City:	SFA Zip code: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>		
Section 1 Total Schools, Residential Child Care Institutions (RCCIs) and Enrolled Students	**All SFAs must report Section 1**		A. Number of Schools OR Institutions	B. Number of Students
	1-1: Total schools (Do not include RCCIs):			
	1-2: Total RCCIs (Do not include schools counted in 1-1):			
	1-2a: RCCIs with day students (Report ONLY day students in 1-2aB):			
	1-2b: RCCIs with NO day students:			
Section 2 SFAs with schools operating alternate provisions	**ONLY SFAs with alternate provisions must report Section 2**		A. Number of Schools AND Institutions	B. Number of Students
	2-1: Operating Provision 2/3 in a BASE year for NSLP and SBP:			
	2-2: Operating Provision 2/3 in a NON BASE year for NSLP and SBP:			
	2-2a: Provision 2/3 students reported as FREE in a NON BASE year:			
	2-2b: Provision 2/3 students reported as REDUCED PRICE in a NON BASE year:			
	2-3: Operating other alternatives for NSLP and SBP:			
2-4: Operating an alternate provision(s) for only SBP or only NSLP:				
2-5: Operating the Community Eligibility Option:				
Section 3 Students approved as FREE eligible NOT subject to verification	**ALL SFAs must report Section 3 or check box 3.1 if applicable**			B. Number of FREE Students
	3.1: <input type="checkbox"/> Check the box only if each school/RCCI in the SFA was not required to perform direct certification with SNAP (i.e. NON-BASE year Provision 2/3 for all schools)			
	3-2: Students directly certified through Supplemental Nutrition Assistance Program (SNAP): Do not include students certified with SNAP through the letter method			
	3-3: Students directly certified through other programs: Include those directly certified through Temporary Assistance for Needy Families (TANF), Food Distribution Program on Indian Reservations (FDPIR), or Medicaid (if applicable); those documented as homeless, migrant, runaway, foster, Head Start, Pre-K Even Start, or non-applicant but approved by local officials. DO NOT include SNAP students already reported in 3-2.			
3-4: Students certified Categorically FREE eligible through SNAP letter method: Include students certified for free meals through the family's providing a letter from the SNAP agency.				
Section 4 Students approved as FREE or REDUCED PRICE eligible through a household application	**ALL SFAs collecting applications must report Section 4**		A. Number of Applications	B. Number of Students
	4-1: Approved as categorically FREE Eligible: Based on those providing documentation (e.g. a case number on an application for SNAP, TANF, FDPIR)			
	4-2: Approved as FREE eligible: Based on household size and income information			
	4-3: Approved as REDUCED PRICE eligible: Based on household size and income information			
T-1: Total FREE Eligible Students Reported:		<input type="text"/>	T-2: Total REDUCED PRICE Eligible Students Reported: <input type="text"/>	

****ALL SFAs must report Section 5 or check box 5.1 if applicable****

5.1: Check the box if ALL schools and/or RCCIs are exempt from verification (see instructions for list of exemptions).
If 5.1 is checked, no further reporting in Section 5 is required.

<p>5-2: Was verification performed and completed?</p> <p><input type="checkbox"/> Yes, completed by November 15th</p> <p><input type="checkbox"/> Yes, completed after November 15th</p> <p><input type="checkbox"/> No, verification was NOT performed or the process was not completed.</p>	<p>5-3: Type of Verification process used:</p> <p>1. <input type="checkbox"/> Standard (Lesser of 3% or 3,000 error-prone)</p> <p>2. <input type="checkbox"/> Alternative one (Lesser of 3% or 3,000 selected randomly)</p> <p>3. <input type="checkbox"/> Alternate two (Lesser of 1% or 1,000 error prone applications PLUS lesser of one-half of one percent or 500 applications with SNAP/TANF/FDPIR case numbers)</p>
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<p>If 1 or 3 checked in 5-3, report 5-4. If 2 checked in 5-3, enter "N/A" in 5-4</p>	<p>5-4: Total ERROR PRONE applications: <i>Report all applications as of October 1st considered error prone</i></p>	<p>5-5: Number of applications initially selected for verification sample:</p>	
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****ALL SFAs must report 5-7 or check box 5-6 if applicable****

5.6: Check the box if direct verification was not conducted in the SFA, (i.e. not even one of the schools in the SFA performed direct verification). If 5-6 is checked, skip 5-7.

<p>Report if FREE and/or REDUCED PRICE eligibility is confirmed through direct verification with SNAP/TANF/FDPIR/MEDICAID as of November 15th</p>	<p>5-7: Confirmed through direct verification:</p>	<p>A. Number of Applications</p>	<p>B. Number of Students</p>
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5-8: Results of Verification by Original Benefit Type

For each original benefit type (A, B, & C), report the number of applications and students as of November 15th for each result category (1, 2, 3, & 4). Do NOT include students and applications already reported in 5-7A or 5-7B.

A. FREE-Categorically Eligible <i>Certified as FREE based on SNAP/TANF/FDPIR documentation (e.g. case number) on application</i>			B. FREE-Income <i>Certified as FREE based on income/household size application</i>			C. REDUCED PRICE-Income <i>Certified as REDUCED PRICE based on income/household size application</i>		
Result Category	a. Applications	b. Students	Result Category	a. Applications	b. Students	Result Category	a. Applications	b. Students
1. Responded, NO CHANGE:			1. Responded, NO CHANGE:			1. Responded, NO CHANGE:		
2. Responded, Changed to REDUCED PRICE:			2. Responded, Changed to REDUCED PRICE:			2. Responded, Changed to FREE:		
3. Responded, Changed to PAID:			3. Responded, Changed to PAID:			3. Responded, Changed to PAID:		
4. NOT Responded, Changed to PAID:			4. NOT Responded, Changed to PAID:			4. NOT Responded, Changed to PAID:		

VC-1: Total questionable applications verified for cause (Enter "N/A" if not applicable):
Report the number of applications as of November 15th verified for cause in addition to the verification requirement.

Additional Instructions for Reporting the FNS-742

For additional guidance on verification requirements and procedures, refer to the Eligibility Manual
<http://www.fns.usda.gov/cnd/guidance/EligMan.pdf>

Enter the State agency name, SFA name, SFA ID, SFA city, SFA Zip code for each SFA with schools and/or institutions operating the NSLP and/or SBP. Select if the SFA overall is public or a private/nonprofit entity and enter the school year for which the report is completed. Include schools and/or RCCIs and the enrolled students only once if operating both NSLP and SBP.

Section 1

All SFAs with schools or RCCIs operating the NSLP and/or SBP must complete this section regardless if all schools are exempt from verification. Report schools or institutions operating the NSLP and/or SBP and students with access to the NSLP and/or SBP as of the last operating day in October.

1-1A & B: TOTAL number of schools (not including RCCIs) operating the NSLP and/or SBP and the TOTAL number of enrolled students with access to the NSLP and/or SBP.

1-2A & B: TOTAL number of RCCIs operating the NSLP and/or SBP and the TOTAL number of enrolled students with access to the NSLP and/or SBP in RCCIs.

1-2aA & 1-2aB: Of the RCCIs reported in 1-2A; enter the number of RCCIs with DAY students and ONLY the DAY students with access to the NSLP and/or SBP in RCCIs (**day students are those students NOT institutionalized and eligibility is determined individually by application or direct certification as applicable**).

1-2bA & 1-2bB: Of the RCCIs reporting in 1-2A; enter the number of RCCIs with NO day students and the TOTAL number of institutionalized students.

Section 2

All SFAs with some or all schools operating under an alternative provision must complete this section. For RCCIs operating an alternate provision, include both day and residential students. Report students with access to the NSLP and/or SBP as of the last operating day in October. 2-1 through 2-3 should be reported only if the school operates Provision 2/3 for BOTH programs resulting in no collection of applications for the school. Schools operating Provision 2/3 for only one program and collecting household applications for the other program should report applicable provision data in 2-4.

2-1A & B: BASE year is when certification procedures are conducted.

2-2A & B: NON BASE year is when no certification procedures are conducted.

2-2aB, 2-2bB: Multiply the most recent base year FREE percentage by the enrollment reported in 2-2B to determine 2-2aB. Multiply the base year REDUCED PRICE percentage by the enrollment reported in 2-2B to determine 2-2bB.

2-3A & B: Other alternatives include Provision 1 and universal meal service through census data or socioeconomic surveys.

2-4A & B: Enter the number of schools and/or RCCIs and students enrolled operating an alternate provision for **SBP or NSLP ONLY**. Include schools/RCCIs operating in both a base year and non base year.

2-5A & B: Number of schools operating the Community Eligibility Option and the number of enrolled students in the schools with access to the NSLP and/or SBP.

Section 3

All SFAs must complete this section. If each school/RCCI in the SFA was not required to perform direct certification with SNAP, then check box 3-1. Direct certification is the process by which the student is certified eligible based on documentation received directly from the applicable program (e.g. SNAP or TANF agency). This process eliminates the need for the household to submit an application. Report students approved FREE eligible as of the last operating day in October.

3-2B: Include students directly certified with SNAP. If a student is directly certified with SNAP as well as with another program (e.g. TANF/eligible homeless), include the student in this SNAP count (3-2B). Also include in this count any student in the SFA deemed eligible based on extended categorical eligibility via an eligible student in the primary household who has been directly certified with SNAP. Do NOT include SNAP letter method certifications in this SNAP count. (Letter method with SNAP is when the family submits a letter from the SNAP agency to document receipt of SNAP benefits. This is no longer considered to be direct certification.)

3-3B: Include students directly certified through programs other than SNAP, including those directly certified via TANF or FDPIR based on a letter provided by the family from the applicable agency. Include students in the SFA deemed eligible due to extended categorical eligibility via an eligible student in the primary household directly certified with TANF and FDPIR.

3-4B: Include ONLY students certified as categorically FREE eligible based on a letter submitted by family from the SNAP agency. Include students in the SFA deemed eligible due to extended categorical eligibility via an eligible student in the primary household certified as FREE categorically eligible with the letter method with SNAP.

Section 4

All SFAs with schools collecting individual household applications must report this section, including schools and/or RCCIs in a Provision 2/3 base year. Report number of **students(A)** as of the last operating day in October. Report number of **applications(B)** approved as of October 1st.

4-1A&B: Number of **applications** approved FREE eligible based on documentation submitted on an application (i.e. SNAP, TANF, or FDPIR case number) on file as of October 1st and the number of **students** approved FREE eligible based on documentation submitted on an application (i.e. SNAP, TANF, or FDPIR case number) as of the last operating day in October. *Include students in SFA deemed eligible due to extended categorical eligibility via an eligible student in the primary household categorically FREE eligible with SNAP, TANF, & FDPIR.*

4-2A&B: Number of **applications** approved FREE eligible based on income information submitted by the household on file as of October 1st and the number of **students** approved FREE eligible based on income information submitted by the household.

4-3A&B: Number of **applications** approved REDUCED PRICE eligible based on income information submitted by the household on file as of October 1st and the number of **students** approved REDUCED PRICE eligible based on income information submitted by the household.

T-1: Enter the total number of students reported as FREE eligible.
 (3-2B) + (3-3B) + (3-3B) + (4-1B) + (4-2B) + (2-2aB, if applicable)

T-2: Enter the total number of students reported as REDUCED PRICE eligible
 (4-3B) + (2-2bB, if applicable)

Section 5	<p>If ALL schools/RCCIs in the SFA are exempt from verification activities, check box 5-1 and no further reporting is required in Section 5. Verification efforts are NOT required for:</p> <ul style="list-style-type: none"> • schools/RCCIs in which all children have been certified under direct certification procedures including children documented as eligible foster, migrant, runaway or homeless children RCCIs which do not have day students; • schools electing the Community Eligibility Option; • schools/RCCIs in which FNS has approved universal meal service through census data or using socioeconomic surveys; e.g., special cash assistance claims based on economic statistics regarding per capita income (Puerto Rico and the Virgin Islands); • schools participating only in the Special Milk Program; • schools in which all children are served with no separate charge for food service and no special cash assistance is claimed, (i.e., non-pricing programs claiming only the paid rate of reimbursement); • all schools are Provision 2/3 schools in a non-base year; • schools which do not have any free or reduced price eligible students. • other FNS determined exemptions on a case-by-case basis.
	<p>5-2: Indicate whether verification was performed and completed by the deadline of November 15th. If verification was completed after the deadline, report the remainder of Section 5 as applicable.</p>
	<p>5-3: If verification was completed, check the type of verification process used to comply with the requirements of 7 CFR 245.6a. Please note the qualification requirements in 7 CFR 245.6a(d) must be met to use the two alternate sample sizes.</p> <ul style="list-style-type: none"> • <i>Standard:</i> Verify 3% or 3,000, whichever is less, of all approved error-prone applications on file as of October 1. If there are not enough error-prone applications, LEA must select at random additional applications to complete sample size. • <i>Alternate one:</i> Verify 3% or 3,000, whichever is less, of all randomly selected approved applications on file as of October 1. • <i>Alternate two:</i> Verify the lesser of 1% or 1,000 approved applications as of October 1 selected from error prone applications PLUS the lesser of one-half of one percent or 500 applications approved as of October 1 that provided a case number in lieu of income.
	<p>5-4: Error-prone applications are household applications approved as of October 1 indicating monthly income within \$100 of the monthly limit or annual income within \$1,200 of the annual limit of the applicable income eligibility guidelines.</p>
	<p>5-5: Enter the total number of applications initially selected for the verification process as indicated in 5.3.</p>
	<p>5-6: Check if direct verification was not conducted in the SFA (not even one school in the SFA conducted direct verification).</p>
	<p>5-7A & B: Only report applications and students if FREE and/or REDUCED PRICE eligibility is confirmed through direct verification. Report applications and students not directly verified in the appropriate category in 5-8.</p>
	<p>5-8: For the purposes of this report verification is complete</p> <ul style="list-style-type: none"> • for households whose eligibility does not change: as of the date of the confirmation of eligibility by a reviewing official; • for households which do not appeal a change in eligibility: as of the first operating day following the last date for filing an appeal in response to a notice of change in eligibility;
	<p>for households which appeal a change in eligibility: as of the first operating day following a decision by the hearing official. Responded: The household provided sufficient documentation. This includes verbal or written notification that the household declines benefits. NOT Responded: The household did not provide sufficient documentation or the household did not provide a response.</p> <p>A1, B1, & C1: Number of applications with no change, and the number of students on these applications.</p> <p>A2 & B2: Number of applications changed to REDUCED PRICE based on sufficient documentation provided by the household, and the number of students on the applications.</p> <p>C2: Number of applications changed to FREE based on sufficient documentation provided by the household, and the number of students on the applications.</p> <p>A3, B3, & C3: Number of applications for which the eligibility was changed to PAID based on sufficient documentation by the household, and the number of students on the applications.</p> <p>A4, B4, & C4: Number of applications for which the eligibility was changed to PAID because documentation necessary to complete the verification process was NOT provided, and the number of students on the applications. The number of applications reported in 5-8 should include both the results of verification from verification process and the results from any applications verified for cause reported in VC-1.</p>
	<p>VC-1: If applicable in at least one school and/or RCCI, report all applications verified for cause outside of the verification process (7 CFR 245.6a) as of November 15th. Applications verified for cause are NOT considered part of the required sample size. Include the results of verification for cause by original benefit type in the appropriate category in 5-8.</p>

[FR Doc. 2012-13943 Filed 6-7-12; 8:45 am]

BILLING CODE 3410-30-C

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Opportunity To Submit Comment on the Public Release Time of Several Major USDA Statistical Reports

AGENCY: National Agricultural Statistics Service and Office of the Chief Economist, Department of Agriculture.

ACTION: Notice and request for stakeholder input.

SUMMARY: The National Agricultural Statistics Service (NASS) and the Office of the Chief Economist are currently accepting stakeholder input on the

public release time and procedures of several major USDA statistical reports.

DATES: Comments on this notice must be received by July 9, 2012 to be assured of consideration.

ADDRESSES: Requests must address items listed in comments section below. Please submit comments via the Internet at <https://www.agcounts.usda.gov/optin/136771>, or via mail to: USDA-NASS, Agricultural Statistics Board Chair, 1400 Independence Ave. SW., Room 5029, Washington, DC 20250.

If you have any questions, send an email to HQASBDeputy@nass.usda.gov or call 1-800-727-9540.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720-4333, Fax: 202-

720-9013, or email: HQ_OA@nass.usda.gov.

SUPPLEMENTARY INFORMATION: USDA's National Agricultural Statistics Service and the Office of the Chief Economist are seeking comments on the release time of several of their major statistical reports. USDA statistical report release times are affected for the following reports: "World Agricultural Supply and Demand Estimates", "Acreage", "Cattle", "Cattle on Feed", "Crop Production", "Grain Stocks", "Prospective Plantings", "Quarterly Hogs and Pigs", and "Small Grain Summary". The current release times of 8:30 a.m. and 3 p.m. ET will remain unchanged until official comments are considered. Under the Freedom of Information Act (FOIA) and the Office of Management and Budget (OMB) Statistical Policy Directives 3 and 4,

rules are in place to regulate the public's access to federally generated statistics. With nearly round-the-clock commodities trading in the United States now underway, the agencies want to hear from all parties who use federal agricultural statistics so that we best meet their needs while upholding our responsibility to provide equal access to data. The agencies will carefully consider all input on the time of report releases. The 2012 official published schedule for all NASS reports is available online at www.nass.usda.gov/Publications/index.asp. The World Agricultural Outlook Board (WAOB) report schedule is available at www.usda.gov/oce/commodity/wasde.

Comments: Please address the following questions when submitting your comments:

1. What is your preferred time of day (EDT) for report release?
2. Why is this time preferred?
3. Who are the data users impacted by this recommended time change?
4. How will this change impact these data users?
5. How are the data used when received at the current release time?
6. Other comments.

All responses to this notice will become a matter of public record and be summarized and considered by NASS and the Office of the Chief Economist in preparing any recommendation(s).

Signed at Washington, DC, May 24, 2012.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2012-13951 Filed 6-7-12; 8:45 am]

BILLING CODE 3410-20-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: Quarterly Services Survey.

OMB Control Number: 0607-0907.

Form Number(s): QSS-0(A), QSS-0(E), QSS-1(A), QSS-1(E), QSS-1P(A), QSS-1P(E), QSS-2(A), QSS-2(E), QSS-3(A), QSS-3(E), QSS-4(A), QSS-4(E), QSS-4F(A), QSS-4F(E), QSS-5(A), QSS-5(E), QSS-6(A), QSS-6(E), QSS-7(A), QSS-7(E), QSS-8(A), QSS-8(E), QSS-9(A), QSS-9(E)..

Type of Request: Revision of a currently approved collection.

Burden Hours: 20,900.

Number of Respondents: 23,500.

Average Hours per Response: 13 minutes.

Needs and Uses: The U.S. Census Bureau requests a revision of the current OMB approval of the Quarterly Services Survey (QSS). Beginning in March 2013, with the introduction of a new sample, the QSS will cover all or parts of the following NAICS sectors: Utilities (excluding government owned); Transportation and warehousing (except rail transportation and postal) services; Information; Finance and insurance (except funds, trusts, and other financial vehicles); Real estate and rental and leasing; Professional, scientific, and technical services; Administrative and support and waste management and remediation services; Educational services (except elementary and secondary schools, junior colleges, and colleges, universities, and professional schools); Health care and social assistance; Arts, entertainment, and recreation; Accommodation; and Other services (except public administration). The QSS provides the most current reliable measures of total revenue and percentage of revenue by class of customer (for selected industries) on a quarterly basis. In addition, the QSS provides the only current quarterly measure of total expenses from tax-exempt firms in industries that have a large not-for-profit component. All respondent data are received by mail, facsimile, telephone, or Internet reporting.

Before the QSS economic indicator existed for the service sector, which accounts for about 53 percent of all economic activity, the only data available were from the Service Annual Survey (SAS) and the five-year Economic Censuses. The QSS was developed to address and provide more up-to-date estimates of services output. Based on this effort, the QSS is a major source for the development of quarterly Gross Domestic Product (GDP) and an indicator of short-term economic change.

The total revenue estimates produced from the QSS provide current trends of economic service industry activity in the United States from service providers with paid employees.

In addition to revenue, we also collect total expenses from tax-exempt firms in industries that have a large not-for-profit component. Expenses provide a better measure of the economic activity of these firms. Expense estimates produced by the QSS, in addition to inpatient days and discharges for the hospital industry, are used by the Centers for Medicare and Medicaid Services (CMS)

to project and study hospital regulation, Medicare payment adequacy, and other related projects. For select industries in the Arts, entertainment, and recreation sector, the survey produces estimates of admissions revenue.

Beginning in March 2013, with the introduction of a new QSS sample, the QSS plans to provide estimates of revenue for the Accommodation subsector and estimates for interest income, loan fees, fees and commissions, financial planning and investment management, and net gains and losses from brokering for select finance and insurance industries.

We currently publish estimates based on the 2002 North American Industry Classification System (NAICS). With the introduction of the new QSS sample, we will publish estimates based on the 2007 NAICS. We will continue to publish no later than 75 days after the end of each calendar quarter.

Reliable measures of economic activity are essential to an objective assessment of the need for, and impact of, a wide range of public policy decisions. The QSS supports these measures by providing the latest estimates of service industry output on a quarterly basis.

Currently, the U.S. Census Bureau collects, tabulates, and publishes estimates to provide, with measurable reliability, statistics on domestic service total revenue, total expenses, and percentage of revenue by class of customer for select service providers. In addition, the QSS produces estimates for inpatient days and discharges for hospitals. In the future, QSS may produce breakdowns of revenue from financial firms. This depends on the quality and amount of data received as well as its reliability and accuracy.

The Bureau of Economic Analysis (BEA) is the primary Federal user of QSS results. The BEA utilizes the QSS estimates to make improvements to the national accounts for service industries. In the National Income and Product Accounts (NIPA), the QSS estimates allow more accurate estimates of both Personal Consumption Expenditures (PCE) and private fixed investment. For example, recently published revisions to the quarterly NIPA estimates resulted from the incorporation of new source data from the QSS. Revenue estimates from the QSS are also used to produce estimates of gross output by industry that allow BEA to produce a much earlier release of the gross domestic product by industry estimates.

Estimates produced from the QSS are used by the BEA as a component of quarterly GDP estimates. The estimates also provide the Federal Reserve Board

(FRB) and Council of Economic Advisors (CEA) with timely information on current economic performance. All estimates collected from this survey are used extensively by various government agencies and departments on economic policy decisions; private businesses; trade organizations; professional associations; academia; and other various business research and analysis organizations.

The CMS uses the QSS estimates to develop hospital spending estimates in the National Accounts. In addition, the QSS estimates improve their ability to analyze hospital spending trends. They also use the estimates in their healthcare indicator analysis publication; ten-year health spending forecast estimates; and studies in hospital regulation and Medicare policy, procedures, and trends.

The Medicare Payment Advisory Commission (MedPac) utilizes the QSS estimates to assess payment adequacy in the current Medicare program.

The FRB and the CEA use the QSS information to better assess current economic performance. In addition, other government agencies, businesses, and investors use the QSS estimates for market research, industry growth, business planning and forecasting.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

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: June 5, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012-13927 Filed 6-7-12; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-862]

Foundry Coke Products From the People's Republic of China: Continuation of Antidumping Duty Order

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

DATES: *Effective Date:* May 31, 2012.

SUMMARY: As a result of the determinations by the Department of Commerce ("Department") and the International Trade Commission ("ITC") that revocation of the antidumping duty order on foundry coke products from the People's Republic of China ("PRC") would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order.

FOR FURTHER INFORMATION CONTACT: Ricardo Martinez Rivera, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-4532.

SUPPLEMENTARY INFORMATION: On December 1, 2011, the Department published the notice of initiation of the sunset review of the antidumping duty order on foundry coke products from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("Act").¹ As a result of its sunset review, the Department determined that revocation of the antidumping duty order on foundry coke from the PRC would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked.² On May 29, 2012, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on foundry coke from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable future.³

¹ See *Initiation of Five-Year ("Sunset") Review*, 76 FR 74775 (December 1, 2011).

² See *Foundry Coke Products from the People's Republic of China: Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 77 FR 20788 (April 6, 2012) and accompanying Issues and Decision Memorandum.

³ See *Foundry Coke Products from China Determination*, 77 FR 32998 (June 4, 2012), and

Scope of the Order

The product covered under the antidumping duty order is coke larger than 100 mm (4 inches) in maximum diameter and at least 50 percent of which is retained on a 100-mm (4 inch) sieve, of a kind used in foundries. The foundry coke products subject to the antidumping duty order were classifiable under subheading 2704.00.00.10 (as of January 1, 2000) and are currently classifiable under subheading 2704.00.00.11 (as of July 1, 2000) of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Continuation of the Order

As a result of these determinations by the Department and the ITC that revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping order on foundry coke products from the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year sunset review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: June 4, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012-13996 Filed 6-7-12; 8:45 am]

BILLING CODE 3510-DS-P

USITC Publication 4326 (May 29, 2012), Foundry Coke from China: Investigation No. 731-TA-891 (Second Review).

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-943]

Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Results of the First Antidumping Duty Administrative Review, Rescission in Part and Intent To Rescind in Part

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

SUMMARY: In response to requests from interested parties, the Department of Commerce ("the Department") is conducting the first administrative review of the antidumping duty order on oil country tubular goods ("OCTG") from the People's Republic of China ("PRC"), covering the period May 19, 2010, through April 30, 2011.¹

We have preliminarily determined that Jiangsu Chengde Steel Tube Share Co., Ltd. ("Jiangsu Chengde"), Taizhou Chengde Steel Tube Co., Ltd. ("Taizhou Chengde"), and Yangzhou Chengde Steel Tube Co., Ltd. ("Yangzhou Chengde") (collectively "the Chengde Group") are a single entity for purposes of this administrative review² and that the Chengde Group made sales of subject merchandise in the United States at prices below normal value ("NV") during the period of review ("POR"). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR. The Department is rescinding this administrative review, in part, for 18 respondents with existing separate rate status for which the request for review has been timely withdrawn. Further, the Department preliminarily intends to rescind this administrative review, in part, for 33 additional respondents who do not have separate rate status for which the request for review has been timely withdrawn.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument a summary of the argument. We intend to issue the final results no later than 120 days from the date of publication of

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 76 FR 24460 (May 2, 2011).

² See below Affiliation section; see also the Department's memorandum titled "Jiangsu Chengde Steel Tube Share Co., Ltd.—Affiliations and Collapsing," dated concurrent with this notice.

this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

DATES: *Effective Date:* June 8, 2012.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-4474, and (202) 482-0414, respectively.

Background

On May 21, 2010, the Department published in the **Federal Register** the antidumping duty order on OCTG from the PRC.³ On May 2, 2011, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on OCTG from the PRC. On May 26, 2011, in accordance with 19 CFR 351.213(b)(2), Jiangsu Chengde, a foreign producer and exporter of the subject merchandise, requested that the Department review its sales of subject merchandise during the POR.⁴ On May 31, 2011, United States Steel Corporation ("U.S. Steel")⁵ requested that the Department conduct an administrative review of the exports of subject merchandise made by 53 exporters/producers during the POR.⁶ On June 28, 2011, the Department initiated an administrative review of the antidumping duty order on OCTG from the PRC for the POR with regard to the 53 named exporters/producers.⁷ On September 19, 2011, the Department selected Jiangsu Chengde and Faray Petroleum Steel Pipe Co., Ltd. ("Faray") as mandatory respondents in this

³ See *Certain Oil Country Tubular Goods From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 75 FR 28551 (May 21, 2010) ("Order").

⁴ See Letter from Jiangsu Chengde, "Oil Country Tubular Goods from China; Request for Administrative Review," dated May 26, 2011.

⁵ The petitioners in the investigation consisted of eight parties. Not all eight parties have entered an appearance in this review. TMK IPSCO, Wheatland Tube Company, V&M Star, and Maverick Tube Corporation ("Maverick") are interested parties. Only U.S. Steel requested this administrative review.

⁶ See Letter from U.S. Steel, "Oil Country Tubular Goods from the People's Republic of China; Request for Administrative Review," dated May 31, 2011.

⁷ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 76 FR 37781 (June 28, 2011) ("Initiation Notice"). See also "Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part," 76 FR 53404 (August 26, 2011) in which the POR was corrected from November 17, 2009 through April 30, 2011 to May 19, 2010 through April 30, 2011.

review.⁸ During July and August 2011, four companies submitted separate rate certifications (including Jiangsu Chengde) and two companies submitted separate rate applications.⁹

On September 19, 2011 the Department issued its antidumping duty questionnaire to Jiangsu Chengde and Faray. On September 23, 2011, U.S. Steel withdrew its request for review for all parties named in the *Initiation Notice* except Jiangsu Chengde.¹⁰ The Department issued supplemental questionnaires to Jiangsu Chengde on December 12, 2011, February 15, 2012, and April 10, 2012. On February 16, 2012, U.S. Steel submitted comments on Jiangsu Chengde's initial questionnaire response and its response to the December 12, 2011 supplemental questionnaire.

On November 10, 2011, the Department requested that Import Administration's Office of Policy provide a list of surrogate countries for this review.¹¹ On November 28, 2011, the Office of Policy issued its list of surrogate countries.¹² On December 5, 2011, the Department issued a letter to interested parties seeking comments on surrogate country selection and surrogate values ("SVs").¹³ On December 19, 2011, TMK IPSCO, Wheatland Tube Company, V&M Star, Maverick Tube Corporation ("Maverick") and U.S. Steel provided surrogate country selection comments. On January 18, 2012, these parties also provided surrogate value comments. No interested party submitted rebuttal comments with respect to surrogate country selection or SVs.

On January 19, 2012, the Department extended the time period for completion of the preliminary results of this review

⁸ See the memorandum "Selection of Mandatory Respondents" dated September 19, 2011.

⁹ The two companies that submitted separate rate applications also received separate rate status in OCTG's less than fair value investigation.

¹⁰ See Letter from the U.S. Steel "Certain Oil Country Tubular Goods from the People's Republic of China: Withdrawal of Request for Administrative Review," dated September 23, 2011.

¹¹ See Memorandum to Carole Showers, Director, Office of Policy, "Administrative Review of Oil Country Tubular Goods from the People's Republic of China: Selection of Surrogate Countries," dated November 10, 2011.

¹² See Memorandum from Carole Showers, Director, Office of Policy, "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods ("OCTG") from the People's Republic of China ("China")," dated November 28, 2011 ("Surrogate Country List").

¹³ See Letter to Interested Parties, "First Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the People's Republic of China: Request for Comments on the Selection of a Surrogate Country and Surrogate Values," dated December 5, 2011.

by 90 days until April 30, 2012.¹⁴ On April 24, 2012, the Department extended the time period for completing the preliminary results of review by an additional 30 days until May 30, 2012.¹⁵

Period of Review

The POR is May 19, 2010, through April 30, 2011.

Scope of the Order

The merchandise covered by the order consists of certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (e.g., whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute ("API") or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The merchandise covered by the order also covers OCTG coupling stock. Excluded from the order are casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise covered by the order is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00,

7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The OCTG coupling stock covered by the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, and 7304.59.80.80.

The HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of the order is dispositive.

Rescission of Review in Part

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the initiation notice of the requested review. For all but one of the 53 companies for which the Department initiated an administrative review, U.S. Steel was the only party that requested the review. On September 23, 2011, U.S. Steel timely withdrew its review requests for 52 of the 53 companies for which the U.S. Steel was the only party that had requested an administrative review.

For those companies named in the *Initiation Notice* that received separate rate status in the *Final Determination* other than Jiangsu Chengde, in accordance with 19 CFR 351.213(d)(1), we are rescinding this administrative review. These companies are: (1) Anhui Tianda Oil Pipe Co., Ltd.; (2) Benxi Northern Steel Pipes Co., Ltd.; (3) Faray Petroleum Steel Pipe Co., Ltd.; (4) Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, The Thermal Recovery Equipment, Zibo Branch; (5) Hengyang Steel Tube Group Int'l Trading Inc.; (6) Jiangyin City Changjiang Steel Pipe Co., Ltd.; (7) Shandong Dongbao Steel Pipe Co., Ltd.; (8) Shandong Molong Petroleum Machinery Co., Ltd.; (9) Shengli Oil Field Freet Petroleum Equipment Co., Ltd.; (10) Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd.; (11) Shengli Oil Field Highland Petroleum Equipment Co., Ltd.; (12) Tianjin Pipe International Economic & Trading Corp.;

(13) Tianjin Tiangang Special Petroleum Pipe Manufacturer Co., Ltd.; (14) Wuxi Baoda Petroleum Special Pipe Manufacture Co., Ltd.; (15) Wuxi Seamless Oil Pipe Co., Ltd.; (16) Wuxi Zhenda Special Steel Tube Manufacturing Co., Ltd.; (17) Xigang Seamless Steel Tube Co., Ltd.; and (18) Yangzhou Lontrin Steel Tube Co., Ltd.

Intent To Rescind the Review in Part

Petitioner's timely request for an administrative review included a request to conduct an administrative review of multiple companies that do not have separate rates. As described above, the U.S. Steel withdrew its review request covering these companies. Because these companies have not established their eligibility for a separate rate, these companies will continue to be considered part of the PRC-wide entity. Although the PRC-wide entity is not under review for these preliminary results, the possibility exists that the PRC-wide entity could be under review for the final results of this administrative review. Therefore, we are not rescinding this review with respect to these companies at this time but we intend to rescind this review with respect to the following companies in the final results if the PRC-wide entity is not reviewed: (1) Baoshan Iron & Steel Co., Inc.; (2) Baosteel Group; (3) Cangzhou Huaye Metal Products Co., Ltd.; (4) Cangzhou Qiancheng Steel Pipe Co.; (5) Freet Petroleum Equipment Group Co., Ltd.; (6) Guangzhou Juyi Steel Pipes Co., Ltd.; (7) Hebei Machinery Import & Export Co., Ltd.; (8) Hebei Zhongyuan Steel Pipe Manufacturing Co., Ltd.; (9) Hefei Zijin Steel Tube Manufacturing Co., Ltd.; (10) Hengyang Valin MPM Tube Co., Ltd.; (11) Hengyang Valin Steel Tube Co., Ltd.; (12) Huai'an Zhenda Steel Tube Manufacturing Co., Ltd.; (13) Huludao Steel Pipe Industrial Co., Ltd.; (14) Huludao City Steel Pipe Industrial Co., Ltd.; (15) Jiangsu Changbao Precision Tube Co., Ltd.; (16) Jiangsu Changbao Steel Tube Co., Ltd.; (17) Jiangsu Yulong Steel Pipe Co., Ltd.; (18) Jiangyin Chuangzin Oil Pipe; (19) Jiangyin City Seamless Steel Tube Factory; (20) Jinan Meide Casting Co., Ltd.; (21) Northern Tool Equipment Co., Ltd.; (22) Shandong Molong Group Co.; (23) Shengli Oil Field Freet Import & Export Co., Ltd.; (24) Thermal Recovery Equipment Manufacturer of Shengli Oil Field Freet Petroleum Equipment Co., Ltd.; (25) Tianjin Pipe Group Co., Ltd.; (26) Tianjin Shuangjie Pipe Manufacturing Co., Ltd.; (27) Wuxi Fastube Industry Co.; (28) Wuxi Huayou Special Steel Co., Ltd.; (29) Wuxi Seamless Special Pipe Co., Ltd.; (30)

¹⁴ See *Oil Country Tubular Goods From the People's Republic of China: Extension of Time for the Preliminary Results of the Antidumping Duty Administrative Review*, 77 FR 2700 (January 19, 2012).

¹⁵ See *Oil Country Tubular Goods From the People's Republic of China: Extension of Time for the Preliminary Results of the Antidumping Duty Administrative Review*, 77 FR 24464 (April 24, 2012).

Xi'An Meixinte Industrial & Trading Co., Ltd.;¹⁶ (31)Yantai Yuanhua Steel Tubes Co., Ltd.; (32) ZhangJiaGang ZhongYuan Pipe-Making Co.; and (33) Zhejiang Jianli Enterprise Co., Ltd.

Review of Yangzhou Chengde

U.S. Steel requested a review of Yangzhou Chengde and subsequently withdrew its review request with respect to this company. However, as described above and in the affiliation-collapsing memorandum,¹⁷ the Department has collapsed Yangzhou Chengde, Jiangsu Chengde, and Taizhou Chengde into a single entity for purposes of this administrative review. Therefore, Yangzhou Chengde continues to be subject to review in this segment of the proceeding as part of the Chengde Group.

Non-Market Economy Country Status

No interested party contested the Department's treatment of the PRC as a non-market economy ("NME") country in this administrative review, and the Department has treated the PRC as an NME country in all past antidumping duty investigations and administrative reviews.¹⁸ Designation as an NME country remains in effect until it is revoked by the Department.¹⁹ As such, we continue to treat the PRC as an NME in this proceeding.

Surrogate Country

When the Department conducts an administrative review of imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production ("FOP"), valued in a surrogate market economy ("ME") country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (A) at a level of economic development

comparable to that of the NME country; and (B) significant producers of comparable merchandise.²⁰ The sources of the SVs are discussed under the "Factor Valuations" section below and in the Factor Valuation Memorandum,²¹ which is on file in the Central Records Unit, Room 7046 of the main Department building.

In examining which country to select as its primary surrogate country for this proceeding, the Department first determined that Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine are countries comparable to the PRC in terms of economic development.²² Once the Department has identified countries that are economically comparable to the PRC, it identifies those countries which are significant producers of comparable merchandise.

TMK IPSCO, Wheatland Tube Company, and V&M Star submitted a letter stating that Indonesia is an appropriate surrogate country because: (1) Indonesia is at a level of economic development comparable to the PRC; (2) Indonesia is a significant producer of identical and comparable merchandise; and (3) the government of Indonesia has published publicly available import data covering the entire POR from which values for the major FOPs may be derived.²³

U.S. Steel submitted a letter stating that Indonesia is the appropriate surrogate country because: (1) Indonesia is at a level of economic development comparable to the PRC; (2) Indonesia is a significant producer of comparable merchandise; (3) Indonesia data meets the Department's criteria: the data allows the Department to calculate SVs using period-wide average prices that are publicly available, specific to the inputs in question, net of taxes and import duties, and contemporaneous with the POR.²⁴ In addition, U.S. Steel states that the Department determined in the investigation that Indonesian import data provided the best available information to value the "most important input in the production of

OCTG, steel billets."²⁵ Moreover, U.S. Steel contends that financial statements will show that that surrogate financial ratios can be calculated using Indonesian financial statements that provide ample, contemporaneous financial data from producers of tubular products with physical characteristics, end uses, and production processes similar to those of OCTG. In addition, U.S. Steel contends that the Department has recognized that the financial data available for Indonesia "provide sufficient detail" to calculate surrogate financial ratios.²⁶

Maverick submitted a letter incorporating by reference the December 19, 2011, comments made by TMK IPSCO, Wheatland Tube Company, and V&M Star stating that Indonesia is an appropriate surrogate country. Maverick states that in the *Final Determination*, India was the primary surrogate country but India is no longer designated on the Surrogate Country List for the PRC. In addition, Maverick states that in the *Final Determination* the Department selected Indonesia as the source of the data used to calculate the SV for steel billets, which it claims comprises the vast majority of the cost of production of OCTG. Maverick contends that by doing so, the Department, for all practical purposes, indicated that Indonesia was the appropriate source of SVs for all primary material inputs.²⁷

After evaluating interested parties' comments, the Department has determined that Indonesia is the appropriate surrogate country to use in this review in accordance with section 773(c)(4) of the Act, based on the following: (1) Indonesia is at a level of economic development comparable to that of the PRC;²⁸ (2) Indonesia, in terms of total value of net exports, is a significant producer of comparable merchandise;²⁹ and (3) Indonesian SVs are available to value all of the FOPs reported by the Chengde Group, and in accordance with the Department's preference, this data represent non-export average values and are contemporaneous with the POR, product-specific, and tax-exclusive.

¹⁶ Yangzhou Chengde was covered by the initiation notice and did not receive a separate rate in the less-than-fair-value, however it is being collapsed with Jiangsu Chengde, the mandatory respondent in this review.

¹⁷ See the Department's memorandum titled "Jiangsu Chengde Steel Tube Share Co., Ltd.—Affiliations and Collapsing" ("Affiliation/Collapsing Memo") dated concurrently with the date of signature of this notice.

¹⁸ See e.g., *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 52645 (September 10, 2008); see also *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3560 (January 21, 2009).

¹⁹ See section 771(18)(C)(i) of the Act.

²⁰ See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004).

²¹ See Factor Valuation Memorandum.

²² See Surrogate Country List.

²³ See Letter from TMK IPSCO, Wheatland Tube Company, and V&M Star, "Oil Country Tubular Goods from the People's Republic of China," dated December 19, 2011.

²⁴ See Letter from U.S. Steel, "Oil Country Tubular Goods from the People's Republic of China: Surrogate Country Selection," dated January 6, 2012 ("U.S. Steel's SV Letter").

²⁵ U.S. Steel cites the *Final Determination*, and accompanying Issues and Decision Memorandum at Comment 20.

²⁶ U.S. Steel cites *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838 (April 13, 2009) and accompanying Issues and Decision memorandum at comment 1.

²⁷ See Letter from Maverick, "Oil Country Tubular Goods from the People's Republic of China: Comments on Surrogate Country Selection," dated January 6, 2012.

²⁸ See Surrogate Country List.

²⁹ See U.S. Steel' SV Letter.

Therefore, because Indonesia represents the experience of producers of comparable merchandise operating in a surrogate country, and provides the best, and only, available information on the record of this review, we have selected Indonesia as the surrogate country. Accordingly, we have calculated NV using Indonesian import data to value Chengde's FOPs. We have obtained and relied upon publicly available information to value all FOPs and factory overhead, sales general and administrative expenses, and profit ratios.³⁰ In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly available information to value the FOPs within 20 days after the date of publication of the preliminary results of review.³¹

Affiliation

Based on the evidence presented in Jiangsu Chengde's questionnaire responses, we preliminarily find that Jiangsu Chengde is affiliated with Yangzhou Chengde and Taizhou Chengde, both of which are capable of producing subject merchandise, pursuant to sections 771(33)(F) of the Act. In addition, based on the information presented in Jiangsu Chengde's questionnaire responses, we preliminarily find that Jiangsu Chengde, Taizhou Chengde, and Yangzhou Chengde, should be collapsed for the purposes of this administrative review. This finding is based on the determination that: (1) Jiangsu Chengde, Yangzhou Chengde, and Taizhou Chengde are affiliated; (2) Jiangsu Chengde is a producer of subject merchandise; (3) Yangzhou Chengde, and Taizhou Chengde are capable of producing merchandise under consideration and no retooling would be necessary in order to restructure manufacturing priorities; and (4) there is significant potential for manipulation of

³⁰ Other than with respect to ocean freight, Chengde Group did not report any ME purchase prices for its reported FOPs.

³¹ In accordance with 19 CFR 351.301(c)(1), for the final determination of this review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative SV information pursuant to 19 CFR 351.301(c)(1). 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.

price or production among the parties.³² For further discussion, see the Affiliation/Collapsing Memo.

Separate Rates

A designation of a country as an NME remains in effect until it is revoked by the Department.³³ 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 weighted-average dumping margin.³⁴

In the *Initiation Notice*, the Department notified parties of the application and certification process by which exporters may obtain separate rate status in NME proceedings.³⁵ It is the Department's policy to assign all exporters of subject merchandise in an NME country a single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). However, if the Department determines that a company is wholly foreign-owned or located in a ME, then a separate rate analysis is not necessary to determine whether it is independent from government control.³⁶

Separate Rate Applicants—Withdrawn Request for Review

Three companies other than the Chengde Group submitted separate rate certifications and two companies submitted separate rate applications.

³² See 19 CFR 351.401(f)(1) and (2).

³³ See section 771(18)(C)(i) of the Act.

³⁴ See e.g., *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) ("*Lined Paper from the PRC*"); see also *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 71 FR 29303 (May 22, 2006).

³⁵ See *Initiation Notice*.

³⁶ See e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

However, because U.S. Steel withdrew its request for review of these companies and no other company requested a review of them, their separate rate certifications/applications have not been considered for purposes of this administrative review.

Separate Rate Recipients

Jiangsu Chengde reported that it is a wholly Chinese-owned company.³⁷ Therefore, the Department must analyze whether it can demonstrate the absence of both *de jure* and *de facto* governmental control over its export activities. Evidence on the record shows that Taizhou Chengde is also a wholly Chinese-owned company. Yangzhou Chengde is a joint venture with Chinese and Hong Kong ownership. Taizhou Chengde and Yangzhou Chengde are not individually eligible for separate rate consideration in this review because evidence on the record indicates they had no shipments of subject merchandise during the POR. However, for these preliminary results, the Department determines that the Chengde Group, comprised of Jiangsu Chengde, Taizhou Chengde, and Yangzhou Chengde is eligible for separate rate status.

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 companies; and (3) other formal measures by the government decentralizing control of companies.³⁸

The evidence provided by the Chengde Group supports a preliminary finding of the absence of *de jure* governmental control based on the following: (1) An absence of restrictive stipulations associated with their businesses and export licenses; (2) applicable legislative enactments decentralizing control of companies; and (3) formal measures by the government decentralizing control of companies.³⁹

b. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each

³⁷ See Jiangsu Chengde's section A questionnaire response ("*AQR*"), dated October 20, 2011 at page A-2.

³⁸ See *Sparklers*, 56 FR at 20589.

³⁹ See Foreign Trade Law of the People's Republic of China, contained in Jiangsu Chengde's *AQR*, at Exhibit A-5 and Company Law of the People's Republic of China at Exhibit A-4.

respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices (“EP”) 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 disposition of profits or financing of losses.⁴⁰ The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control, which would preclude the Department from assigning separate rates.

The evidence provided by the Chengde Group supports a preliminary finding of the absence of *de facto* of government control based on the following: (1) The absence of evidence that the EPs are set by or are subject to the approval of a government agency;⁴¹ (2) the respondents have authority to negotiate and sign contracts and other agreements;⁴² (3) the respondents have autonomy from the government in making decisions regarding the selection of management;⁴³ and (4) the respondents retain the proceeds of their export sales and make independent decisions regarding disposition of profits or financing of losses.⁴⁴

Therefore, the evidence placed on the record of this review by the Chengde Group demonstrates an absence of *de jure* and *de facto* government control with respect to the Chengde Group’s exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, we have determined that Jiangsu Chengde has demonstrated its eligibility for a separate rate.⁴⁵

Fair Value Comparisons

To determine whether sales of OCTG to the United States by the Chengde

⁴⁰ See *Silicon Carbide*, 59 FR at 22587; 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).

⁴¹ See Jiangsu Chengde’s AQR, at A-7—A-8 and Exhibit A-9.

⁴² *Id.*

⁴³ See Jiangsu Chengde’s AQR, at A-9—A-10 and Exhibit A-3.

⁴⁴ See Jiangsu Chengde’s AQR at A-11.

⁴⁵ Yangzhou Chengde and Taizhou Chengde, which are part of the collapsed entity, are not eligible for separate rates because they had no shipments of subject merchandise during the POR.

Group were made at less than NV, the Department compared EP to NV, as described in the “Export Price” and “Normal Value” sections of this notice. In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*.⁴⁶ In particular, the Department compared monthly weighted-average EPs with monthly weighted-average normal values and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

Export Price

In accordance with section 772(a) of the Act, we used EP for all sales reported by the Chengde Group. We calculated EP based on the packed prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (*e.g.*, foreign inland freight from the plant to the port of exportation, domestic brokerage, international freight to the port of importation, etc.) 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 from Indonesia. See “Factor Valuation” section below for further discussion of surrogate value rates.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOPs, but when a producer sources an input from a ME and pays for it in ME currency, the Department may value the factor using the actual price paid for the input.⁴⁷ The Chengde Group reported that it purchased international freight services from ME suppliers for transportation of the subject merchandise to the United States and paid for it in a market economy currency.⁴⁸ However, the

⁴⁶ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012) (“*Final Modification for Reviews*”).

⁴⁷ See 19 CFR 351.408(c)(1); see also *Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc. v. United States*, 268 F.3d 1376, 1382–1383 (Fed. Cir. 2001) (affirming the Department’s use of market-based prices to value certain FOPs).

⁴⁸ See Jiangsu Chengde’s section C questionnaire response at page C-24 and Exhibit C-4.

Chengde Group in fact purchased its ocean freight from a NME provider who contracted from an ME freight provider. Therefore, because the Chengde Group purchased the ocean freight services from a NME supplier, for these preliminary results we are valuing ocean freight using an SV.⁴⁹

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors of production methodology if the merchandise is exported from an NME country and the Department finds that the available 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. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. The Department’s questionnaire requires that the Chengde Group provide information regarding the weighted-average FOPs across all of the company’s plants and/or suppliers that produce the merchandise under consideration, not just the FOPs from a single plant or supplier. This methodology ensures that the Department’s calculations are as accurate as possible.⁵⁰

We calculated NV based on FOPs in accordance with section 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The 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. The Department used FOPs reported by the Chengde Group for direct materials, energy, labor, and packing materials.

The Chengde Group reported that it generates steel scrap during the production process of merchandise under consideration and requested an

⁴⁹ See Jiangsu Chengde’s supplemental questionnaire response dated May 2, 2012 at 3 and Exhibits S3-4, S3-5 and S3-6. See also *Certain Stilbenic Optical Brightening Agents From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 76 FR 68148 (November 3, 2011).

⁵⁰ See *e.g.*, *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 Issue C Decision Memorandum at Comment 19.

offset for this scrap.⁵¹ However, the Department's policy is to grant scrap offsets for scrap produced, not sold, during the POR.⁵² The Chengde Group reported that it does not track scrap when it is produced but collects scrap and weighs it when it is sold.⁵³ Because the Chengde Group has not established that the steel scrap it sold during the POR was produced during the POR, for the preliminary results, the Department has determined that the Chengde Group is not entitled to a byproduct offset for steel scrap in its margin calculation.

Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on FOPs reported by the Chengde Group for the POR. To calculate NV, the Department multiplied the reported per-unit factor consumption quantities by publicly available Indonesian SVs. In selecting the SVs, the Department considered the quality, specificity, and contemporaneity of the data. The Department adjusted input prices by including freight costs to make them delivered prices, as appropriate. Specifically, the Department added to Indonesian import surrogate values an Indonesian surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all SVs used to value the Chengde Group's reported FOPs may be found in the Factor Valuation Memorandum.

For the preliminary results, in accordance with the Department's practice, except where noted below, we used data from Indonesian import statistics in the Global Trade Atlas ("GTA") and other publicly available Indonesian sources in order to calculate SVs for the Chengde Group's FOPs (*i.e.*, direct materials, energy, and 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, SVs

which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.⁵⁴ The record shows that data in the Indonesian import statistics, as well as those from the other Indonesian sources, are contemporaneous with the POR, product-specific, and tax-exclusive.⁵⁵ In those instances where we could not obtain publicly available information contemporaneous to the POR with which to value factors, we adjusted the SVs using, where appropriate, the Indonesian Producer Price Index ("PPI") inflators/deflators as published in the International Monetary Fund's *International Financial Statistics*.⁵⁶

Furthermore, with regard to Indonesian import-based SVs, we have disregarded prices that we have reason to believe or suspect may be subsidized, such as those from South Korea, India, and Thailand. 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 to all markets from these countries may be subsidized.⁵⁷ We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized.⁵⁸ Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. In accordance with the foregoing, we have not used prices

from these countries in calculating SVs using Indonesian import data.

In these preliminary results, the Department calculated the cost of labor using data on industry-specific labor cost from the primary surrogate country (*i.e.*, Indonesia), as described in *Labor Methodologies*. The Department relied on the International Labor Organization ("ILO") Yearbook of Labor Statistics ("Yearbook") Chapter 6A labor cost data for Indonesia for the year 2008, because this is the most recent Chapter 6A data available for Indonesia. The Department further determined that the two-digit description under ISIC–Revision 3–D ("28–Manufacture of Fabricated Metal Products") is the best available information because it is specific to the industry being examined and, therefore, is derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor cost data reported by Indonesia to the ILO under Sub-Classification 28 of the ISIC–Revision 3–D, in accordance with section 773(c)(4) of the Act. For further information on the calculation of the wage rate.⁵⁹

The ILO data from Chapter 6A of the Yearbook, which was used to value labor, reflects all costs related to labor, including wages, benefits, housing, training, *etc.* Pursuant to *Labor Methodologies*, the Department's practice is to consider whether financial ratios reflect labor expenses that are included in other elements of the respondent's factors of production (*e.g.*, general and administrative expenses).⁶⁰ The financial statements used to calculate financial ratios in this review were sufficiently detailed to allow the Department to isolate labor expenses from other expenses such as selling, general and administrative expenses. Therefore, the Department revised its calculation of surrogate financial ratios consistent with *Labor Methodologies* to exclude items incorporated in the labor wage rate data in Chapter 6A of the ILO data. As a result, bonuses and other forms of compensation included in the ILO's calculation of wages are now excluded from our calculation of labor in our surrogate financial ratios.⁶¹

For these preliminary results the Department did not separately value

⁵⁴ 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).

⁵⁵ See Factor Valuation Memorandum.

⁵⁶ See Factor Valuation Memorandum. See also, *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, 9600 (March 5, 2009) ("*Kitchen Racks Prelim*"), 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) ("*Kitchen Racks Final*").

⁵⁷ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 54007, 54011 (September 13, 2005), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review*, 71 FR 14170 (March 21, 2006); and *China Nat'l Mach. Import & Export Corp. v. United States*, 293 F. Supp. 2d 1334 (CIT 2003), *affirmed* 104 Fed. Appx. 183 (Fed. Cir. 2004).

⁵⁸ See H.R. Rep. No. 100–576 at 590 (1988).

⁵⁹ See Memorandum to the File, "2010–2011 Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the People's Republic of China: Factor Valuation Memorandum for the Preliminary Results of Review," dated May 30, 2012 ("*Factor Valuation Memorandum*").

⁶⁰ See *id.* at 36094.

⁶¹ See Factor Valuation Memorandum.

⁵¹ See Jiangsu Chengde's section D questionnaire response at pages D–14–D–15.

⁵² See *Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results of the 2007–2008 Administrative Review of the Antidumping Duty Order*, 75 FR 8301 (February 24, 2010) and accompanying Issues and Decision memorandum at Comment 10.

⁵³ See Jiangsu Chengde's section D questionnaire response at pages D–14–D–15.

energy inputs reported by the Chengde Group, *i.e.*, electricity, coal, coal tar, and water because the financial statement used to calculate factory overhead, selling, general and administrative expenses, and profit did not break out energy expenses. Therefore these expenses are included in the calculated financial ratios. Thus, separately valuing energy inputs would result in double-counting.⁶²

We valued truck freight expenses using data from an Indonesian freight forwarder, PT. Mantap Abiah Abadi, for the month of September 2011.

We valued brokerage and handling expenses using the World Bank

publication “Doing Business 2011: Indonesia.”

We valued marine insurance using a price quote for July 2010, which we obtained from RJG Consultants. RJG Consultants is a market-economy provider of marine insurance. We did not inflate this rate since it is contemporaneous with the POR.⁶³

19 CFR 351.408(c)(4) directs the Department to value overhead, general, and administrative expenses (“SG&A”) and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. In this administrative review, the Department

valued overhead, SG&A using the financial statements of PT Citra Tubindo a manufacturer and service provider for oilfield tubular goods.

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect as certified by the Federal Reserve Bank on the date of the U.S. sale.

Weighted-Average Dumping Margin

The preliminary weighted-average dumping margin is as follows:

Oil country tubular goods from the PRC–2010/11 administrative review

Exporter	Weighted-average dumping margin (percent)
Jiangsu Chengde, Yangzhou Chengde, Taizhou Chengde (collectively, The Chengde Group	185.84

Disclosure and Public Comment

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review.⁶⁴ Rebuttals to written comments may be filed no later than five days after the written comments are filed.⁶⁵

Any interested party may request a hearing within 30 days of publication of this notice.⁶⁶ 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”). Requests should contain the party’s name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing

which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.⁶⁷ Parties should confirm by telephone the date, time, and location of the hearing. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in the briefs, within 120 days of publication of these preliminary results, in accordance with section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.⁶⁸ The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For any individually examined respondent whose weighted-average dumping margin is above *de minimis* (*i.e.*, 0.50 percent) in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer’s examined sales and the total entered value of sales, in accordance with 19 CFR

351.212(b)(1).⁶⁹ Where we calculate a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, we will direct CBP to assess importer-specific assessment rates based on the resulting per-unit rates. Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis*, we will instruct CBP to collect the appropriate duties at the time of liquidation.⁷⁰ Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.⁷¹

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For the Chengde Group, which has a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, then zero cash deposit will

⁶² 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, 67713 (November 2, 2011) (“*Steel Wheels*”).

⁶³ See Factor Valuation Memorandum.

⁶⁴ See 19 CFR 351.309(c).

⁶⁵ See 19 CFR 351.309(d).

⁶⁶ See 19 CFR 351.310(c).

⁶⁷ See 19 CFR 351.310.

⁶⁸ See 19 CFR 351.212(b).

⁶⁹ In these preliminary results, the Department applied the assessment rate calculation method adopted in *Final Modification for Reviews, i.e.*, on the basis of monthly average-to-average

comparisons using only the transactions associated with that importer with offsets being provided for non-dumped comparisons. See *Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8103, February 14, 2012.

⁷⁰ See 19 CFR 351.212(b)(1).

⁷¹ See 19 CFR 351.106(c)(2).

be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 99.14 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: May 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012-13972 Filed 6-7-12; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Codes: Request for Public Input for Revision of Codes and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: This notice contains the list of National Fire Protection Association (NFPA) documents opening for Public Input, and it also contains information on the NFPA Revision Process. The National Institute of Standards and Technology (NIST) is publishing this notice on behalf of the National Fire Protection Association (NFPA) to announce the NFPA's proposal to revise

some of its fire safety codes and standards and requests Public Input to amend existing or begin the process of developing new NFPA fire safety codes and standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its codes and standards.

DATES: Interested persons may submit Public Input by 5:00 p.m. EST/EDST on or before the date listed with the code or standard.

ADDRESSES: Amy Beasley Cronin, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169-7471.

FOR FURTHER INFORMATION CONTACT:

Amy Beasley Cronin, NFPA, Secretary, Standards Council, at above address, (617) 770-3000. David F. Alderman, NIST, at 301-975-4019.

SUPPLEMENTARY INFORMATION: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety codes and standards and requests Public Input to amend existing or begin the process of developing new NFPA fire safety codes and standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its codes and standards. The publication of this notice of request for Public Input 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.

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 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 four basic steps that are followed for developing new documents as well as revising existing documents. Step 1: Public Input Stage, which results in the First Draft Report (formerly ROP); Step 2: Comment Stage, which results in the Second Draft Report (formerly ROC); Step 3: The Association Technical Meeting at the NFPA Conference & Expo; and Step 4: Standards Council consideration and issuance of documents.

Note: NFPA rules state that, anyone wishing to make Amending Motions on the Public Comments, Second Revisions, or Committee Comments must signal his or her

intention by submitting a Notice of Intent to Make a Motion by 5:00 p.m. EST/EDST of the Deadline stated in the Second Draft Report. Certified motions will then be posted on the NFPA Web site. Documents that receive notice of proper Amending Motions (Certified Amending Motions) will be presented for action at the Association Technical Meeting at the NFPA Conference & Expo. Documents that receive no motions will be forwarded directly to the Standards Council for action on issuance.

For more information on these rules and for up-to-date information on schedules and deadlines for processing NFPA Codes and Standards, check the NFPA Web site at www.nfpa.org, or contact NFPA Codes and Standards Administration.

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.

When a Technical Committee begins the development of a new or revised NFPA code or standard, it enters one of two Revision Cycles available each year. The Revision Cycle begins with the Call for Public Input, that is, a public notice asking for any interested persons to submit specific Input for developing or revising a code or standards. The Call for Public Input is published in a variety of publications.

Following the Call for Public Input period, the Technical Committee holds a meeting to consider all the submitted Public Input and make Revisions accordingly. A document known as the First Draft Report (formerly ROP), is prepared containing all the Public Input, the Technical Committee's response to each Input, as well as all Committee-generated First Revisions. The First Draft is then submitted for the approval of the Technical Committee by a formal written ballot. Any Revisions that do not receive approval by a two-thirds vote calculated in accordance with NFPA rules will not appear in the First Draft. If the necessary approval is received, the Revisions are published in the First Draft Report that is posted on the NFPA Web site at www.nfpa.org for public review and comment, and the process continues to the next step.

Once the First Draft Report becomes available, there is a 10 week comment period during which anyone may submit a Comment on the proposed changes in the First Draft Report. The

Committee then reconvenes at the end of the Comment period and acts on all Comments.

As before, a two-thirds approval vote by written ballot of the eligible members of the Committee is required for approval of the Second Revisions. All of this information is compiled into a second report, called the Second Draft Report (formerly ROC), which, like the First Draft Report, is published, and is made available for public review for a five-week period.

The process of public input and review does not end with the publication of the First Draft Report and Second Draft Report. Following the completion of the Public Input and Comment periods, there is further opportunity for debate and discussion through the Association Technical Meeting that takes place at the NFPA Conference & Expo.

The Association Technical Meeting provides an opportunity for the

Technical Committee Report (i.e., the First Draft Report and Second Draft Report) on each proposed new or revised code or standard to be presented to the NFPA membership for the debate and consideration of motions to amend the Report. Before making an allowable motion at an Association Technical Meeting, the intended maker of the motion must file, in advance of the session, and within the published deadline, a Notice of Intent to Make a Motion (NITMAM). A Motions Committee appointed by the Standards Council then reviews all notices and certifies all amending motions that are proper. Only these Certified Amending Motions, together with certain allowable Follow-Up Motions (that is, motions that have become necessary as a result of previous successful amending motions) will be allowed at the Association Technical Meeting.

For more information on dates/locations of NFPA Technical Committee

meetings and NFPA Conference & Expo, check the NFPA Web site at: www.nfpa.org/tcmeetings.

The specific rules for the types of motions that can be made and who can make them are set forth in NFPA's Regulations Governing the Development of NFPA Standards which should always be consulted by those wishing to bring an issue before the membership at an Association Technical Meeting.

Request for Public Input

Interested persons may submit Public Input supported by data, views, and substantiation. Public Input should be submitted online for each specific document (i.e., www.nfpa.org/publicinput). Public Input received by 5:00 p.m. EST/EDST on or before the closing date indicated with each code or standard would be acted on by the Committee, and then considered by the NFPA Membership at the Association Technical Meeting.

Document—edition	Document title	Public input closing date
NFPA 1—2012	Fire Code	6/22/2012.
NFPA 2—2011	Hydrogen Technologies Code	1/4/2013.
NFPA 3—2012	Recommended Practice on Commissioning and Integrated Testing of Fire Protection and Life Safety Systems.	6/22/2012.
NFPA 4—P*	Standard for Integrated Testing of Fire Protection Systems	6/22/2012.
NFPA 11—2010	Standard for Low-, Medium-, and High-Expansion Foam	1/4/2013.
NFPA 12—2011	Standard on Carbon Dioxide Extinguishing Systems	1/4/2013.
NFPA 12A—2009	Standard on Halon 1301 Fire Extinguishing Systems	1/4/2013.
NFPA 13E—2010	Recommended Practice for Fire Department Operations in Properties Protected by Sprinkler and Standpipe Systems.	1/4/2013.
NFPA 16—2011	Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems	1/4/2013.
NFPA 18—2011	Standard on Wetting Agents	6/22/2012.
NFPA 30—2012	Flammable and Combustible Liquids Code	6/22/2012.
NFPA 30A—2012	Code for Motor Fuel Dispensing Facilities and Repair Garages	6/22/2012.
NFPA 30B—2011	Code for the Manufacture and Storage of Aerosol Products	6/22/2012.
NFPA 31—2011	Standard for the Installation of Oil-Burning Equipment.	
NFPA 33—2011	Standard for Spray Application Using Flammable or Combustible Materials	1/4/2013.
NFPA 34—2011	Standard for Dipping, Coating, and Printing Processes Using Flammable or Combustible Liquids	1/4/2013.
NFPA 40—2011	Standard for the Storage and Handling of Cellulose Nitrate Film	6/22/2012.
NFPA 45—2011	Standard on Fire Protection for Laboratories Using Chemicals	1/4/2013.
NFPA 54—2012	National Fuel Gas Code	6/22/2012.
NFPA 59—2012	Utility LP-Gas Plant Code	6/22/2012.
NFPA 70E—2012	Standard for Electrical Safety in the Workplace®	6/22/2012.
NFPA 73—2011	Standard for Electrical Inspections for Existing Dwellings	7/8/2013.
NFPA 79—2012	Electrical Standard for Industrial Machinery	6/22/2012.
NFPA 85—2011	Boiler and Combustion Systems Hazards Code	1/4/2013.
NFPA 86—2011	Standard for Ovens and Furnaces	6/22/2012.
NFPA 87—2011	Recommended Practice for Fluid Heaters	6/22/2012.
NFPA 88A—2011	Standard for Parking Structures	6/22/2012.
NFPA 90A—2012	Standard for the Installation of Air-Conditioning and Ventilating Systems	6/22/2012.
NFPA 90B—2012	Standard for the Installation of Warm Air Heating and Air-Conditioning Systems	6/22/2012.
NFPA 91—2010	Standard for Exhaust Systems for Air Conveying of Vapors, Gases, Mists, and Noncombustible Particulate Solids.	1/4/2013.
NFPA 92—2012	Standard for Smoke Control Systems	1/4/2013.
NFPA 99—2012	Health Care Facilities Code	6/22/2012.
NFPA 99B—2010	Standard for Hypobaric Facilities	6/22/2012.
NFPA 120—2010	Standard for Fire Prevention and Control in Coal Mines	1/4/2013.
NFPA 122—2010	Standard for Fire Prevention and Control in Metal/Nonmetal Mining and Metal Mineral Processing Facilities.	1/4/2013.
NFPA 160—2011	Standard for the Use of Flame Effects Before an Audience	7/8/2013.
NFPA 170—2012	Standard for Fire Safety and Emergency Symbols	1/4/2013.
NFPA 204—2012	Standard for Smoke and Heat Venting	1/4/2013.
NFPA 253—2011	Standard Method of Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source.	1/4/2013.

Document—edition	Document title	Public input closing date
NFPA 262—2011	Standard Method of Test for Flame Travel and Smoke of Wires and Cables for Use in Air-Handling Spaces.	1/4/2013.
NFPA 265—2011	Standard Methods of Fire Tests for Evaluating Room Fire Growth Contribution of Textile or Expanded Vinyl Wall Coverings on Full Height Panels and Walls.	1/4/2013.
NFPA 276—2011	Standard Method of Fire Tests for Determining the Heat Release Rate of Roofing Assemblies with Combustible Above-Deck Roofing Components.	1/4/2013.
NFPA 286—2011	Standard Methods of Fire Tests for Evaluating Contribution of Wall and Ceiling Interior Finish to Room Fire Growth.	1/4/2013.
NFPA 302—2010	Fire Protection Standard for Pleasure and Commercial Motor Craft	6/22/2012.
NFPA 303—2011	Fire Protection Standard for Marinas and Boatyards	7/8/2013.
NFPA 307—2011	Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves	7/8/2013.
NFPA 312—2011	Standard for Fire Protection of Vessels During Construction, Conversion, Repair, and Lay-Up	7/8/2013.
NFPA 318—2012	Standard for the Protection of Semiconductor Fabrication Facilities	6/22/2012.
NFPA 326—2010	Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair	1/4/2013.
NFPA 329—2010	Recommended Practice for Handling Releases of Flammable and Combustible Liquids and Gases	1/4/2013.
NFPA 405—2010	Standard for the Recurring Proficiency of Airport Fire Fighters	1/4/2013.
NFPA 408—2010	Standard for Aircraft Hand Portable Fire Extinguishers	1/4/2013.
NFPA 409—2011	Standard on Aircraft Hangars	7/8/2013.
NFPA 410—2010	Standard on Aircraft Maintenance	1/4/2013.
NFPA 422—2010	Guide for Aircraft Accident/Incident Response Assessment	1/4/2013.
NFPA 423—2010	Standard for Construction and Protection of Aircraft Engine Test Facilities	7/8/2013.
NFPA 484—2012	Standard for Combustible Metals	6/22/2012.
NFPA 520—2010	Standard on Subterranean Spaces	1/4/2013.
NFPA 556—2011	Guide on Methods for Evaluating Fire Hazard to Occupants of Passenger Road Vehicles	7/8/2013.
NFPA 557—2012	Standard for Determination of Fire Loads for Use in Structural Fire Protection Design	1/4/2013.
NFPA 600—2010	Standard on Industrial Fire Brigades	1/4/2013.
NFPA 601—2010	Standard for Security Services in Fire Loss Prevention	1/4/2013.
NFPA 701—2010	Standard Methods of Fire Tests for Flame Propagation of Textiles and Films	1/4/2013.
NFPA 720—2012	Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment	6/22/2012.
NFPA 790—2012	Standard for Competency of Third-Party Field Evaluation Bodies	6/22/2012.
NFPA 791—2012	Recommended Practice and Procedures for Unlabeled Electrical Equipment Evaluation	6/22/2012.
NFPA 804—2010	Standard for Fire Protection for Advanced Light Water Reactor Electric Generating Plants	1/4/2013.
NFPA 805—2010	Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants	1/4/2013.
NFPA 806—2010	Performance-Based Standard for Fire Protection for Advanced Nuclear Reactor Electric Generating Plants Change Process.	1/4/2013.
NFPA 820—2012	Standard for Fire Protection in Wastewater Treatment and Collection Facilities	7/8/2013.
NFPA 850—2010	Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations.	1/4/2013.
NFPA 851—2010	Recommended Practice for Fire Protection for Hydroelectric Generating Plants	1/4/2013.
NFPA 853—2010	Standard for the Installation of Stationary Fuel Cell Power Systems	1/4/2013.
NFPA 914—2010	Code for Fire Protection of Historic Structures	1/4/2013.
NFPA 950—P*	Standard for Data Development and Exchange for the Fire Service	1/4/2013.
NFPA 1000—2011	Standard for Fire Service Professional Qualifications Accreditation and Certification Systems	7/8/2013.
NFPA 1003—2010	Standard for Airport Fire Fighter Professional Qualifications	1/4/2013.
NFPA 1035—2010	Standard for Professional Qualifications for Fire and Life Safety Educator, Public Information Officer, and Juvenile Firesetter Intervention Specialist.	1/4/2013.
NFPA 1071—2011	Standard for Emergency Vehicle Technician Professional Qualifications	7/8/2013.
NFPA 1091—P*	Standard for Traffic Control Incident Management Professional Qualifications	1/4/2013.
NFPA 1126—2011	Standard for the Use of Pyrotechnics Before a Proximate Audience	7/8/2013.
NFPA 1145—2011	Guide for the Use of Class A Foams in Manual Structural Fire Fighting	7/8/2013.
NFPA 1150—2010	Standard on Foam Chemicals for Fires in Class A Fuels	1/4/2013.
NFPA 1201—2010	Standard for Providing Fire and Emergency Services to the Public	1/4/2013.
NFPA 1250—2010	Recommended Practice in Fire and Emergency Service Organization Risk Management	1/4/2013.
NFPA 1407—2010	Standard for Training Fire Service Rapid Intervention Crews	1/4/2013.
NFPA 1410—2010	Standard on Training for Initial Emergency Scene Operations	1/4/2013.
NFPA 1452—2010	Guide for Training Fire Service Personnel to Conduct Dwelling Fire Safety Surveys	1/4/2013.
NFPA 1581—2010	Standard on Fire Department Infection Control Program	1/4/2013.
NFPA 1583—2008	Standard on Health-Related Fitness Programs for Fire Department Members	1/4/2013.
NFPA 1584—2008	Standard on the Rehabilitation Process for Members During Emergency Operations and Training Exercises.	1/4/2013.
NFPA 1620—2010	Standard for Pre-Incident Planning	1/4/2013.
NFPA 1710—2010	Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments.	6/22/2012.
NFPA 1720—2010	Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations and Special Operations to the Public by Volunteer Fire Departments.	6/22/2012.
NFPA 1901—2009	Standard for Automotive Fire Apparatus	7/8/2013.
NFPA 1906—2012	Standard for Wildland Fire Apparatus	7/8/2013.
NFPA 1931—2010	Standard for Manufacturer's Design of Fire Department Ground Ladders	1/4/2013.
NFPA 1932—2010	Standard on Use, Maintenance, and Service Testing of In-Service Fire Department Ground Ladders	1/4/2013.
NFPA 1936—2010	Standard on Powered Rescue Tools	1/4/2013.
NFPA 1952—2010	Standard on Surface Water Operations Protective Clothing and Equipment	1/4/2013.
NFPA 2001—2012	Standard on Clean Agent Fire Extinguishing Systems	1/4/2013.
NFPA 2010—2010	Standard for Fixed Aerosol Fire-Extinguishing Systems	1/4/2013.

Document—edition	Document title	Public input closing date
NFPA 2113—2012	Standard on Selection, Care, Use, and Maintenance of Flame-Resistant Garments for Protection of Industrial Personnel Against Flash Fire.	6/22/2012.

* Proposed NEW drafts are available from NFPA's Web site—www.nfpa.org or may be obtained from NFPA's Codes and Standards Administration, 1 Batterymarch Park, Quincy, Massachusetts 02169-7471.

Dated: May 31, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012-13952 Filed 6-7-12; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Public Workshop: “Designing for Impact: Workshop on Building the National Network for Manufacturing Innovation”

AGENCY: Advanced Manufacturing National Program Office, National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The Advanced Manufacturing National Program Office (AMNPO), housed at the National Institute of Standards and Technology (NIST), announces the second workshop in a series of public workshops entitled “Designing for Impact: Workshop on Building the National Network for Manufacturing Innovation.” This workshop series provides a forum for the AMPNO to introduce the National Network for Manufacturing Innovation (NNMI) and its regional components, Institutes for Manufacturing Innovation (IMIs) and for public discussion of this new initiative that was announced by President Obama on March 9, 2012¹. The discussion at the workshop will focus on the following topics: Technologies with Broad Impact, Institute Structure and Governance, Strategies for Sustainable Institute Operations, and Education and Workforce Development. The Designing for Impact workshop series is organized by representatives from the Department of Commerce, NIST; Department of Defense; Department of Energy; National Aeronautics and Space Administration; and National Science Foundation.

DATES: The second public workshop in this series will be held on Monday, July 9, 2012 from 8:00 a.m. until 4:30 p.m. Eastern time. Event check-in will

open at approximately 7:00 a.m. Eastern time. On-line sign-up for the workshop will close at 5:00 p.m. Eastern time on Tuesday, July 2, 2012.

ADDRESSES: The second public workshop in this series will be held at Corporate College East, 4400 Richmond Road, Warrensville Hts., OH 44128. Corporate College East is located on the campus of Cuyahoga Community College. Members of the public wishing to attend the public workshop must sign-up in advance and must do so online at: <http://eventgov.com/NNMIworkshop2Cleveland>.

FOR FURTHER INFORMATION CONTACT:

Michael Schen, (301) 975-6741, michael.schen@nist.gov; or Prasad Gupte, (301) 975-5062, prasad.gupte@nist.gov; or Carol Tolbert, (216) 433-6167, carol.m.tolbert@nasa.gov. Additional information may also be found at: <http://manufacturing.gov/amp/cleveland2012.html>.

SUPPLEMENTARY INFORMATION:

Legal Authority: 15 U.S.C. 272(b)(1).

The proposed NNMI initiative focuses on strengthening and ensuring the long-term competitiveness and job-creating power of U.S. manufacturing. The constituent IMIs will bring together industry, universities and community colleges, federal agencies, and U.S. states to accelerate innovation by investing in industrially-relevant manufacturing technologies with broad applications to bridge the gap between basic research and product development, provide shared assets to help companies—particularly small manufacturers—access cutting-edge capabilities and equipment, and create an unparalleled environment to educate and train students and workers in advanced manufacturing skills. The President's proposed FY 2013 budget includes \$1 billion for this proposed initiative.

Each IMI will serve as a regional hub of manufacturing excellence, providing the innovation infrastructure to support regional manufacturing and ensuring that our manufacturing sector is a key pillar in an economy that is built to last. Each IMI also will have a well-defined technology focus to address industrially-relevant manufacturing challenges on a large scale and to provide the capabilities and facilities

required to reduce the cost and risk of commercializing new technologies.

In his March 9, 2012 announcement, President Obama proposed building a national network consisting of up to 15 IMIs.

On December 15, 2011, Commerce Secretary John Bryson announced the Advanced Manufacturing National Program Office (AMNPO) that is hosted by the National Institute of Standards and Technology (NIST)². The AMNPO is charged with convening and enabling industry-led, private-public partnerships focused on manufacturing innovation and engaging U.S. universities; and designing and implementing an integrated “whole of government” advanced manufacturing initiative to facilitate collaboration and information sharing across federal agencies.

The AMNPO coordinated and held the first “Designing for Impact: Workshop on Building the National Network for Manufacturing Innovation” on April 25, 2012, at Rensselaer Polytechnic Institute in Troy, New York. On May 4, 2012 the AMNPO issued a Request for Information (RFI), seeking public comment on specific questions related to the structure and operations of the NNMI and IMIs. The RFI was published in the **Federal Register** and may be found at: <http://www.gpo.gov/fdsys/pkg/FR-2012-05-04/pdf/2012-10809.pdf>. Comments in response to the RFI are due on or before 11:59 p.m. Eastern Time on October 25, 2012.

Individuals planning to attend the second public workshop must sign-up in advance. See sign-up information in the **DATES** and **ADDRESSES** sections above.

Announcements of additional workshops may be found at: <http://www.manufacturing.gov/amp/ampevents.html>. Future workshops will also be announced in the **Federal Register**.

Dated: May 31, 2012.

Phillip Singerman,

Associate Director for Innovation and Industry Services.

[FR Doc. 2012-13945 Filed 6-7-12; 8:45 am]

BILLING CODE 3510-13-P

¹ <http://www.whitehouse.gov/the-press-office/2012/03/09/remarks-president-manufacturing-and-economy>.

² <http://www.commerce.gov/news/press-releases/2011/12/16/commerce-secretary-john-bryson-lays-out-vision-department-commerce>.

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****New England Fishery Management Council; Public Meeting**

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee (Committee) in June, 2012, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Monday, June 25, 2012, at 9 a.m.

ADDRESSES: The meeting will be held at the Courtyard by Marriott, 225 McClellan Highway, East Boston, MA 02128, telephone: (617) 569-5250; fax: (617) 569-5159.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION: The Research Steering Committee will meet to give an update on NEFSC Northeast Cooperative Research Program as well as an update on NERO Cooperative research activities. The Committee will also review cooperative research projects final reports: (1) REDNET—A Network to Redevelop a Sustainable Redfish (*Sebastes fasciatus*) Trawl Fishery in the Gulf of Maine; Kohl Kanwit, Mike Pol, Pingguo He; (2) Optimizing the Georges Bank Scallop Fishery by Maximizing Meat Yield and Minimizing Bycatch; 2011 Sea Scallop Research Set-Aside, Ronald Smolowitz, Kathryn Goetting, Farrell Davis, Dan Ward, Coonamessett Farm Foundation, Inc; (3) A Study on the Use of Tie-Downs and Their Impact on Atlantic Sturgeon, Marine Mammal Bycatch and Targeted Catch in the New Jersey Monkfish Fishery. Fox, D. A., L. M. Brown, K. W. Wark, and J. L. Armstrong. 2011, NOAA Bycatch Reduction Engineering Program; (4) Pilot Project to Assess Need and Initialize a Methodology to Groundtruth Existing Multibeam and Side-scan Sonar Seafloor Charts—NEC Report, Salvatore Genovese, Ph.D. Northeast University;

(5) Ecological Role of Adult and Juvenile Anadromous Forage fish in Downeast Maine Estuaries: Sea-run Alewife and Groundfish Prey—NEC Report, Karen Wilson, University of Southern Maine; and (6) A Collaborative Effort to Examine New Strategies for Managing Closed Bottom Habitats for Sea Scallops—NEC Report, Dr. Brian F. Jeal, University of Maine at Machias, Terry Stockwell and Chris Bartlett.

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 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 Paul J. Howard, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

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

Dated: June 5, 2012.

William D. Chappell,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012-13982 Filed 6-7-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Western Pacific Fishery Management Council; Public Meetings**

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

ACTION: Notice of change to public meeting agenda.

SUMMARY: The Western Pacific Fishery Management Council (Council) announces a change in the agenda for the 154th Council Meeting.

DATES: The 154th Council meeting will be held between 9 a.m. and 5:30 p.m. on June 26, 2012, between 8:30 a.m. and 5:30 p.m. on June 27, 2012, and between 8:30 a.m. and 4 p.m. on June 28, 2012.

For specific times and agenda, see

SUPPLEMENTARY INFORMATION.

ADDRESSES: The Council meeting will be held at the Laniakea YWCA-Fuller Hall, 1040 Richards Street, Honolulu, HI 96813; telephone: (808) 538-7061.

Council address: Western Pacific Fishery Management Council Office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522-8220.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on Tuesday, June 05, 2012 (77 FR 33195). This notice announces an amendment to the agenda. All other previously-published information remains the same.

The 154th Council meeting will be held between 9 a.m. and 5:30 p.m. on June 26, 2012, between 8:30 a.m. and 5:30 p.m. on June 27, 2012, and between 8:30 a.m. and 4 p.m. on June 28, 2012. Pelagics and International Fisheries is scheduled on the agenda for the afternoon session of the Council between 1:30 p.m. and 5:30 p.m. on June 27, 2012.

Revised Agenda for Item II: Pelagic & International Fisheries

- A. Amendment Options for Marianas Purse Seine Area Closure (Action Item)
- B. Recommendations on Territory Bigeye Tuna Catch Limits (Action Item)
- C. Options for American Samoa Longline and Purse Seine Landing Requirements (Action Item)
- D. Implementation of the Incidental Take Statement in the 2012 Biological Opinion for Hawaii Shallow-Set Longline Fishery (Action Item)
- E. American Samoa and Hawaii Longline Quarterly Reports
- F. International Fisheries Meetings
 1. Eighth Regular Session of the Western and Central Pacific Fisheries Commission (WCPFC 8)
 2. Inter-American Tropical Tuna Commission (IATTC) General Advisory Committee (GAC) and Scientific Subcommittee (SAC) Meetings
 3. U.S. Report to the Western and Central Pacific Tuna Commission
- G. Council Coordination Committee (CCC) Recommendation on International Fisheries Management
- H. Pelagic Plan Team Report
- I. Scientific and Statistical Committee Discussion and Recommendations
- J. Pelagic Standing Committee Report
- K. Public Hearing
- L. Council Discussion and Action

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

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522-8220 (voice) or (808) 522-8226 (fax), at least 5 prior to the meeting date.

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

Dated: June 5, 2012.

William D. Chappell,

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

[FR Doc. 2012-13984 Filed 6-7-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-BC09

Atlantic Highly Migratory Species; Notice of Public Scoping Meetings

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

ACTION: Notice of public scoping meeting.

SUMMARY: NMFS has scheduled an additional scoping meeting for Amendment 7 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan, which will focus on management issues related to Atlantic bluefin tuna. A Notice of Intent published on April 23, 2012, which notified the public that NMFS intended to hold public scoping meetings and that it anticipated preparing a draft environmental impact statement. That **Federal Register** document provided the public with specific dates and times for four scheduled scoping meetings. This notice notifies the public of another scoping meeting on Amendment 7 in Portland, ME.

DATES: The Portland, ME, scoping meeting will be held on June 18, 2012.

ADDRESSES: The Amendment 7 public scoping meeting will be held in Portland, ME, at the Holiday Inn by the Bay. See supplementary information below for further details.

FOR FURTHER INFORMATION CONTACT: Tom Warren or Brad McHale, 978-281-9260.

SUPPLEMENTARY INFORMATION: NMFS published a Notice of Intent on April 23, 2012 (77 FR 24161), which notified the public of its intent to hold public scoping meetings and that it anticipated preparing a draft environmental impact statement, and requested comments. The intent of the public comment and scoping meetings is to determine the scope and significance of issues to be analyzed in a potential proposed amendment to the 2006 Consolidated Highly Migratory Species Fishery

Management Plan and any associated environmental impact statement on management measures for Atlantic bluefin tuna. The public scoping process will help NMFS determine if existing measures are the best means of achieving certain management objectives for bluefin tuna and providing flexibility for future management, consistent with relevant Federal laws. NMFS also announced the availability of a scoping document describing measures for potential inclusion in a proposed Amendment, and solicited public comment on the objectives and management options. Written comments on the Notice of Intent and the scoping document must be received on or before July 15, 2012.

The April 23, 2012 Notice of Intent included the specific location, date, and time of four scoping meetings, and the location and approximate time of three NMFS consultations with regional fishery management councils (Councils), during their June meetings (Mid-Atlantic Fishery Management Council; New England Fishery Management Council, South Atlantic Fishery Management Council), and more detailed background information. That information is not repeated here.

Since the publication of the Notice of Intent, NMFS decided to schedule an additional scoping meeting that would be held in conjunction with the New England Fishery Management Council meeting in Portland, Maine, to provide additional opportunity for public input. The relevant information is provided below:

Date	Time	Meeting locations	Address
June 18, 2012	6:30-9 p.m.	In Association with the New England Fishery Management Council Meeting Portland, ME.	Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101, 800-345-5050.

In addition to this **Federal Register** notice, NMFS will notify the public of this meeting via email, and the following Web site: www.nmfs.noaa.gov/sfa/hms/breakingnews.htm.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tom Warren (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting.

Dated: June 4, 2012.

Carrie D. Selberg,

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

[FR Doc. 2012-13985 Filed 6-7-12; 8:45 am]

BILLING CODE 3510-22-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be provided by the nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 7/9/2012.

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:

Addition

On 4/13/2012 (77 FR 22289–22290), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is 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 organization that will provide the service to the Government.
2. The action will 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 U.S.C. 8501–8506) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Locations: Janitorial Services, Engineering Research & Development Center (ERDC), Construction Engineering Research Lab (CERL), 2902 Newmark Drive, Champaign, IL.

AT & T Building, 3001 Newmark Drive, Champaign, IL.

NPA: The Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, IL

Contracting Activity: Dept of the Army, XU W2R2 Const Engrg Lab, Champaign, IL

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2012–13939 Filed 6–7–12; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**Procurement List; Proposed Additions**

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: 7/9/2012.

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 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 provide the services to the Government.
2. If approved, the action will result in authorizing small entities to provide the 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 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 services are proposed for addition to the Procurement List for provision by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Service, National Weather Service, Ohio River Forecast Center, 1901 S. State Route 134, Wilmington, OH.

NPA: Goodwill Easter Seals Miami Valley, Dayton, OH.

Contracting Activity: Dept of Commerce, National Oceanic and Atmospheric Administration, Norfolk, VA.

Service Type/Location: Custodial Service, Federal Aviation Administration (FAA), EWR Tower Simulation System (TSS) Room, North Cargo Building 157, Liberty International Airport, 10 Tolar Pl., Newark, NJ.

NPA: North Jersey Friendship House, Inc., Hackensack, NJ.

Contracting Activity: Dept of Transportation, Federal Aviation Administration, Jamaica, NY.

Service Type/Location: Mail Service, US Soldiers Systems Center, Kansas Street, Building 20, Natick, MA.

NPA: Community Workshops, Inc., Boston, MA.

Contracting Activity: Dept of the Army, W6QK ACC–APG Natick, Natick, MA.

Service Type/Locations: Custodial Services, Cherry Capital Airport System Support Center, General Aviation Terminal Building, 1220 Airport Access Road, 2nd Floor, Traverse City, MI.

Cherry Capital Airport Air Traffic Control Center, 1330 Airport Access Road, Traverse City, MI.

NPA: Grand Traverse Industries, Inc., Traverse City, MI.

Contracting Activity: Dept of Transportation, Federal Aviation Administration, Des Plaines, MI.

Service Type/Location: Custodial Service, Department of Health and Human Services (DHHS), Supply Service Center, Buildings 5 and 14, Perry Point, MD.

NPA: Alliance, Inc., Baltimore, MD.

Contracting Activity: Dept of Health and Human Services, Health Resources and Services Administration, Perry Point, MD.

Service Type/Location: Custodial Service, Aseptic Level, Veterinary Treatment Facility, 413 Myers Street, Shaw AFB, SC.

NPA: Goodwill Industries of Lower South Carolina, Inc., North Charleston, SC.

Contracting Activity: Dept of the Air Force, FA4803 20 CONS LGCA, Shaw Air Force Base, SC.

Service Type/Location: Custodial Services, Vandenberg AFB, CA.

NPA: Goodwill Industries of Southern California, Los Angeles, CA.

Contracting Activity: Dept of the Air Force, FA4610 30 CONS LGC, Vandenberg Air

Force Base, CA.

Service Type/Location: Courier Service, Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Office of Chief Counsel (OCC), 1545 Hawkins Boulevard, Suite 275, El Paso, TX.

NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX.

Contracting Activity: Department of Homeland Security, U.S. Immigration and Customs Enforcement, Mission Support Orlando, Orlando, FL.

Service Type/Location: Janitorial Service, Corpus Christi Resident Office, U.S. Army Corps of Engineers (USACE), Southern Area Office (SAO), 1920 N. Chaparral St., Corpus Christi, TX.

NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX.

Contracting Activity: Dept of the Army, W076 Endist Galveston, Galveston, TX.

Service Type/Location: Secure Document Destruction Service, Navy Sea Systems (NAVSEA), Naval Surface Warfare Center (NSWC), (Offsite: 1611 S. Miller Street, Shelbyville, IN), 300 Highway 361, Building 64, Crane, IN.

NPA: Shares Inc., Shelbyville, IN.

Contracting Activity: Dept of the Navy, NSWC CRANE, Crane, IN.

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2012-13940 Filed 6-7-12; 8:45 am]

BILLING CODE 6353-01-P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2012-0030]

Proposed Extension of Approval of Information Collection; Comment Request—Testing and Recordkeeping Requirements for Carpets and Rugs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (Commission) requests comments on a proposed extension of approval, for a period of 3 years from the date of approval by the Office of Management and Budget (OMB), of information collection requirements for manufacturers and importers of carpets and rugs. The collection of information is in regulations implementing the Standard for the Surface Flammability of Carpets and Rugs (16 CFR part 1630) and the Standard for the Surface Flammability of Small Carpets and Rugs (16 CFR part 1631). These regulations establish

requirements for testing and recordkeeping for manufacturers and importers who furnish guaranties or certificates for products subject to the carpet flammability standards. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the OMB.

DATES: The Office of the Secretary must receive comments not later than August 7, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2012-0030, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email), except through www.regulations.gov.

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For further information contact: Mary James, Office of Information and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504-7213, or by email to: mjames@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. The Standards

The Standard for the Surface Flammability of Carpets and Rugs,

16 CFR part 1630, and the Standard for the Surface Flammability of Small Carpets and Rugs, 16 CFR part 1631, were issued under section 4 of the Flammable Fabrics Act (FFA) (15 U.S.C. 1193) in 1970. The standards cover any type of finished product made in whole or in part of fabric or related material and intended for use as a floor covering in homes, offices, or other places of assembly or accommodation. The standards establish an acceptable level of flammability performance. Items must meet the requirements of the standards prior to distribution in commerce, and firms must issue a “General Certification of Conformity” (GCC) or “Children’s Product Certificate” (CPC), certifying that the products meet all applicable product safety regulations. The GCC and CPC requirements are additional requirements imposed by the Consumer Product Safety Improvement Act (CPSIA), 15 U.S.C. 2063(g). The CPSIA also imposes a third party testing requirement for all consumer products, including carpets and rugs, subject to a consumer product safety rule or similar rule, ban, standard, or regulation under any other Act enforced by the Commission, that are primarily intended for children 12 years of age or younger. Every manufacturer (including an importer) or a private labeler of a children’s carpet or rug must have its product tested for compliance to parts 1630 and 1631 and other applicable product safety rules by an accredited, CPSC-accepted third party laboratory. In addition to the standards, certain enforcement regulations (16 CFR 1630.31 and 1631.32) have been issued under section 5 of the FFA (15 U.S.C. 1194) to address reasonable and representative tests and the recordkeeping requirement. These rules specify the frequency of testing necessary to support the issuance of a guaranty of compliance under the FFA and the types of records that must be maintained to document this activity. Beginning in 2013, firms must also employ reasonable and representative testing programs in accordance with the CPSIA.

The OMB approved the collection of information in the regulations under control number 3041-0017. OMB’s most recent extension of approval expires on August 31, 2012. The Commission now proposes to request an extension of approval for the collection of information in the regulations.

B. Estimated Burden

The Commission estimates that 120 firms are subject to the information collection requirements. These firms

have elected to issue a guaranty of compliance with the FFA, or they are required to certify compliance of products intended for children under the CPSA (as amended by the CPSIA). The number of tests that a firm issuing a guaranty of compliance would be required to perform each year varies, depending upon the number of carpet styles and the annual volume of production. CPSC staff estimates that the average firm issuing a continuing guarantee under the FFA is required to conduct a maximum of 200 tests per year. The actual number of tests required by a given firm may vary from one to 200, depending upon the number of carpet styles and the annual production volume. For example, if a firm manufactures 100,000 linear yards of carpet each year, and it consistently has obtained passing test results, then only one test per year is required. For purposes of estimating burden, we have used the midpoint, 100 tests per year. The time required to conduct each test is estimated to be 2.5 hours, plus the time required to establish and maintain the test record. We estimate the total annualized cost/burden to respondents could be as high as 12,000 tests per year at 2.5 hours per test or 30,000 hours.

The annualized costs to respondents for the hour burden for collection of information is estimated to be as high as \$1,837,200, using a mean hourly employer cost-per-hour-worked of \$61.24 (Bureau of Labor Statistics (BLS): Total compensation rates for management, professional, and related occupations in private goods-producing industries, December 2011) (30,000 hours × \$61.24).

The estimated annual cost to the federal government of the information and collection requirements is approximately \$42,900. This sum includes three staff months expended for examination of the information in records required to be maintained by the enforcement rules. This estimate uses an average wage rate of \$57.13 per hour (the equivalent of a GS-14 Step 5 employee), with an additional 30.2 percent added for benefits (BLS, Percentage of total compensation comprised by benefits for all civilian management, professional, and related employees, December 2011) or \$82.56 per hour × 520 hours.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic, or other technological collection techniques, or other forms of information technology.

Dated: June 5, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012-13935 Filed 6-7-12; 8:45 am]

BILLING CODE 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

Notice of Teleconference of the Chronic Hazard Advisory Panel on Phthalates and Phthalate Substitutes

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Consumer Product Safety Commission ("CPSC" or "Commission") is announcing a teleconference and the seventh meeting of the Chronic Hazard Advisory Panel ("CHAP") on phthalates and phthalate substitutes. The Commission appointed this CHAP on April 14, 2010, to study the effects on children's health of all phthalates and phthalate alternatives, as used in children's toys and child care articles, pursuant to section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) (Pub. L. 110-314). The CHAP will discuss its progress toward completing its analysis of potential risks from phthalates and phthalate substitutes.

DATES: The teleconference will take place from 11 a.m. to 1 p.m. EDT (15 to 17 GMT) on Friday, June 29, 2012. Interested members of the public may listen to the CHAP's discussion. Members of the public will not have the opportunity to ask questions, comment, or otherwise participate in the teleconference. Interested parties should contact the CPSC project manager, Michael Babich, by email (mbabich@cpsc.gov), for call-in instructions no later than Wednesday, June 27, 2012.

FOR FURTHER INFORMATION CONTACT: Michael Babich, Directorate for Health Sciences, Consumer Product Safety Commission, Bethesda, MD 20814; telephone (301) 504-7253; email: mbabich@cpsc.gov.

SUPPLEMENTARY INFORMATION: Section 108 of the CPSIA permanently prohibits the sale of any "children's toy or child care article" containing more than 0.1 percent of each of three specified phthalates: di- (2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), and benzyl butyl phthalate (BBP). Section 108 of the CPSIA also prohibits, on an interim basis, the sale of any "children's toy that can be placed in a child's mouth" or "child care article" containing more than 0.1 percent of each of three additional phthalates: diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), and di-*n*-octyl phthalate (DnOP).

Moreover, section 108 of the CPSIA requires the Commission to convene a CHAP "to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles." The CPSIA requires the CHAP to complete an examination of the full range of phthalates that are used in products for children and:

- Examine all of the potential health effects (including endocrine-disrupting effects) of the full range of phthalates;
- Consider the potential health effects of each of these phthalates, both in isolation, and in combination with other phthalates;
- Examine the likely levels of children's, pregnant women's, and others' exposure to phthalates, based upon a reasonable estimation of normal and foreseeable use and abuse of such products;
- Consider the cumulative effect of total exposure to phthalates, both from children's products and from other sources, such as personal care products;
- Review all relevant data, including the most recent, best-available, peer-reviewed, scientific studies of these phthalates and phthalate alternatives that employ objective data-collection practices or employ other objective methods;
- Consider the health effects of phthalates not only from ingestion, but also as a result of dermal, hand-to-mouth, or other exposure;
- Consider the level at which there is a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals and their offspring, considering the best available science, and using sufficient safety factors to account for uncertainties

regarding exposure and susceptibility of children, pregnant women, and other potentially susceptible individuals; and

- Consider possible similar health effects of phthalate alternatives used in children's toys and child care articles.

The CHAP must review prior work on phthalates by the Commission, but it is not to be considered determinative because the CHAP's examination must be conducted *de novo*.

The CHAP must make recommendations to the Commission regarding any phthalates (or combinations of phthalates), in addition to those identified in section 108 of the CPSIA, or phthalate alternatives that the panel determines should be prohibited from use in children's toys or child care articles, or otherwise restricted. The CHAP members were selected by the Commission from scientists nominated by the National Academy of Sciences.

See 15 U.S.C. 2077, 2030(b).

The CHAP met previously in April, July, and December 2010, March, July, and November 2011, and in February 2012, at the CPSC's offices in Bethesda, MD, and by teleconference in November 2010, September 2011, December 2011, and February and April 2012. The CHAP heard testimony from interested parties at the July 2010, and November 2011, meetings. There will not be any opportunity for public comment during the June 2012 teleconference.

Dated: June 5, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012-13934 Filed 6-7-12; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Members Meeting; Cancellation of Meeting

AGENCY: Under Secretary of Defense Personnel and Readiness, DoD.

ACTION: Notice of meeting; cancellation.

SUMMARY: On May 11, 2012 (77 FR 27739), Department of Defense announced a meeting of the National Security Education Board. This meeting was to be held on June 20, 2012, from 8:30 a.m. to 2 p.m. at Defense Language and National Security Education Office, 1101 Wilson Boulevard, Suite 1210, Arlington, VA 22209.

Pursuant to Public Law 92-463, notice is hereby given of the cancellation of the June 20, 2012 National Security Education Board

meeting. The purpose of the meeting was to review and make recommendations to the Secretary of Defense concerning requirements established by the David L. Boren National Security Education Act, Title VII of Public Law 102-183, as amended. The meeting will be postponed until fall 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Alison Patz, Program Analyst, Defense Language and National Security Education Office (DLNSEO), 1101 Wilson Boulevard, Suite 1210, Arlington, Virginia 22209-2248; (703) 696-1991. Electronic mail address: Alison.patz@wso.whs.mil.

Dated: June 5, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012-13942 Filed 6-7-12; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of the Draft Feasibility Study/Environmental Impact Statement for the Chatfield Reservoir Storage Reallocation, Littleton, CO

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, the U.S. Army Corps of Engineers has prepared a Draft Feasibility Study/Environmental Impact Statement (FR/EIS) for the Chatfield Reservoir Storage Reallocation, Littleton, Colorado and by this notice is announcing the opening of the comment period.

DATES: The comment period will be open from June 8, 2012 to August 7, 2012. Public meetings will take place in June, 2012. The specific schedule is provided under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Written comments should be sent to: Department of the Army; Corps of Engineers, Omaha District; CENWO-PM-AA; ATTN: Chatfield Reservoir Storage Reallocation FR/EIS; 1616 Capitol Avenue; Omaha, NE 68102-4901. Comments can also be emailed to: chatfieldstudy@usace.army.mil. Comments on the Draft FR/EIS for the Chatfield Reservoir Storage Reallocation must be postmarked, emailed, or

otherwise submitted no later than August 7, 2012.

FOR FURTHER INFORMATION CONTACT: For further information and/or questions about the Chatfield Reservoir Storage Reallocation FR/EIS, please contact Ms. Gwyn Jarrett, Project Manager, by telephone: (402) 995-2717, by mail: 1616 Capitol Avenue, Omaha, NE 68102-4901, or by email: chatfieldstudy@usace.army.mil. For inquiries from the media, please contact the USACE Omaha District Public Affairs Officer (PAO), Ms. Monique Farmer by telephone (402) 995-2416, by mail: 1616 Capitol Avenue, Omaha, NE 68102-4901, or by email: Monique.I.Farmer@usace.army.mil.

SUPPLEMENTARY INFORMATION:

1. *Background.* Population growth within the Denver, Colorado, metropolitan area continues to create a demand on water providers. Colorado's population is projected to be between 8.6 and 10.3 million in 2050. The Statewide Water Supply Initiative (SWSI), commissioned by the State Legislature, estimates that by 2050, Colorado will need between 600,000 and 1 million acre-feet/year of additional municipal and industrial water. There is also a strong need for additional water supplies for the agricultural community in the South Platte Basin as thousands of acres of previously irrigated land has not been farmed in recent years due to widespread irrigation well curtailments. The purpose and need of the Chatfield Reservoir Storage Reallocation study is to increase availability of water, sustainable over the 50-year period of analysis, in the greater Denver area so that a larger proportion of existing and future (increasing) water needs can be met.

By authority provided under Section 808 of the Water Resources Development Act of 1986 (Pub. L. 99-622), as amended by Section 3042 of the Water Resources Development Act of 2007 (Pub. L. 110-114), the Secretary of the Army, upon request of and in coordination with, the Colorado Department of Natural Resources (CDNR), and upon the Chief of Engineers' finding of feasibility and economic justification, may reassign a portion of the storage space in the Chatfield Lake project to joint flood control-conservation purposes, including storage for municipal and industrial water supply, agriculture, environmental restoration, and recreation and fishery habitat protection and enhancement. The reallocation was conditioned upon the appropriate non-Federal interests agreeing to repay the

cost allocated to such storage in accordance with the provisions of the Water Supply Act of 1958, the Federal Water Project Recreation Act, and such other Federal laws as the Secretary determines appropriate. The payments would go to the United States Treasury. The recreation modifications and environmental mitigation work are additionally authorized by Section 103(c)(2) WRDA 1986, requiring non-Federal payment of 100 percent of the costs of municipal and industrial water supply projects, and this work will be cost shared pursuant to that section.

It is the purpose of this study to identify alternatives, compare those alternatives, and select the best alternative for meeting the needs based on solid planning principles. The FR/EIS allows the public, cooperating agencies, and Corps decision makers to compare the impacts and costs among a range of alternatives.

2. *Document Availability.* The Chatfield Reservoir Storage Reallocation FR/EIS is available online at http://www.nwo.usace.army.mil/html/pd-p/Plan_Formulation/GI/GI_Chatfield.html. Hard copies will be available at the following community libraries and Corps of Engineers Chatfield Project Office no later than June 15, 2012.

Highlands Ranch Library, 9292 Ridgeline Blvd., Highlands Ranch, CO 80129, 303-647-6642.

Colorado Water Conservation Board, 1313 Sherman Street, Room 721, Denver, CO 80203, 303-866-3441.

Columbine Library, 7706 West Bowles Avenue, Littleton, CO 80123, 303-235-5275.

Lincoln Park Library, 919 7th Street, Suite 100, Greeley, CO 80631, 970-546-8460.

Aurora Public Library, 14949 E. Alameda Parkway, Aurora, CO 80012, (303) 739-6600

U.S. Army Corps of Engineers, Tri-Lakes Project Office, 9307 S. Wadsworth Blvd., Littleton, CO 80128.

3. *Public Involvement Meetings.* The Omaha District of the U.S. Army Corps of Engineers invites all interested entities including Tribal governments, Federal agencies, state and local governments, and the general public to comment on the Chatfield Reservoir Storage Reallocation FR/EIS. The public comment period began with the publication of this notice on June 8, 2012 and will continue until August 7, 2012.

All public involvement meetings will use an open house format and will include the opportunity to make public comment. Informational materials about the Chatfield Reservoir Storage

Reallocation FR/EIS will be located throughout the room for participant perusal throughout the evening. Corps representatives will be available to meet one-on-one with meeting participants. In addition to the public comments being recorded, written comments will be collected on comment cards, and the opportunity to have formal verbal comments transcribed will be available. All forms of comment will be weighted equally. Input from the public involvement meetings, along with comments received by other means (regular mail or email), will be used to refine the document before a Final FR/EIS is released.

The Corps has scheduled public involvement meetings from 5:30 p.m. to 8:30 p.m. at the following locations:

1. Monday, June 25th—The Wildlife Experience, 10035 S. Peoria St. Parker, CO 80134, (720) 488-3300.
2. Tuesday, June 26th—Dakota Ridge High School, 13399 West Coal Mine Avenue, Littleton, CO 80127, (303) 982-1970.
3. Wednesday, June 27th—Valley High School, 1001 Birch St, Gilcrest, CO 80623, (970) 737-2494.

If you require assistance under the Americans with Disabilities Act please send your name and phone via email to Colleen.P.O'Brien@usace.army.mil at least three days prior to the meeting you plan to attend. Persons who use a telecommunications service for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877-8339, 24 hours a day, seven days a week to relay this same information.

For more information about the Chatfield Reservoir Storage Reallocation FR/EIS, please visit http://www.nwo.usace.army.mil/html/pd-p/Plan_Formulation/GI/GI_Chatfield.html.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012-13914 Filed 6-7-12; 8:45 am]

BILLING CODE 3720-58-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; Lumedyne Technologies, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Lumedyne Technologies, Inc., a revocable, nonassignable, partially exclusive license in the United States to practice the Government-Owned

inventions described in Navy Case No. 101330: Tuning Fork Gyroscope Time Domain Inertial Sensor.//Navy Case No. 101472: Auto-Ranging for Time Domain Extraction of Perturbations to Sinusoidal Oscillation.//Navy Case No. 101473: Closed-Loop Control Algorithm for a Gyroscope with Arbitrary Force and Angular Rate Inputs.//U.S. Patent Application No. 13/353205: Time Domain Tunneling Switched Multi-axial Gyroscope with Independent Acceleration Measurement.//U.S. Patent Application No. 13/425631: In-Plane, Six Degree of Freedom Inertial Device with Integrated Clock.//U.S. Patent Application No. 11/272588: Auto-Ranging for Time Domain Inertial Sensor.//U.S. Patent Application No. 13/288841: Oscillation Apparatus with Atomic-Layer Proximity Switch.//U.S. Patent No. 8174083: Dual-suspension system for MEMS-based devices.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than June 25, 2012.

ADDRESS: Written objections are to be filed with the Office of Research and Technology Applications Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St, Bldg A33 Room 2531, San Diego, CA 92152-5001.

FOR FURTHER INFORMATION CONTACT: Brian Suh, Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St, Bldg A33 Room 2531, San Diego, CA 92152-5001, telephone 619-553-5118, E-Mail: brian.suh@navy.mil.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: May 31, 2012.

J.M. Beal,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012-13867 Filed 6-7-12; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13458-001]

BOST1 Hydroelectric LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.*: 13458–001.

c. *Date Filed*: March 21, 2012.

d. *Submitted By*: BOST1

Hydroelectric LLC (BOST1).

e. *Name of Project*: Coon Rapids Dam Hydroelectric Project.

f. *Location*: Mississippi River in Hennepin and Anoka counties, Minnesota at the existing Coon Rapids Dam which is owned and operated by the Three Rivers Park District.

g. *Filed Pursuant to*: 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant*: Mr. Douglas A. Spaulding, P.E., Nelson Energy LLC, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426; (952) 544–8133.

i. *FERC Contact*: Lesley Kordella at (202) 502–6406; or email at lesley.kordella@ferc.gov.

j. BOST1 Hydroelectric LLC filed a request to use the Traditional Licensing Process on March 21, 2012. BOST1 Hydroelectric LLC provided public notice of the request on April 4, 2012. In a letter dated May 17, 2012, the Director of the Division of Hydropower Licensing approved the request to use the Traditional Licensing Process.

k. *With this notice, we are initiating informal consultation with*: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Minnesota State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. BOST1 Hydroelectric LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (<http://www.ferc.gov>), using the "eLibrary" link. Enter the docket number (P–13458), excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCONlineSupport@ferc.gov or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

n. Register online at <http://www.ferc.gov/docs-filing/>

[esubscription.asp](#) to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: June 1, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–13881 Filed 6–7–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–464–000]

Petal Gas Storage, L.L.C., Hattiesburg Industrial Gas Sales, L.L.C.; Notice of Application

Take notice that on May 21, 2012, Petal Gas Storage, L.L.C. (Petal) and Hattiesburg Industrial Gas Sales, L.L.C. (Hattiesburg), 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, filed in Docket No. CP12–464–000 an application pursuant to sections 7(c) and 7(b) of the Natural Gas Act (NGA), for authorization for Petal to acquire the non-jurisdictional natural gas storage facilities owned and operated by Hattiesburg in Forrest County, Mississippi, for continued authority to charge market-based rates for services related to the combined facilities, and for Hattiesburg to abandon its facilities and services related to its certificate of limited jurisdiction issued under section 284.224 of the Commission's regulations, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any questions regarding the applications should be directed to J. Kyle Stephens, Vice President, Regulatory Affairs, Petal Gas Storage, L.L.C., 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, or call at 713–479–8033, by facsimile at 713–479–1846, or by email at Kyle.Stephens@bwpmlp.com.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS)

or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed

documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: June 21, 2012.

Dated: May 31, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-13883 Filed 6-7-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14202-001]

FFP Project 70, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 14202-001.

c. *Date Filed:* April 3, 2012.

d. *Submitted By:* Free Flow Power Corporation on behalf of FFP Project 70, LLC (FFP), a wholly-owned subsidiary of Free Flow Power, LLC.

e. *Name of Project:* Mississippi Lock and Dam 19 Water Power Project.

f. *Location:* Mississippi River at river mile 364.2, in Lee County, Iowa at an existing out-of-service lock and dry dock area owned and operated by the

US Army Corps of Engineers (Corps). The proposed project would occupy 23.3 acres of land, all of which are owned by the Corps.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Ramya Swaminathan, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114; (978) 283-2822; or email at rswaminathan@free-flow-power.com.

i. *FERC Contact:* Lesley Kordella at (202) 502-6406; or email at lesley.kordella@ferc.gov.

j. Free Flow Power Corporation on behalf of FFP Project 70, LLC filed a request to use the Traditional Licensing Process on April 3, 2012. Free Flow Power Corporation provided public notice of the request on March 13 and 14, 2012. In a letter dated June 1, 2012, the Director of the Division of Hydropower Licensing approved the request to use the Traditional Licensing Process.

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Iowa State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating FFP Project 70, LLC and Free Flow Power Corporation as the Commission's non-federal representatives for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and section 106 of the National Historic Preservation Act.

m. Free Flow Power Corporation on behalf of FFP Project 70, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (<http://www.ferc.gov>), using the "eLibrary" link. Enter the docket number (P-14202), excluding the last three digits in the docket number field to access the document. For assistance, contact FERC

Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: June 1, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-13882 Filed 6-7-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14375-000]

American River Power III, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 22, 2012, the American River Power III, LLC filed an application for a preliminary permit under section 4(f) of the Federal Power Act proposing to study the feasibility of the proposed Dillon Lake Hydroelectric Water Power Project No. 14375, to be located at the existing Dillon Lake Dam on the Licking River, near the City of Zanesville in Muskingum County, Ohio. The Dillon Lake Dam is owned by the United States Government and operated by the United States Army Corps of Engineers.

The proposed project would consist of: (1) One new 30-foot-long by 30-foot-wide by 30-foot-high powerhouse, containing one 1.59-megawatt turbine; (2) one new 50-foot-long by 8-foot-diameter steel penstock; (3) a new 32-foot by 28-foot substation; (4) a new 30-foot-wide tailrace; (5) a new 300-foot-long, 14.7-kilovolt transmission line; and (6) appurtenant facilities. The project would have an estimated annual generation of 9.7 gigawatt-hours.

Applicant Contact: Mr. John P. Henry, 726 Eldridge Avenue, Collingswood, NJ 08107-1708; (856) 240-0707.

FERC Contact: Tyrone A. Williams, (202) 502-6331.

Deadline for filing comments, motions to intervene, and 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 18 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/efiling.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 or 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-14375) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: June 1, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-13876 Filed 6-7-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14398-000]

American River Power IX, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 30, 2012, American River Power IX, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Peoria Dam, Illinois—Hydroelectric Water Power Project (Peoria Dam Project or project) to be located at the U.S. Army Corps of Engineers' (Corps) Peoria Lock and Dam on the Illinois River, near Bartonville, Peoria County, Illinois. 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 the following: (1) A concrete intake located on the Peoria County side of the Illinois River upstream of an existing retaining wall and facing 45 degrees to the existing dam; (2) a 120-foot-long, 50-foot-wide, 55-foot-high powerhouse containing two horizontal Kaplan pit turbines each with a rated capacity of 3.75 megawatts, and each coupled to a speed increaser and then coupled to a high speed generator; (3) a concrete tailrace releasing water into the river downstream of the dam; (4) a switchyard with a step-up transformer increasing the 4.16 kilovolts (kV) produced by the generators to 36.7 kV; (5) a 1,500-foot-long, 36.7-kV transmission line conveying the power from the switchyard to a point of interconnection with the local utility; and (6) appurtenant facilities. The project would occupy lands owned and administered by the Corps. The estimated annual generation of the Peoria Dam Project would be 32.5 gigawatt-hours.

Applicant Contact: Michael Skelly, Chairman/Manager, American River Power IX, LLC, 726 Eldridge Avenue, Collingswood, NJ 08107-1708; phone: (856) 240-0707 or mskelly@americanriverpower.com.

FERC Contact: Sergiu Serban; phone: (202) 502-6211 or sergiu.serban@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 18 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/efiling.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 or 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-14398) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: June 1, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-13877 Filed 6-7-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2149-000]

Public Utility District No. 1 of Douglas County; Notice of Authorization for Continued Project Operation

On May 27, 2010, the Public Utility District No. 1 of Douglas County, licensee for the Wells Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Wells Hydroelectric Project is located on the Columbia River in Douglas, Okanogan, and Chelan Counties, Washington.

The license for Project No. 2149 was issued for a period ending May 31, 2012. Section 15(a)(1) of the FPA, 16 USC 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on

its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2149 is issued to the Public Utility District No. 1 of Douglas County for a period effective June 1, 2012 through May 31, 2013, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before May 31, 2013, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the Public Utility District No. 1 of Douglas County is authorized to continue operation of the Wells Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: May 31, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-13880 Filed 6-7-12; 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: RP12-750-000.
Applicants: Questar Southern Trails Pipeline Company.

Description: Report of Questar Southern Trails Pipeline Company Annual Fuel Gas Reimbursement Report.

Filed Date: 5/24/12.

Accession Number: 20120524-5201.

Comments Due: 5 p.m. ET 6/5/12.

Docket Numbers: RP12-751-000.

Applicants: Big Sandy Pipeline, LLC.

Description: Negotiated Rates May 2012 Cleanup to be effective 6/25/2012.

Filed Date: 5/25/12.

Accession Number: 20120525-5030.

Comments Due: 5 p.m. ET 6/6/12.

Docket Numbers: RP12-752-000.

Applicants: White River Hub, LLC.

Description: Report of White River Hub, LLC's Annual Fuel Gas Reimbursement Report.

Filed Date: 5/24/12.

Accession Number: 20120524-5204.

Comments Due: 5 p.m. ET 6/5/12.

Docket Numbers: RP12-753-000.

Applicants: Gulf South Pipeline Company, LP.

Description: Amendments related to PXS service to be effective 6/1/2012.

Filed Date: 5/29/12.

Accession Number: 20120529-5036.

Comments Due: 5 p.m. ET 6/11/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: May 29, 2012.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2012-13885 Filed 6-7-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the Southwest Power Pool, Inc. (SPP):

Strategic Planning Committee Task Force on Order 1000

June 7, 2012

8:30 a.m.-3 p.m. CDT.

June 26, 2012

9:00 a.m.-3 p.m. CDT.

The above-referenced meetings will be held at: AEP Offices, 1201 Elm Street, 8th Floor, Dallas, TX 75270.

The above-referenced meetings are open to stakeholders.

Further information may be found at www.spp.org.

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. ER09-35-001, *Tallgrass Transmission, LLC*

Docket No. ER09-36-001, *Prairie Wind Transmission, LLC*

Docket No. ER09-548-001, *ITC Great Plains, LLC*

Docket No. ER11-4105-000, *Southwest Power Pool, Inc.*

Docket No. EL11-34-001, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER11-3967-002, *Southwest Power Pool, Inc.*

Docket No. ER11-3967-003, *Southwest Power Pool, Inc.*

Docket No. ER12-1179-000, *Southwest Power Pool, Inc.*

Docket No. ER12-1415-000, *Southwest Power Pool, Inc.*

Docket No. ER12-1460-000, *Southwest Power Pool, Inc.*

Docket No. ER12-1610-000, *Southwest Power Pool, Inc.*

For more information, contact Luciano Lima, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (202) 502-6210 or luciano.lima@ferc.gov.

Dated: May 31, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-13879 Filed 6-7-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF12-3-000]

Corpus Christi Liquefaction, LLC; Cheniere Corpus Christi Pipeline, L.P.; Notice of Intent To Prepare an Environmental Assessment for the Planned Corpus Christi LNG Terminal and Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the planned Corpus Christi LNG Terminal and Pipeline Project (Project). The Project would involve constructing

and operating a liquefied natural gas (LNG) export and import terminal, and a natural gas transmission pipeline in Nueces and San Patricio Counties, Texas. The EA will be used by the Commission in its decision-making process to determine whether to authorize the LNG terminal. The EA will also be used by the Commission to help determine whether the pipeline facilities are in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about the Project. Your input will help the Commission's staff determine what issues need to be evaluated in the EA. Your input will also help the Commission's staff determine whether the preparation of an environmental impact statement would be more appropriate for this project. Comments about the Project may be submitted in writing or verbally. In lieu of or in addition to submitting written comments, the Commission invites you to attend a public scoping meeting scheduled as follows:

FERC Public Scoping Meeting, Corpus Christi LNG Terminal and Pipeline Project, June 26, 2012—6:00 p.m., Portland Community Center, 2000 Bill G Webb Drive, Portland, TX 78374.

Please note that the scoping period will close on July 2, 2012.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a Project representative may contact you about the acquisition of an easement to construct, operate, and maintain the natural gas transmission pipeline facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the facilities, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, a condemnation proceeding could be initiated where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need to Know?" is available for viewing on the FERC Web site (www.ferc.gov). This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to

participate in the Commission's proceedings.

Summary of the Planned Project

Corpus Christi Liquefaction, LLC (Corpus Christi Liquefaction) plans to construct and operate a LNG export and import terminal on the north shore of Corpus Christi Bay in Nueces and San Patricio Counties, Texas. The terminal facilities would be capable of liquefying approximately 2.1 billion cubic feet per day of natural gas. These facilities would also be capable of vaporizing approximately 400 million cubic feet per day of LNG. In addition to the liquefaction and vaporization facilities; Corpus Christi Liquefaction plans to construct and operate three LNG storage tanks at the terminal. These tanks would be capable of storing approximately 160,000 cubic meters of LNG. To facilitate the estimated 200 ships per year necessary to export and import LNG, Corpus Christi Liquefaction is also planning to construct and operate a marine berth connecting the terminal to the adjacent La Quinta Channel which provides access to open water shipping routes.

Cheniere Corpus Christi Pipeline, L.P. (Corpus Christi Pipeline) plans to construct and operate an approximately 23-mile-long, 48-inch-diameter, bi-directional, natural gas transmission pipeline (and associated facilities) capable of moving approximately 2.25 billion cubic feet per day of natural gas between the terminal and existing natural gas transmission infrastructure near the City of Sinton, Texas. Corpus Christi Pipeline is also planning to construct and operate two compressor stations; the 12,260 horsepower (hp) Taft Compressor Station and the 41,000 hp Sinton Compressor Station to facilitate the movement of gas within the pipeline.

The general location of the planned facilities is shown in Appendix 1.¹

Land Requirements for Construction

Constructing the LNG terminal would require the use of about 891 acres of land. Operating the terminal would require the permanent use of about 326 acres of land. Constructing the pipeline and associated facilities would require the use of about 441 acres of land. Operating the pipeline and associated facilities would require the permanent

use of about 202 acres of land. In total, constructing the terminal and pipeline would require the use of about 1,332 acres of land. Operating these facilities would require the permanent use of about 528 acres of land.

The terminal and pipeline would be constructed and operated for the most part on lands previously reviewed by the Commission in FERC Docket Nos. CP04-37, 44, 45 and 46-000. These lands were reviewed for the proposed Cheniere Corpus Christi LNG Project which was approved by the Commission, but never built. The Cheniere Corpus Christi LNG Project would have required the use of about 1,161 acres of land for construction activities and about 712 acres of land for operations-related activities.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission and other federal agencies to take into account the environmental impacts that could result from an action whenever a federal authorization, permit and/or approval is issued. NEPA also requires the Commission's staff to discover and address concerns the public may have about proposals. The discovery process is commonly referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to be addressed in the staff's EA. All comments received will be considered during the preparation of the EA.

In the EA, the Commission's staff will describe the impacts that could occur as a result of constructing and operating the Project under these general headings:

- Geology and soils;
- Water resources and wetlands;
- Vegetation, fisheries and wildlife;
- Threatened and endangered species;
- Socioeconomics;
- Land use and aesthetics;
- Cultural resources;
- Air quality and noise;
- Public safety; and
- Cumulative impacts.

The Commission's staff will also evaluate possible alternatives to the Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, the Commission's staff has already initiated its NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of

¹ The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of the pre-filing review, the Commission's staff has begun to contact several federal and state agencies to discuss their involvement in the scoping process and the preparation of an EA.

The EA will present the staff's independent analysis of the issues. If staff determines the preparation of an EA is appropriate, the EA will be placed in the public record, published, and distributed to the public. A comment period will be allotted when the EA is issued. Staff will consider all comments on the EA before making its recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section of this notice.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to environmental issues to formally cooperate with staff in preparing the EA. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided in the Public Participation section of this notice.

Involvement of U.S. Department of Energy

The U.S. Department of Energy, Office of Fossil Energy (DOE) has agreed to participate as a cooperating agency in the preparation of the EA to satisfy its NEPA responsibilities. DOE proposes to authorize Corpus Christi Liquefaction, LLC, or affiliated company, to export LNG from the planned Corpus Christi LNG Terminal if DOE determines that such export is not inconsistent with the public interest.

The DOE must meet its obligation under section 3 of the Natural Gas Act of 1938, as amended (NGA), to authorize the import and export of natural gas, including LNG, unless it finds that the proposed import or export will not be consistent with the public interest. The purpose and need for DOE action is to respond to an expected application to DOE seeking authorization to export domestically produced natural gas as LNG from the Corpus Christi LNG Terminal to any country: (1) With which the United States does not have a free trade agreement requiring the national treatment for trade in natural gas, and (2) with which trade is not prohibited by U.S. law or policy.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's

implementing regulations for section 106 of the National Historic Preservation Act, staff is using this notice to initiate consultation with applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.² Staff will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). The EA for this project will document the staff's findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

Based on a preliminary review of the planned facilities and information provided by Corpus Christi Liquefaction, the Commission's staff has already identified several issues that it thinks deserves attention. This preliminary list of issues may be changed based on your comments and the staff's analysis. These issues are:

- Air quality;
- Water use;
- Aesthetics;
- Transportation;
- Socioeconomics; and
- Public safety.

Notice of Floodplain Involvement

Because the proposed Project may involve actions in floodplains, in accordance with Title 10 of the Code of Federal Regulations, Part 1022, *Compliance with Floodplain and Wetland Environmental Review Requirements*, the EA will include a floodplain assessment as appropriate, and a floodplain statement of findings will be included in any DOE finding of no significant impact.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to

avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before July 2, 2012.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF12-3-000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502-8258 or efiling@ferc.gov.

(1) You can file your comments electronically using the eComment feature located on the Commission's Web site (www.ferc.gov) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the eFiling feature located on the Commission's Web site (www.ferc.gov) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You must select the type of filing you are making. If you are filing a comment on a particular project, please select "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Staff will update the environmental mailing list as the analysis proceeds to ensure that it sends the information related to this environmental review to all individuals, organizations, and government entities

²The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

interested in and/or potentially affected by the planned project.

Becoming an Intervenor

Once Corpus Christi Liquefaction files its application with the Commission, you may want to become an “intervenor” which is an official party to the Commission’s proceeding. Intervenor play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission’s final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User’s Guide under the “e-filing” link on the Commission’s Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission’s Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (www.ferc.gov) using the eLibrary link. Click on the eLibrary link, click on “General Search” and enter the docket number, excluding the last three digits in the Docket Number field (i.e., PF12–3–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to www.ferc.gov/esubscribenow.htm.

Finally, public meetings or site visits will be posted on the Commission’s calendar located at www.ferc.gov/EventCalendar/EventsList.aspx along with other related information.

Dated: June 1, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012–13875 Filed 6–7–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–62–000]

PPL Montana, LLC; Supplemental Notice of Meeting

May 31, 2012.

On May 23, 2012, the Federal Energy Regulatory Commission (Commission) announced that Commission staff will meet with PPL Montana, LLC and the Confederated Salish and Kootenai Tribes on Thursday, June 7, 2012 at 1:00 p.m. EDT at Commission’s headquarters, located at 888 First Street NE., Washington, DC 20426, Room 3M–1.

Interested parties may participate in the meeting by telephone. Please contact Gary Cohen, Office of the General Counsel, Federal Energy Regulatory Commission at (202) 502–8321 or Gary.Cohen@ferc.gov.

Dated: May 31, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012–13878 Filed 6–7–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Georgia-Alabama-South Carolina System of Projects

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of extension of time to present written comments.

SUMMARY: The period for submitting written comments on Southeastern’s proposed rate adjustment is extended to June 19, 2012.

DATES: Written comments may be submitted until the close of business June 19, 2012.

ADDRESSES: Written comments should be submitted to: Kenneth E. Legg, Administrator, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711.

FOR FURTHER INFORMATION CONTACT: Virgil G. Hobbs, III, Assistant Administrator for Finance and Marketing Division, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia, 30635–6711 (706–213–3838).

SUPPLEMENTARY INFORMATION: On March 7, 2012, Southeastern published a Notice in the **Federal Register** at Vol. 77 FR 13594 that proposed new rate

schedules to replace the current wholesale power schedules for the Georgia-Alabama-South Carolina System for a five-year period from October 1, 2012, to September 30, 2017. The Notice outlined a public comment process that included a public information and comment forum for the Georgia-Alabama-South Carolina customers and interested parties which was held in Atlanta, Georgia, on April 24, 2012. Pursuant to 10 CFR 903.14, the public information process provided that additional written comments would be due to Southeastern on or before June 5, 2012. The Georgia-Alabama-South Carolina customers, through their representatives, have requested an extension of the comment period from June 5, 2012, to close of business on June 19, 2012. The customers state that additional time is needed in order to review the extensive materials and information provided and developed at and after the forum and to allow sufficient time for such necessary review and preparation of informed comments regarding the new proposed rates. For the reasons stated above, and as provided for in 10 CFR 903.14, Southeastern hereby extends the period for submission of written comments to the close of business June 19, 2012.

Dated: May 31, 2012.

Herbert R. Nadler,
Acting Administrator.

[FR Doc. 2012–13925 Filed 6–7–12; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2006–0361; FRL–9681–6]

Agency Information Collection Activities; Proposed Collection; Comment Request; Trade Secret Claims for Emergency Planning and Community Right-To-Know Information; EPA ICR No. 1428.09

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the Environmental Protection Agency (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 November 30, 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 August 7, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-SFUND-2006-0361, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *Email*: superfund.docket@epa.gov.
- *Fax*: (202) 566-0224.
- *Mail*: Superfund Docket,

Environmental Protection Agency,
Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

- *Hand Delivery*: Docket Center, EPA West Bldg., Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-SFUND-2006-0361 identified by the Docket ID Number provided for each item in the text. 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: Sicy Jacob, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564-8019; fax number: (202) 564-2620; email address: jacob.sicy@epa.gov.

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-SFUND-2006-0361 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 202-566-1744.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

- (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (iii) Enhance the quality, utility, and clarity of the information to be collected; and
- (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting

electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Docket ID No. EPA-HQ-SFUND-2006-0361.

Affected entities: Entities potentially affected by this action are manufacturers or non-manufacturers subject to reporting under Sections 303, 311/312 or 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

Title: Trade Secret Claims for Emergency Planning and Community Right-to-Know Information.

ICR number: EPA ICR No. 1428.09, OMB Control No. 2050-0078.

ICR status: This ICR is currently scheduled to expire on November 30, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This information collection request pertains to trade secrecy claims submitted under Section 322 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). EPCRA contains provisions requiring facilities to report to State and local authorities, and EPA, the presence of extremely hazardous substances (Section 302), inventory of hazardous chemicals (Sections 311 and 312) and manufacture, process and use of toxic chemicals (Section 313). Section 322 of EPCRA allows a facility to withhold the specific chemical identity from these EPCRA reports if the facility asserts a claim of trade secrecy for that chemical identity. The provisions in Section 322 establish the requirements and procedures that facilities must follow to request trade secrecy treatment of chemical identities, as well as the procedures for submitting public petitions to the Agency for review of the "sufficiency" of trade secrecy claims.

Trade secrecy protection is provided for specific chemical identities contained in reports submitted under each of the following: (1) Section 303 (d)(2)—Facility notification of changes that have or are about to occur, (2) Section 303 (d)(3)—Local Emergency Planning Committee (LEPC) requests for facility information to develop or implement emergency plans, (3) Section 311—Material Safety Data Sheets (MSDSs) submitted by facilities, or lists of those chemicals submitted in place of the MSDSs, (4) Section 312—Emergency and hazardous chemical inventory forms (Tier I and Tier II), and (5) Section 313 Toxic chemical release inventory form.

Burden Statement: The burden and costs stated below are from the current approved ICR. The annual public reporting and recordkeeping burden for this collection of information is estimated to average 9.8 hours per claim. Prior to submitting ICR package to OMB, the Agency will revise the costs associated with this ICR based on the current labor and wage rates provided in the Bureau of Labor and Statistics, Employer Costs for Employee Compensation.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any

previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The current approved ICR 1428.08 provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Respondents/Affected Entities: Entities potentially affected by this action are manufacturers or non-manufacturers subject to reporting under sections 303, 311/312 or 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

Estimated total number of potential respondents: 481.

Frequency of response: Trade secret claims are submitted by facilities either annually with reports submitted under sections 312 and 313 of EPCRA or during the time the LEPC request information under section 303 of EPCRA.

Estimated total average number of responses for each respondent: One

Estimated total annual burden hours: 4,658 hours.

Estimated total annual costs: \$0, which includes \$0 annualized capital or O&M costs.

Are there changes in the estimates from the last approval?

The burden hours and costs provided here are from the current approved ICR. Prior to submitting the ICR package to OMB, EPA may revise the burden hours and costs based on the current labor and wage rates provided in the Bureau of Labor and Statistics, Employer Costs for Employee Compensation.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another Federal Register notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: May 30, 2012.

Lawrence M. Stanton,

Director, Office of Emergency Management.

[FR Doc. 2012-13959 Filed 6-7-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-ORD-2012-0399; FRL-9683-8]

Draft Toxicological Review of Ammonia: In Support of the Summary Information in the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period and listening session.

SUMMARY: EPA is announcing a 60-day public comment period and a public listening session for the external review draft human health assessment titled "Toxicological Review of Ammonia: In Support of Summary Information on the Integrated Risk Information System (IRIS)" (EPA/635/R-11/013A). The draft assessment was prepared by the National Center for Environmental Assessment (NCEA) within the EPA Office of Research and Development (ORD). 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's Science Advisory Board (SAB) will convene an expert panel for independent external peer review of the draft assessment. The EPA SAB is a body established under the Federal Advisory Committee Act with a broad mandate to advise the Agency on scientific matters. The public comment period and the SAB peer review are separate processes that provide opportunities for all interested parties to comment on the document. The SAB will schedule one or more public peer-review meetings, which will be announced in the **Federal Register** at a later date.

EPA is also announcing a listening session to be held on Thursday, July 12, 2012, during the public comment period. The purpose of the listening session is to allow all interested parties to present scientific and technical comments on the draft IRIS health assessment to EPA and other interested parties attending the listening session. EPA welcomes the scientific and technical comments that will be provided to the Agency by the listening

session participants. The comments will be considered by the Agency as it revises the draft assessment after the independent external peer review.

DATES: The public comment period begins, June 8, 2012, and ends August 7, 2012. Technical comments should be in writing and must be received by EPA by August 7, 2012.

The listening session on the draft IRIS health assessment for ammonia will be held on July 12, 2012, beginning at 9 a.m. and ending at 4 p.m., Eastern Standard Time, or when the last presentation has been completed. If you would like to make a presentation at the listening session, you should register by July 3, 2012, following the detailed instructions below under

SUPPLEMENTARY INFORMATION.

ADDRESSES: The draft "Toxicological Review of Ammonia: In Support of Summary Information on the Integrated Risk Information System (IRIS)" is available primarily via the Internet on the NCEA home page under the Recent Additions and Publications menus at <http://www.epa.gov/ncea>. A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703-347-8561; facsimile: 703-347-8691. If you request a paper copy, please provide your name, mailing address, and the document title.

The listening session on the draft assessment of ammonia will be held at the EPA offices at Two Potomac Yard (North Building), 7th Floor, Room 7100, 2733 South Crystal Drive, Arlington, Virginia, 22202. There are two buildings at Potomac Yard, please be sure you go to Building Two, the North Building. Please note that to gain entrance to this EPA building, attendees must register at the guard's desk in the lobby and present photo identification. The guard will retain your photo identification and provide you with a visitor's badge. At the guard's desk, attendees should give the name Christine Ross and the telephone number, 703-347-8592, to the guard on duty. The guard will contact Ms. Ross who will meet you in the reception area to escort you to the meeting room. When you leave the building, please return your visitor's badge to the guard and you will receive your photo identification.

A teleconference line will also be available for registered attendees/speakers. The teleconference number is 866-299-3188 and the access code is 926-378-7897, followed by the pound sign (#). The teleconference line will be activated at 8:45 a.m., and you will be asked to identify yourself and your affiliation at the beginning of the call.

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the Ammonia Listening Session and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, please contact Christine Ross at 703-347-8592 or IRISListeningSession@epa.gov. To request accommodation of a disability, please contact Ms. Ross, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

SUPPLEMENTARY INFORMATION:

I. Information About IRIS

IRIS is a database that contains potential adverse human health effects information that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at <http://www.epa.gov/iris>) contains qualitative and quantitative health effects information for more than 540 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of a risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, IRIS data are used by government and private entities to help characterize public health risks of chemical substances in site-specific situations and thereby support risk management decisions designed to protect public health.

II. How To Register for the Listening Session

To attend the July 12, 2012, listening session, register by July 3, 2012, by sending an email to IRISListeningSession@epa.gov (subject line: Ammonia Listening Session); by calling Christine Ross at 703-347-8592; or by faxing a registration request to 703-347-8689. Please reference the "Ammonia Listening Session" and include your name, title, affiliation, sponsoring organization, if any, full address, and contact information. To present at the listening session, indicate in your registration that you would like to make oral comments and provide the length of your presentation. When you register, please indicate if you will need audio-visual aid (e.g., laptop and slide projector). In general, each presentation should be no more than 30 minutes. If, however, there are more requests for

presentations than the allotted time allows, then the time limit for each presentation will be adjusted. A copy of the agenda for the listening session will be available at the meeting. If no speakers have registered by July 3, 2012, the listening session will be cancelled and EPA will notify those registered of the cancellation.

III. How To Submit Technical Comments to the Docket at <http://www.regulations.gov>

Submit your comments, identified by Docket ID No. EPA-HQ-ORD-2012-0399 by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *Email:* ORD.Docket@epa.gov.
- *Fax:* 202-566-9744.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460. The phone number is 202-566-1752.

- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center's 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 mail or 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.

Instructions for submitting comments to the EPA Docket: Direct your comments to Docket ID No. EPA-HQ-ORD-2012-0399. Please ensure that your comments are submitted within the specified comment period.

Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at <http://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 <http://www.regulations.gov> or email. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

All documents in the docket are listed in the <http://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 <http://www.regulations.gov> or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

FOR FURTHER INFORMATION CONTACT: For information on the federal docket, contact the Office of Environmental Information Docket; telephone: 202-566-1752; facsimile: 202-566-9744; or email: ORD.Docket@epa.gov.

For information on the public listening session, please contact Christine Ross, IRIS Staff, National Center for Environmental Assessment, (8601P), U.S. EPA, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone: 703-347-8592; facsimile: 703-347-8689; or email: IRISListeningSession@epa.gov.

If you have questions about the document, contact Audrey Galizia, National Center for Environmental Assessment (NCEA); telephone: 732-906-6887; facsimile: 732-452-6429; or email: FRN_Questions@epa.gov.

Dated: May 24, 2012.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2012-13825 Filed 6-7-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9003-4]

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 05/29/2012 Through 06/01/2012
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. 20120172, Final EIS, BLM, WV, East Lynn Lake Coal Lease Project, To Offer Federal Coal in the Coalburg/Winifrede Seam for Competitive Leasing, Wayne County, WV, Review Period Ends: 07/09/2012, Contact: Chris Carusona 414-297-4463.

EIS No. 20120173, Draft EIS, FHWA, TX, South Padre Island Second Access Project, State Highway 100, Across the Laguna Madre, To Park Road 100, Construction of a New Location Highway Facility, USACE Section 10 and 404 Permits, Cameron County, TX, Comment Period Ends: 08/15/2012, Contact: Gregory Punske 512-536-5960.

EIS No. 20120174, Final EIS, FHWA, MD, US 50 Crossing Study, Transportation Improvement from MD-611 to MD 378; and 3rd Street to Somerset Street, Funding, USACE Section 10 and 404 Permits, Worcester County, MD, Review Period Ends: 07/09/2012, Contact: Nicholas Blendy 302-734-2966.

EIS No. 20120175, Draft EIS, USFWS, DE, Prime Hook National Wildlife Refuge, Development of a Comprehensive Conservation Plan, Implementation, Sussex County, DE, Comment Period Ends: 08/06/2012, Contact: Thomas Bonetti 413-253-8307.

EIS No. 20120176, Second Final Supplement, USN, 00, Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar Systems, Updated and Additional Information on Employment of Four SURTASS LFA Sonar Systems for Routine Training, Testing, and Military Operation, Implementation, Review Period Ends: 07/09/2012, Contact: CDR R.A. Dempsey 703-695-8266.

EIS No. 20120177, Draft EIS, USAF, 00, Divert Activities and Exercises, Guam Commonwealth of the Northern Mariana Islands (CNMI), To Improve existing Airport(s) and Associated Infrastructure in the Mariana Islands and To Achieve Divert Capabilities in Western Pacific, Mariana Islands Region, Comment Period Ends: 07/23/2012, Contact: Jay Nash 703-693-4001.

EIS No. 20120178, Final EIS, APHIS, 00, Glyphosate-Tolerant H7-1 Sugar Beet, Request for Nonregulated Status, United States, Review Period Ends: 07/09/2012, Contact: Rebecca Stankiewicz Gabel 301-851-3927.

EIS No. 20120179, Final EIS, DOE, CA, Energia Sierra Juarez U.S. Transmission Line Project, Construction, Operation, Maintenance, and Connection of Either 230-Kilovolt or a 500-Kilovolt Electric Transmission Line Crossing U.S.-Mexico Border, Presidential Permit Approval, San Diego County, CA, Review Period Ends: 07/09/2012, Contact: Brian Mills 202-586-8267.

EIS No. 20120180, Final EIS, USN, HI, Basing of MV-22 and H-1 Aircraft in Support of III Marine Expeditionary Force (MEF) Elements, Construction and Renovation of Facilities to Accommodate and Maintain the Squadrons, HI, Review Period Ends: 07/16/2012, Contact: 808-472-1196.

EIS No. 20120181, Final EIS, WAPA, AZ, Grapevine Canyon Wind Project, Proposal to Develop a Wind Energy Generating Facility up to 500 Megawatts; (2) a 345 Kilovolt (kV) Electrical Transmission Tie-Line; and (3) a 345-kV Electrical Interconnection Switchyard, Coconino County, AZ, Review Period Ends: 07/09/2012, Contact: Matt Blevins 800-336-7288.

Amended Notices

EIS No. 20120091, Draft, BLM, AK, National Petroleum Reserve—Alaska (NPR–A) Integrated Activity Plan, To Determine Appropriate Management BLM—Administrated Lands in the NPR–A, North Slope Borough, AK, Comment Period Ends: 06/15/2012, Contact: Jim Ducker 907–271–3130. Revision to FR Notice Published 04/20/2012; Comment Period Extended from 06/01/2012 to 06/15/2012.

EIS No. 20120168, Draft EIS, USFS, 00, Lake Tahoe Basin Management Unit, Land and Resource Management Plan, Updated Forest Plan, Implementation, Alpine, El Dorado, Placer Counties, CA and Douglas and Washoe Counties, NV, Comment Period Ends: 08/29/2012, Contact: Randy Moore 707–562–9000. Revision to FR Notice Published 06/01/2012; Change State from AZ to NV and Change Contact Phone Number to 707–562–9000.

Dated: June 5, 2012.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2012–13956 Filed 6–7–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0281; FRL–9347–2]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete

uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

DATES: Unless the Agency receives a written withdrawal request on or before July 9, 2012, the deletions are effective July 9, 2012, because the registrants requested a waiver of the 180-day comment period. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before July 9, 2012.

ADDRESSES: Submit your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2012–0281, by one of the following methods:

- *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: Christopher Green, Information Technology and Resources Management Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0367; email address: green.christopher@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, 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 ID number EPA–HQ–OPP–2012–0281. 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 action is the agency taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in Table 1 of this unit by registration number, product name, active ingredient, and specific uses deleted. The requests listed in the following Table 1 have a 30-day comment period because the registrants requested a waiver of the 180-day comment period.

TABLE 1—REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA registration No.	Product name	Active ingredient	Delete from label
100–1313	Quadris Top	Difenoconazole, Azoxystrobin	Turf.
10404–37	PCNB 12.5% Plus Fertilizer	Pentachloronitrobenzene	Golf course roughs (limited to tees, greens, & fairways); residential sites including lawns, yards, ornamental plants & gardens around homes & apartments; grounds around day care facilities; school yards; parks (except industrial parks); playgrounds; & athletic fields (except professional & college fields).
39967–5	Preventol BP	2–Benzyl–4–chlorophenol	Material preservative uses.
70127–5	Taegro	<i>Bacillus subtilis</i> var. <i>amyloliquefaciens</i> Strain FZB24.	Turf, shade & forest trees, shrubs, hydroponics, tubers, bulbs & corns, interiorscapes, orchids & ferns, & mushroom applications.

TABLE 1—REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA registration No.	Product name	Active ingredient	Delete from label
75624-2	Afla-Guard	<i>Aspergillus flavus</i> NRRL 21882	Sweet corn & its commodities.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before July 9, 2012, to discuss withdrawal of the application for

amendment. This 30-day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 of this unit includes the names and addresses of record for all registrants of the products listed in Table 1 of this unit, in sequence by EPA company number.

TABLE 2—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA company number	Company name and address
100	Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419-8300.
10404	LESCO Inc., 1301 East 9th Street, Suite 1300, Cleveland, OH 44114-1849.
39967	LANXESS Corporation, 111 RIDC Park West Drive, Pittsburgh, PA 15275-1112.
70127	Novozymes Biologicals, Inc., 5400 Corporate Circle, Salem, VA 24153.
75624	Circle One Global, Inc., P.O. Box 18300, Greensboro, NC 27419-8300.

III. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to Christopher Green using the methods in **ADDRESSES**. The Agency will consider written withdrawal requests no later than July 9, 2012.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 4, 2012.

Calvin Furlow,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2012-13958 Filed 6-7-12; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 2012.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *S&T Bancorp, Inc.*, Indiana, Pennsylvania; to acquire 100 percent of the voting shares of Gateway Bank of Pennsylvania, McMurray, Pennsylvania.

Board of Governors of the Federal Reserve System, June 5, 2012.

Robert deV. Frierson,
Deputy Secretary of the Board.

[FR Doc. 2012-13983 Filed 6-7-12; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also

includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 2012.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. *Malvern Federal Mutual Holding Company*, to convert to stock form and merge with Malvern Bancorp, Inc., both in Paoli, Pennsylvania, which proposes to become a savings and loan holding company by acquiring 100 percent of the voting shares of Malvern Federal Savings Bank, Paoli, Pennsylvania.

Board of Governors of the Federal Reserve System, June 5, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012-13981 Filed 6-7-12; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting Standards Subcommittee

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS); Subcommittee on Standards.

Time and Date: June 20, 2012, 9 a.m.–5 p.m. EST.

Place: Double Tree Hilton Hotel Silver Spring, 8727 Colesville Road, Silver Spring, Maryland 20910, Tel: 1-301-589-5200.

Status: Open.

Purpose: The purpose of the hearing is to receive an update from industry on the implementation of ASCX12 Version 5010 and NCPDP Version D.0 (HIPAA standards), an update from the Designated Standards Maintenance Organization (DSMO), and industry preparations for the first set of operating rules. The committee will also hear from the American Dental Association about updates to their voting process for the dental code set. Finally, information will be provided on unique medical

device identifiers, and commentary from industry concerning issues pertaining to health plan compliance certification.

The NCVHS has been named in the Patient Protection and Affordable Care Act (ACA) of 2010 to review and make recommendations on several operating rules and standards related to HIPAA transactions. This meeting will support these activities in the development of a set of recommendations for the Secretary, as required by § 1104 of the ACA.

Contact Person for More Information: Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458-4245 or Lorraine Doo, lead staff for the Standards Subcommittee, NCVHS, Centers for Medicare and Medicaid Services, Office of E-Health Standards and Services, 7500 Security Boulevard, Baltimore, Maryland 21244, telephone (410) 786-6597. Program information as well as summaries of meetings and a roster of committee members are available on the NCVHS home page of the HHS Web site: <http://www.ncvhs.hhs.gov/>, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458-4EEO (4336) as soon as possible.

Dated: June 1, 2012.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2012-13986 Filed 6-7-12; 8:45 am]

BILLING CODE 4151-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Full Committee Meeting.

Time and Date: June 21, 2012, 9 a.m.–3:45 p.m. EST. June 22, 2012, 10 a.m.–3 p.m. EST.

Place: Double Tree Hilton Hotel Silver Spring, 8727 Colesville Road, Silver

Spring, Maryland 20910. Tel: 1-301-589-5200.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the Committee will hear updates from the Department (HHS), the Centers for Medicare and Medicaid Services (CMS), and the Office of the National Coordinator (ONC). The agenda will also include discussion on items for approval: (1) Recommendation letter on collection of socioeconomic status data in HHS surveys; and (2) recommendation letter on Quality Measures that Matter to Patients. After lunch, an update will be given on NCVHS's new Working Group on HHS Data Access and Use, and the April 17–18, 2012 Privacy Subcommittee hearing.

The morning of the second day will include a review of the final action items discussed on the first day. After lunch, the Committee will discuss NCVHS's plans at the NCHS National Conference on Health Statistics; have a briefing on a Standards Subcommittee meeting; and hear subcommittee reports, strategic plans and discuss next steps. After the full Committee adjourns, the new Working Group on HHS Data Access and Use will convene to discuss work expectations and schedule; and summarize anticipated work products and logistical plans. Further information will be provided on the NCVHS Web site at <http://www.ncvhs.hhs.gov/>.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions are scheduled for late in the afternoon on the first day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458-4245. Information also is available on the NCVHS home page of the HHS Web site: <http://www.ncvhs.hhs.gov/>, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458-4EEO (4336) as soon as possible.

Dated: June 1, 2012.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2012-13987 Filed 6-7-12; 8:45 am]

BILLING CODE 4151-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for the "Patient-Centered Outcomes Research—Dissemination by Health Professionals Associations (PCOR-DHPA) (R18)" applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Patient-Centered Outcomes Research—Dissemination by Health Professionals Associations (PCOR-DHPA) (R18).

Dates: June 20, 2012 (Open on June 20 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

Place: Crowne Plaza Rockville, 3 Research Court, Rockville, MD 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and

Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427-1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: May 31, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012-13773 Filed 6-7-12; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for the "Building the Science of Public Reporting (R21)" applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Building the Science of Public Reporting (R21).

Date: June 20-21, 2012 (Open on June 20 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

Place: Crowne Plaza Rockville, 3 Research Court, Rockville, MD 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee

Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427-1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: May 31, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012-13771 Filed 6-7-12; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Initial Review

The meeting announced below concerns Cooperative Research Agreements Related to the World Trade Center Health Program (U01), PAR 12-126, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Times and Dates:

8 a.m.-5 p.m., July 17, 2012 (Closed).

8 a.m.-5 p.m., July 18, 2012 (Closed).

Place: Residence Inn Alexandria Old Town, 1456 Duke Street, Alexandria, Virginia 22314, Telephone (703) 548-5474.

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 applications received in response to "Cooperative Research Agreements Related to the World Trade Center Health Program (U01) PAR 12-126".

Contact Person for More Information: Joan Karr, Ph.D., Scientific Review Officer, CDC/NIOSH, 1600 Clifton Road, Mailstop E-74, Atlanta, Georgia 30333, Telephone: (404) 498-2506.

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 31, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012-13908 Filed 6-7-12; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)—Ethics Subcommittee (ES)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the CDC announces the following meeting of the aforementioned subcommittee:

Time and Date: 9:30 a.m.–12:30 p.m. EDT, Friday, June 29, 2012.

Place: Teleconference.

Status: Open to the public, limited only by the availability of telephone ports. The public is welcome to participate during the public comment period. A public comment period is tentatively scheduled for 12 p.m.–12:15 p.m. To participate in the teleconference, please dial (877) 928-1204 and enter code 4305992.

Purpose: The ES will provide counsel to the ACD, CDC, regarding a broad range of public health ethics questions and issues arising from programs, scientists and practitioners.

Matters To Be Discussed: Agenda items will include the following: Addition of ethics standards to the accreditation process for public health departments; ethical considerations relating to use of travel restrictions for the control of communicable diseases and possible revisions to CDC's standard operating procedures; progress on developing practical tools to assist state, tribal, local, and territorial health departments in their efforts to address public health ethics challenges; approaches for evaluating the impact of public health ethics; and strategies for increasing collaboration between public health ethics and public health law.

The agenda is subject to change as priorities dictate.

Contact Person for More Information: Drue Barrett, Ph.D., Designated Federal Officer, ACD, CDC-ES, 1600 Clifton Road NE., M/S D-50, Atlanta, Georgia 30333. Telephone: (404) 639-4690. Email: d Barrett@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: June 4, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012-13922 Filed 6-7-12; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS-10434]

Agency Information Collection Activities: Proposed Collection; Comment Request; Webinars

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection

Request: New collection (request for a new OMB control number). *Title of Information Collection:* Medicaid and CHIP Program (MACPro). *Use:* Medicaid, authorized by Title XIX of the Social Security Act and, CHIP, reauthorized by the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), play an important role in financing health care for approximately 48 million people throughout the country. By 2014, it is expected that an additional 16 million people will become eligible for Medicaid and CHIP as a result of the Affordable Care Act (Pub. L. 111-148). In order to implement the statute, CMS must provide a mechanism to ensure timely approval of Medicaid and CHIP State plans, waivers and demonstrations and provide a repository for all Medicaid and CHIP program data that supplies data to populate

Healthcare.gov and other required reports. Additionally, 42 CFR 430.12 sets forth the authority for the submittal and collection of State plans and plan amendment information. Pursuant to this requirement, CMS has created the MACPro system.

Generally, MACPro will be used by both State and CMS officials to: Improve the State application and Federal review processes, improve Federal program management of Medicaid programs and CHIP, and standardize Medicaid program data. More specifically, it will be used by State agencies to (among other things): (1) Submit and amend Medicaid State Plans, CHIP State Plans, and Information System Advanced Planning Documents, and (2) submit applications and amendments for State waivers, demonstration, and benchmark and grant programs. It will be used by CMS to (among other things): (1) Provide for the review and disposition of applications, and (2) monitor and track application activity.

This system will be operational in phases, beginning with this first phase or Phase 1, MACPro will include the following three authorities: State Plan and CHIP Eligibility, Alternative Benchmark plans, and 1115 Waiver Demonstration portions/modules to be implemented before January 1, 2013.

A paper-based version of the MACPro instrument would be sizable and time consuming for interested parties to follow as a paper-based instrument. In our effort to provide the public with the most efficient means to make sense of the MACPro system, we will be conducting four webinars in lieu of including a paper-based version of MACPro on CMS' PRA-related Web site.

The webinars will be held:

1. June 13, 2012, from 1 to 3 p.m. EST.
2. June 20, 2012, from 1 to 3 p.m. EST.
3. June 27, 2012, from 1 to 3 p.m. EST.
4. July 11, 2012, from 1 to 3 p.m. EST.

Please note that the webinars will be recorded by CMS and can be accessed by the public at <http://www.medicaid.gov/State-Resource-Center/Events-and-Announcements/Events-and-Announcements.html> at any time during the duration of the public comment period. Each webinar will present the most current MACPro information so they are not expected to be identical. No login or password is needed.

Form Number: CMS-10434 (OCN 0938-New). *Frequency:* Annual and once. *Affected Public:* State, Local, or Tribal Governments. *Number of Respondents:* 56. *Total Annual Responses:* 15. *Total Annual Hours:* 15,736 (or 5,245 hr for each of the three authorities). (For policy questions

regarding this collection contact Darlene Anderson at 410-786-9828. For all other issues call 410-786-1326.)

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access CMS' Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or Email your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786-1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by August 7, 2012:

1. *Electronically.* You may submit your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier CMS-10434, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: June 4, 2012.

Martique Jones,

Director, Regulations Development Group, Division B Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012-13869 Filed 6-7-12; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-3269-N]

Medicare Program; Proposal Evaluation Criteria and Standards for End Stage Renal Disease (ESRD) Network Organizations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice describes the standards, criteria, and procedures we will use to evaluate an End-Stage Renal Disease (ESRD) Network Organization's capabilities to perform, and actual performance of, the duties and functions

under the ESRD Network Statement of Work (SOW).

DATES: *Effective Date:* June 8, 2012.

FOR FURTHER INFORMATION CONTACT: Teresa Casey, 410-786-7215. Renee Dupee, 410-786-6747.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1881(c) of the Social Security Act (the Act) authorized the establishment of, among other things, ESRD network areas and Network Organizations under the Medicare program to ensure the effective administration of the ESRD program benefits. We currently have contracts with ESRD Network Organizations to serve the 18 ESRD Network areas.

The existing 18 ESRD Network contracts have been operating under the same Statement of Work (SOW) since 2003 and have been renewed to continue to provide service to the ESRD population. Recent major policy and legislative changes have modernized Medicare payments for ESRD care. In particular, the Medicare Improvements for Patients and Providers Act (MIPPA) required the Secretary of the Department of Health and Human Services (the Secretary) to implement an ESRD bundled payment system under which a single payment is made to a provider of services or a renal dialysis facility for renal dialysis services in lieu of any other payment. MIPPA also required the Secretary to establish an ESRD Quality Incentive Program (QIP).

Additionally, a heightened focus on quality improvement, public reporting and value-based purchasing in healthcare has fueled a growing need for facility-level data collection; analysis; monitoring; trending; evaluating and intervening, where necessary, to improve patient care. We have also emphasized spreading and replicating the best practices of high performing providers. Therefore, a redesigned ESRD Network SOW was drafted to incorporate these priorities in healthcare and changes in legislation. The SOW will charge the ESRD Network Organizations with establishing relationships with patients, families and facilities within their Network areas to reach the objective of optimal patient-centered care.

Section 1881(c)(1)(A)(ii)(I) of the Act provides that in order to determine whether the Secretary should enter into, continue, or terminate an agreement with an ESRD Network Organization, the Secretary shall develop and publish in the **Federal Register** standards, criteria, and procedures used to evaluate an ESRD Network Organization's

capabilities to perform, and actual performance of, the network functions required by section 1881(c)(2) of the Act. These functions are to:

- Encourage participation in vocational rehabilitation programs, and develop criteria and standards relating to this participation.
- Evaluate the procedures used by facilities and providers in the network to assess patients for placement in appropriate treatment modalities.
- Implement a procedure for evaluating and resolving patient grievances.
- Conduct onsite reviews of facilities and providers as necessary (as determined by a medical review board or the Secretary) using standards of care established by the ESRD Network Organization.
- Collect, validate, and analyze data necessary to prepare the required annual report to the Secretary and to ensure the maintenance of a national ESRD registry.
- Identify facilities and providers that are not cooperatively working toward meeting network goals, and assist those facilities and providers in developing plans for correction, as well as report to the Secretary on those facilities and providers that are not providing appropriate care.
- Submit an annual report to the Secretary on July 1 of each year.

Shortly after the publication of this **Federal Register** notice, we will post a Request for Proposals (RFP) to perform the work of the redesigned ESRD Network SOW on the Fed Biz Opps Web site (www.fbo.gov). The RFP will competitively award a portion of the 18 ESRD Network contracts using a best value process in accordance with Federal Acquisition Regulation (FAR) Part 15. The remaining ESRD Network contracts will be renewed and competed at a later date. The period of performance for these ESRD Network contracts will be one 12-month base year which begins on January 1, 2013 and ends on December 31, 2013, with two 12-month option periods. We may exercise an option in accordance with the FAR Part 17.2, and it may terminate a contract for convenience or for default, in accordance with FAR Part 49. This notice describes the capabilities that an applicant must demonstrate to be awarded an ESRD Network contract and the general criteria that will be used to evaluate the ESRD Network Organizations performing under the SOW.

II. Description of the Tasks Under the Revised ESRD Network Organization SOW

ESRD Network Organizations are responsible, in addition to other duties and functions that the Secretary prescribes, for performing the tasks outlined in section 1881(c)(2) of the Act.

Under the revised ESRD Network Organization SOW, ESRD Network Organizations will complete the requirements of the three Aims outlined in the SOW which support the functions required by section 1881(c)(2) of the Act. The three Aims are as follows:

- Aim 1, is the “Better Care for the Individual through Beneficiary and Family Centered Care” Aim. This Aim envisions ESRD Networks, facilities and beneficiaries working together to promote appropriateness of patient care and processes for evaluating and resolving patient grievances.

- Aim 2, is the “Better Health for the ESRD Population” Aim. This Aim considers the preparation and education of beneficiaries for transplantation and self-care settings or home dialysis.

- Aim 3, is the “Reduce Costs of ESRD Care by Improving Care” Aim. This Aim has Network Organizations assisting dialysis facilities in meeting the requirements of the ESRD Quality Incentive Program (QIP), supporting dialysis facilities in their submission of data to designated data collection systems and using data to provide necessary reports to CMS and the Secretary.

More detailed information for each Aim, Domain, and sub-domain can be found in sections C.2 through C.4. of the ESRD Network SOW posted at the www.fbo.gov Web site. Each Aim is also described further below.

1. Aim 1: Better Care for the Individual Through Beneficiary and Family Centered Care (See Section C.4.1 of the ESRD Network SOW)

The “Better Care for the Individual through Beneficiary and Family Centered Care” Aim strives to promote health care that is respectful of and responsive to individual patient preferences, needs, and values. The Network patient-centered domains will achieve Aim 1. Network patient-centered domains are Patient and Family Engagement; Patient Experience of Care; Patient-Appropriate Access to In-Center Dialysis Care; Vascular Access Management; and Patient Safety; Healthcare-Acquired Infections (HAIs).

The ESRD Network Organizations’ activities within this Aim will be enhanced by the patient’s voice. The ESRD Network Organization will take a

two-tiered approach to incorporating the patient’s voice in the activities of the Network and the renal community as a whole. The two tiers are: (1) Engagement at the dialysis facility level to foster patient and family involvement; and (2) development and implementation of a beneficiary and family centered care focused Learning and Action Network (LAN) to promote patient and family involvement at the Network level. Both tiers are essential and work together to promote beneficiary and family engagement to improve quality of care.

2. Aim 2: Better Health for the ESRD Population (See Section C.4.2 of the ESRD Network Statement of Work)

The “Better Health for the ESRD Population” Aim focuses on improving the quality of and access to ESRD care through a Population Health Innovation Pilot Project in one of the following areas:

- Increase HBV, Influenza, and Pneumococcal Vaccination Rates;
- Improve Dialysis Care Coordination With a Focus on Reducing Hospital Utilization;
- Improve Transplant Coordination;
- Promote Appropriate Home Dialysis in Qualified Beneficiaries; or
- Support Improvement in Quality of Life.

Under the SOW, each ESRD Network Organization will work with low performing dialysis facilities in their Network to conduct one Population Health Innovation Pilot Project and achieve the specified outcome or outcomes for the measures related to the project area. The SOW describes the outcomes the ESRD Network Organization should achieve for each Project; however, the ESRD Network Organizations will develop and implement interventions to increase performance within the participating dialysis facilities. Additionally, ESRD Network Organizations must demonstrate a reduction in one of the disparity areas outlined in the SOW.

3. Aim 3: Reduce Costs of ESRD Care by Improving Care (See section C.4.3 of the ESRD Network Statement of Work)

The “Reducing Costs of ESRD Care by Improving Care” Aim focuses on supporting the ESRD QIP, facility performance improvement on QIP measures, and facility data submission for CROWNWeb, the National Healthcare Safety Network (NHSN), and/or other CMS-designated data collection system(s).

III. Evaluation of ESRD Network Organizations’ Capabilities To Perform, and Evaluation of the Performance of, the Responsibilities Under the SOW

A. Evaluation of Capabilities To Perform the Responsibilities Under the SOW

In order to receive an ESRD Network Contract award, an applicant must demonstrate, through the submission of a technical proposal, the capability to perform the duties listed in the ESRD Network SOW. Technical proposal submissions must detail the applicant’s approach to accomplish each of the Aims of the SOW and describe how the applicant will maximize the outcome of the specific tasks within each Aim. Additionally, successful applicants must offer sound quality improvement approaches for the intervention strategies they are proposing to meet the tasks identified in the SOW. The proposed interventions are expected to be evidence-based, efficient and effective. The proposed interventions should also be feasible in the context of the applicant’s ESRD Network service area, considering geography and other relevant location-specific factors. Applicants will be expected to offer proposed solutions to anticipated challenges with a reasonable likelihood of success.

Other factors used to determine capability to receive an ESRD Network Contract award include an evaluation of the applicant’s relevant past performance, the management structure that the applicant proposes to successfully perform the work of the contract as well as the qualified and experienced staff proposed to administer the tasks of the ESRD Network SOW.

We note that the solicitation posted on Fed Biz Opps is the official notice of the ESRD Network Contract Request for Proposals, and in the event that any terms within this **Federal Register** notice conflict with those of the solicitation and the SOW, the language within the solicitation and the SOW controls.

B. Evaluation of Performance of the Responsibilities Under the SOW

With a focus on rapid cycle improvement, ESRD Network Organizations’ performance of the responsibilities under the SOW will be monitored and measured for improvement on an ongoing basis using self-assessment and Contracting Officer Representative (COR) review. We will monitor the ESRD Network Organization’s performance on the Aims and Domains against established criteria, as specified in sections C.2

through C.4., on at least a quarterly basis, and may take appropriate contract action for low or poor performing ESRD Network Organizations. The COR will complete assessment and review of qualitative and quantitative contract evaluation objectives. Throughout the contract cycle, monitoring and measuring for improvement and general performance will be conducted. In addition, qualitative and quantitative evaluation will be conducted at the annual evaluation which generally

occurs in the tenth month of the one year contract period. The annual evaluation will be based on the most recent data available. The performance results of the annual evaluation will be used, in addition to ongoing monitoring activities, to determine the performance on the overall contract

The qualitative evaluation of the ESRD Network Organizations will be based on the impact of the interventions utilized to accomplish the tasks within the SOW. We will evaluate the

interventions for relationship-building, innovation, development of replicable best practices, and sustainability. The quantitative evaluation of the ESRD Network Organizations will be based on the achievement of the measureable targets for each of the Aims, as stated in the ESRD Network SOW (see Section C.4).

The following Tasks will be evaluated in accordance with the measures provided in the SOW:

AIM—Domain	Sub-domain tasks	ESRD SOW reference
1—Patient and Family Engagement	Patient Learning and Action Network Quality Improvement Activity.	C.4.1A
1—Patient and Family Engagement	Patient Learning and Action Network Campaigns	C.4.1A
1—Patient Experience of Care	Grievance Quality Improvement Activity	C.4.1.B.1
1—Patient Experience of Care	Patient Satisfaction with Network Grievance Process	C.4.1.B.1
1—Patient Experience of Care	In-center Hemodialysis Consumer Assessment of Healthcare Providers and Systems (ICH CAPHS) participation Rate.	C.4.1.B.2
1—Patient Experience of Care	ICH CAPHS Quality Improvement Activity	C.4.1.B.2
1—Patient Appropriate Access to In-Center Dialysis Care	Involuntary Discharge/Involuntary Transfer/Failure to Place rate and aversion rate.	C.4.1.C.1–
1—Vascular Access Management	Arteriovenous Fistula (AVF) Monthly Improvement	C.4.1.D
1—Vascular Access Management	AVF Contract goal of 68%	C.4.1.D
1—Vascular Access Management	Long-term Catheter (LTC) Contract goal of 2% reduction in participating facilities.	C.4.1.D
1—Vascular Access Management	Reporting of AVF/LTC data	C.4.1.D
1—Patient Safety: Healthcare-Acquired Infections (HAIs)	National Healthcare Safety Network (NHSN) enrollment & reporting contract goal.	C.4.1.E
1—Patient Safety: Healthcare-Acquired Infections (HAIs)	NHSN Infection Quality Improvement Activity	C.4.1.E
2—Population Health Innovation Pilot Project	Innovation Pilot Project Disparity reduction and outcomes	C.4.2.A.
3—Reduce Costs of ESRD Care by Improving Care	ESRD Quality Incentive Program (QIP) and Performance Improvement on QIP Measures.	C.4.3.A
3—Reduce Costs of ESRD Care by Improving Care	Facility Data Submission to CROWNWeb, NHSN, and/or Other CMS—Designated Data Collection Systems(s).	C.4.3.B

The contract evaluation will determine if the ESRD Network Organization has met the performance evaluation criteria as specified in C.4 of this Statement of Work. We will evaluate whether a Network Organization has achieved each of the Aims and Domains on an individual basis. In general, evaluation of each Aim will relate only to that area, however in the event of failure in multiple Aims, we reserve the right to take appropriate contract action by, for example, providing warning of the need for adjustment, instituting a formal correction plan, terminating an activity, or recommending early termination of a contract.

An ESRD Network Organization will pass an Aim or Domain if it meets the evaluation criteria specified for that Aim or Domain. An ESRD Network Organization will fail an Aim or Domain if it does not meet the evaluation criteria specified for that Aim or Domain. Any failure for any Aim or Domain may result in that ESRD Network Organization receiving an adverse performance evaluation. Further, failure

may impact the ESRD Network Organization's ability to continue similar work in, or eligibility for, award of the next contract cycle of the ESRD Network contract.

We may revise measures, adjust the expected minimum thresholds for satisfactory performance, remove criteria from an Aim and/or Domain evaluation for any of the following reasons, including, but not limited to: Data gathered on Aim and/or Domain; the level of improvement achieved during the contract cycle or in pilot projects currently in progress; information gathered through evaluation of the ESRD Network Program overall; or any unforeseen or other circumstances. Further, in accordance with standard contract procedures, we reserve the right at any time to discontinue an Aim and/or Domain or any other part of this contract regardless of the Network's performance on the Aim and/or Domain. In accordance with section 1881(c)(1)(A)(ii)(I) of the Act, when we make changes to the standards, criteria, and procedures used to evaluate an ESRD Network

Organization's capabilities to perform and/or actual performance of the duties and functions under the ESRD Network SOW, we will publish an updated notice in the **Federal Register**.

If we choose, we may notify the ESRD Network Organization of our intention not to renew the ESRD Network Organization contract. We reserve our termination rights under FAR Part 49.

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.

V. Regulatory Impact Statement

In accordance with the provisions of Executive Order 12866, this regulation 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: June 5, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012-13998 Filed 6-7-12; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-8051-N]

Medicare Program; Meeting of the Medicare Economic Index Technical Advisory Panel—June 25, 2012

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces that a public meeting of the Medicare Economic Index Technical Advisory Panel (“the Panel”) will be held on Monday, June 25, 2012. The purpose of the Panel is to review all aspects of the Medicare Economic Index (MEI). This second meeting will focus on MEI price-measurement proxies and the index’s productivity adjustment. This meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

DATES: Meeting Date: The public meeting will be held on Monday, June 25, 2012 from 8:30 a.m. until 5 p.m., Eastern Daylight Time (EDT).

Deadline for Submission of Written Comments: Written comments must be received at the mailing or email address specified in the section of this notice entitled, **FOR FURTHER INFORMATION CONTACT**, by 5 p.m. EDT, Monday, June 18, 2012. Once submitted, all comments are considered to be final.

Deadlines for Speaker Registration and Presentation Materials: The deadline to register to be a speaker and to submit PowerPoint presentation materials and any other written materials that will be used in support of an oral presentation is 5 p.m. EDT, Monday, June 18, 2012. Speakers may register by contacting Toya Via, HCD International, by phone at (301) 552-8803 or via email at MEITAP@hcdi.com. Materials that will be used in support of an oral presentation must be received at the mailing or email address specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by 5 p.m. EDT, Monday, June 18, 2012.

Deadline for All Other Attendees Registration: Individuals may register online at <http://www.hcdi.com/mei/> or by phone by contacting Toya Via, HCD International, at (301) 552-8803 by 5 p.m. EDT, Monday, June 18, 2012.

We will be broadcasting the meeting live via webinar and conference call (for audio purposes). Webinar details will be sent to registered attendees.

Deadline for Submitting a Request for Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to contact the Designated Federal Officer as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by 5 p.m. EDT, Monday, June 18, 2012.

ADDRESSES: Meeting Location: The meeting will be held in the Media Center of the Centers for Medicare & Medicaid Services (CMS), 7500 Security Boulevard, Baltimore, MD 21244.

FOR FURTHER INFORMATION CONTACT: John Poisal, Designated Federal Officer, Centers for Medicare & Medicaid Services, Office of the Actuary, Mail stop N3-02-02, 7500 Security Boulevard, Baltimore, MD 21244 or contact Mr. Poisal by phone at (410) 786-6397 or via email at John.Poisal@cms.hhs.gov. Press inquiries are handled through the CMS Press Office at (202) 690-6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare Economic Index Technical Advisory Panel (“the Panel”) was established by the Secretary to conduct a technical review of the Medicare Economic Index (MEI). The review will include the inputs, input weights, price-measurement proxies, and productivity adjustment. For more information on the Panel, see the October 7, 2011 **Federal Register** (76 FR 62415). You may view and obtain a copy of the Secretary’s charter for the Panel at <https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/MEITAP.html>. The members of the Panel are: Dr. Ernst Berndt, Dr. Robert Berenson, Dr. Zachary Dyckman, Dr. Kurt Gillis, and Ms. Kathryn Kobe.

This notice announces the Monday, June 25, 2012 public meeting of the Panel. This meeting will focus on MEI price-measurement proxies and the index’s productivity adjustment.

II. Meeting Format

This meeting is open to the public. There will be up to 45 minutes allotted at this meeting for the Panel to hear oral

presentations from the public. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, we will conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by 5 p.m. EDT, Wednesday, June 20, 2012. Any presentations that are not selected based on the lottery will be forwarded to the panel for consideration. For this meeting, public comments should focus on MEI price-measurement proxies and the index’s productivity adjustment. We require that you declare at the meeting whether you have any financial involvement with manufacturers (or their competitors) of any items or services being discussed.

The Panel will deliberate openly on the topics under consideration. Interested persons may observe the deliberations, but the Panel will not hear further comments during this time except at the request of the chairperson. The Panel will also allow up to 15 minutes for an unscheduled open public session for any attendee to address issues specific to the topics under consideration.

III. Registration Instructions

HCD International is coordinating meeting registration. While there is no registration fee, individuals must register to attend. You may register online at <http://www.hcdi.com/mei/> or by phone by contacting Toya Via, HCD International, at (301) 552-8803, by the date specified in the **DATES** section of this notice. Please provide your full name (as it appears on your government-issued photographic identification), address, organization, telephone, and email address. At the time of registration, you will be asked to designate if you plan to attend in person or via webinar. You will receive a registration confirmation with instructions for your arrival at the CMS complex or you will be notified that the seating capacity has been reached.

IV. Security, Building, and Parking Guidelines

This meeting will be held in a Federal Government building; therefore, Federal security measures are applicable. We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Inspection, via metal detector or other applicable means, of all persons entering the building. We note that all items brought into CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting. All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

Authority: 5 U.S.C. App. 2, section 10(a).

Dated: June 5, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012-13988 Filed 6-7-12; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA-2010-E-0333 and FDA-2010-E-0334]

Determination of Regulatory Review Period for Purposes of Patent Extension; KALBITOR; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of May 2, 2012 (77 FR 26017). The document concerned FDA's determination of the regulatory review period for KALBITOR. The document published with an incorrect patent number for KALBITOR. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory

Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6284, Silver Spring, MD 20993-0002, 301-796-3602.

SUPPLEMENTARY INFORMATION: In FR Doc. 2012-26017 in the **Federal Register** of Wednesday, May 2, 2012, the following correction is made:

1. On page 26017, in the third column, in the last paragraph, "U.S. Patent Nos. 5,795,685 and 7,276,480" is corrected to read "U.S. Patent Nos. 5,795,865 and 7,276,480."

Dated: May 29, 2012.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2012-13902 Filed 6-7-12; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2012-N-0548]

Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Drug Safety and Risk Management Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 29, 2012, from 8 a.m. to 5 p.m. and October 30, 2012, from 8 a.m. to 3 p.m.

ADDRESSES: FDA is opening a docket for public comment on this meeting. The docket number is FDA-2012-N-0548.

The docket will open for public comment on June 8, 2012. The docket will close on November 6, 2012. Interested persons may submit either electronic or written comments regarding this meeting. Submit electronic comments to <http://www.regulations.gov>. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments received will be posted without change, including any personal information provided. 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. Comments received on or before October 15, 2012, will be provided to the committee before the meeting.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993-0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: <http://www.fda.gov/AdvisoryCommittees/default.htm>; under the heading "Resources for You," click on "Public Meetings at the FDA White Oak Campus." Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Kristina Toliver, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993-0002, 301-796-9001, FAX: 301-847-8533, email:

DSaRM@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On October 29 and 30, 2012, the committee will discuss the public health benefits and risks, including the potential for abuse, of drugs containing hydrocodone either combined with other analgesics or as an antitussive. The Department of Health and Human Services received a request from the Drug Enforcement Administration for a scientific and medical evaluation and scheduling recommendation for these products in response to continued reports of misuse, abuse, and addiction related to these products.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the

location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see the **ADDRESSES** section of this document) on or before October 15, 2012, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 8:15 a.m. and 9:15 a.m. on October 30, 2012. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 4, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 5, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristina Toliver at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 4, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012-13868 Filed 6-7-12; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2012-N-0494]

Pfizer, Inc.; Withdrawal of Approval of Familial Adenomatous Polyposis Indication for CELEBREX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the familial adenomatous polyposis (FAP) indication for CELEBREX (celecoxib) Capsules held by Pfizer, Inc. (Pfizer), 235 East 42nd St., New York, NY 10017-5755. Pfizer has voluntarily requested that approval of this indication be withdrawn, thereby waiving its opportunity for a hearing.

DATES: Effective June 8, 2012.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6250, Silver Spring, MD 20993-0002, 301-796-3601.

SUPPLEMENTARY INFORMATION: FDA approved the FAP indication for CELEBREX on December 23, 1999, under the Agency's accelerated approval regulations, 21 CFR part 314, subpart H. In addition to FAP, CELEBREX is indicated for the relief of the signs and symptoms of osteoarthritis, rheumatoid arthritis, juvenile rheumatoid arthritis in patients 2 years and older, ankylosing spondylitis, primary dysmenorrhea, and for the management of acute pain in adults. Withdrawal of approval of the FAP indication does not affect any other approved indication for CELEBREX. On February 2, 2011, FDA requested that Pfizer voluntarily withdraw the FAP indication for CELEBREX (celecoxib) Capsules from the market because the postmarketing study intended to verify clinical benefit and required as a condition of approval under subpart H was never completed. In a letter dated February 3, 2011, Pfizer requested that FDA withdraw the FAP indication for CELEBREX (celecoxib) Capsules from the market. In that letter, Pfizer waived any opportunity for a hearing otherwise provided under 21 CFR 314.150 and 314.530, and noted that withdrawal of the FAP indication was not "due to any new efficacy or safety data." In FDA's letter of February 4, 2011, the Agency acknowledged Pfizer's agreement to permit FDA to withdraw the FAP indication for CELEBREX (celecoxib)

Capsules under 21 CFR 314.150(d) and waive its opportunity for a hearing.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and 21 CFR 314.150(d), and under authority delegated by the Commissioner to the Director, Center for Drug Evaluation and Research, approval of the FAP indication for CELEBREX (celecoxib) Capsules is withdrawn (see **DATES**).

Dated: May 4, 2012.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 2012-13900 Filed 6-7-12; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I-102; Revision of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; Form I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 28, 2012 at 77 FR 12070, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 9, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, Clearance

Office, 20 Massachusetts Avenue, Washington, DC 20529. Comments may also be submitted to DHS via email at uscisfrcomment@dhs.gov, to the OMB USCIS Desk Officer via facsimile at 202-395-5806 or via email at oir_submission@omb.eop.gov.

When submitting comments by email please make sure to add OMB Control Number 1615-0079 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-102; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Nonimmigrants temporarily residing in the United States use this form to request a replacement of their arrival evidence document.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 17,700 responses at .416 hours (25 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 7,363.2 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at:

<http://www.regulations.gov/>.

We may also be contacted at: USCIS, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529, Telephone number 202-272-1470.

Dated: May 23, 2012.

Laura Dawkins,

Acting Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012-13799 Filed 6-7-12; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I-590, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I-590, Registration for Classification as Refugee.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 12, 2012, at 77 FR 14535, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 9, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Coordination Division, Office of Policy and Strategy,

Clearance Office, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may also be submitted to DHS via email

uscisfrcomment@dhs.gov, and to the OMB USCIS Desk Officer via facsimile at 202-395-5806 or via email at oir_submission@omb.eop.gov. When submitting comments by email please make sure to add OMB Control Number 1615-0068 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Registration for Classification as Refugee.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-590; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* Form I-590 provides a uniform method for applicants to apply for refugee status and contains the information needed for USCIS to adjudicate such applications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at .583 hours (35 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 58,300 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: <http://www.regulations.gov>.

We may also be contacted at: USCIS, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529; Telephone 202-272-1470.

Dated: May 23, 2012.

Laura Dawkins,

Acting Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012-13794 Filed 6-7-12; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Amspec Services LLC, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Amspec Services LLC, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Amspec Services LLC, 875 Waterman Avenue, East Providence, RI 02914, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.

DATES: The accreditation and approval of Amspec Services LLC, as commercial

gauger and laboratory became effective on January 20, 2012. The next triennial inspection date will be scheduled for January 2015.

FOR FURTHER INFORMATION CONTACT:

Christopher Mocella, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 1, 2012.

Ira S. Reese,

Executive Director.

[FR Doc. 2012-13911 Filed 6-7-12; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Amspec Services LLC, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Amspec Services LLC, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Amspec Services LLC, 100 Wheeler Street, Unit G, New Haven, CT 06512, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.

DATES: The accreditation and approval of Amspec Services LLC, as commercial gauger and laboratory became effective

on January 06, 2012. The next triennial inspection date will be scheduled for January 2015.

FOR FURTHER INFORMATION CONTACT:

Christopher Mocella, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 1, 2012.

Ira S. Reese,

Executive Director.

[FR Doc. 2012-13910 Filed 6-7-12; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 141 N. Pasadena Blvd., Pasadena, TX 77506, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.

DATES: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory

became effective on February 22, 2012. The next triennial inspection date will be scheduled for February 2015.

FOR FURTHER INFORMATION CONTACT: Jonathan McGrath, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: May 22, 2012.

Ira S. Reese,

Executive Director.

[FR Doc. 2012-13912 Filed 6-7-12; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Saybolt LP, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 18251 Cascades Ave. South Suite A, Tukwila, WA 98188, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.

DATES: The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on June 9, 2011. The next triennial inspection date will be scheduled for June 2014.

FOR FURTHER INFORMATION CONTACT: Christopher Mocella, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: June 1, 2012.

Ira S. Reese,

Executive Director.

[FR Doc. 2012-13909 Filed 6-7-12; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Certificate of Registration

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Certificate of Registration. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (77 FR 18847) on March 28, 2012, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 9, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information

should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies'/components' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Certificate of Registration.
OMB Number: 1651-0010.
Form Number: CBP Forms 4455 and 4457.

Abstract: Travelers who do not have proof of prior possession in the United States of foreign-made articles and who do not want to be assessed duty on these items can register them prior to departing on travel. In order to register these articles, the traveler completes CBP Form 4457, *Certificate of Registration for Personal Effects Taken Abroad*, and presents it at the port at the time of export. This form must be signed in the presence of a CBP official after verification of the description of the articles is completed. CBP Form 4457 is accessible at: http://forms.cbp.gov/pdf/CBP_Form_4457.pdf.

CBP Form 4455, *Certificate of Registration*, is used primarily for the registration, examination, and supervised lading of commercial shipments of articles exported for repair, alteration, or processing, which will subsequently be returned to the United States either duty free or at a reduced duty rate. CBP Form 4455 is accessible at: http://forms.cbp.gov/pdf/CBP_Form_4455.pdf.

CBP Forms 4457 and 4455 are used to provide a convenient means of showing

proof of prior possession of a foreign-made item taken on a trip abroad and later returned to the United States. This registration is restricted to articles with serial numbers or unique markings. These forms are provided for by 19 CFR 148.1.

Action: CBP proposes to extend the expiration date of this information collection with a change to the burden hours as a result of a revised estimate to complete CBP Form 4455 from 3 minutes to 10 minutes. There are no changes to the information collected or to CBP Forms 4455 and 4457.

Type of Review: Extension (with change).

Affected Public: Businesses.

CBP Form 4455

Estimated Number of Respondents: 60,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 9,960.

CBP Form 4457

Estimated Number of Respondents: 140,000.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 7,000.

Dated: June 4, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012-13913 Filed 6-7-12; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Guam-CNMI Visa Waiver Information

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing information collection.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Guam-CNMI Visa Waiver Information (CBP Form I-736). This is a proposed extension of an information collection that was

previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (77 FR 19304) on March 30, 2012, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 9, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies'/components' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Guam-CNMI Visa Waiver Information.

OMB Number: 1651-0109.

Form Number: CBP Form I-736.

Abstract: Public Law 110-229, which was enacted on May 8, 2008, provides for certain aliens to be exempt from the nonimmigrant visa requirement if seeking entry into Guam or the Commonwealth of the Northern Mariana Islands (CNMI) as a visitor for a maximum stay of 45 days, provided that no potential threat exists to the welfare, safety, or security of the United States or its territories. Applicants under this provision are not subject to routine screening process at American Consulates. Upon arrival at a Guam or CNMI Port-of-Entry, each applicant for admission presents a completed I-736 to CBP. CBP Form I-736 is provided for by 8 CFR 212.1(q) and is accessible at: http://forms.cbp.gov/pdf/cbp_form_i736.pdf.

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Form I-736.

Type of Review: Extension (without change).

Affected Public: Individuals.

Estimated Number of Respondents: 1,560,000.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 129,480.

Dated: June 4, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012-13906 Filed 6-7-12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5601-N-22]

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: *Air Force*: Mr. Robert Moore, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210) 925–3047; (This is not a toll-free number).

Dated: May 31, 2012.

Clifford Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 06/08/2012

Suitable/Available Properties

Buildings

Colorado

2 Buildings

MFH

USAF CO 80840

Landholding Agency: Air Force

Property Number: 18201220001

Status: Unutilized

Directions: 6550 and 6552

Comments: 3,743 sf. for 6550; 578 sf. for 6552; good conditions; housing/garage; asbestos

2 Buildings

MFH

USAF CO 80840

Landholding Agency: Air Force

Property Number: 18201220003

Status: Unutilized

Directions: 64023 and 64024

Comments: 3,560 sf. for each; housing; poor conditions; need repairs; asbestos

Bldg. 64103

MFH

USAF CO 80840

Landholding Agency: Air Force

Property Number: 18201220004

Status: Unutilized

Comments: 4,270 sf.; housing; poor conditions; need repairs; asbestos

8 Buildings

MFH

USAF CO 80840

Landholding Agency: Air Force

Property Number: 18201220005

Status: Unutilized

Directions: 66041, 66054, 67062, 67072, 67073, 67532, 67542, 67554

Comments: 3,938 sf. for each; housing; poor conditions; need repairs; asbestos

3 Buildings

MFH

USAF CO 80840

Landholding Agency: Air Force

Property Number: 18201220006

Status: Unutilized

Directions: 47010, 47011, 47012

Comments: 3,324 sf. for each; housing; poor conditions; need repairs; asbestos

37 Buildings

MFH

USAF CO 80840

Landholding Agency: Air Force

Property Number: 18201220007

Status: Unutilized

Directions: 66545, 66546, 66593, 66594, 66042, 66043, 66050, 66051, 66062, 67000, 67012, 67020, 67021, 67032, 67040, 67041, 67065, 67066, 67070, 67071, 67500, 67501, 67513, 67520, 67521, 67533, 67534, 67545, 67546, 67550, 67551, 67573, 67574, 67582, 67593, 67594

Comments: 3,348 sf. for each; housing; poor conditions; need repairs; asbestos

24 Buildings

MFH

USAF CO 80840

Landholding Agency: Air Force

Property Number: 18201220008

Status: Underutilized

Directions: 66552, 66581, 66040, 66052, 66053, 66061, 67004, 67024, 67031, 67063, 67064, 67074, 67504, 67510, 67524, 67530, 67543, 67544, 67552, 67553, 67561, 67570, 67581, 67590

Comments: 3,820 sf. for each; housing; poor conditions; need repairs; asbestos

24 Buildings

MFH

USAF CO 80840

Landholding Agency: Air Force

Property Number: 18201220017

Status: Unutilized

Directions: 47103, 47104, 66060, 67002, 67003, 67010, 67022, 67023, 67042, 67043, 67051, 67052, 67053, 67511, 67512, 67522, 67523, 67531, 67560, 67571, 67572, 67580, 67591, 67592

Comments: 3,810 sf. for each; housing; poor conditions; need repairs; asbestos possible

12 Buildings

MFH

USAF CO 80840

Landholding Agency: Air Force

Property Number: 18201220018

Status: Unutilized
 Directions: 66600, 66601, 66055, 67060, 67061, 67540, 67541, 67555, 67556, 67600, 67601, 66056
 Comments: 3,644 sf. for each; housing; poor conditions; need repairs; asbestos identified

Georgia
 2 Buildings
 Moody AFB
 Moody AFB GA 31699
 Landholding Agency: Air Force
 Property Number: 18201220025
 Status: Unutilized
 Directions: 574, 740
 Comments: 793 sf. for b-574; 92 sf. for b-740; usage varies; properties located in secured area; need military escort every time transferee needs to access buildings

Illinois
 Bldg. 500
 Plum Hill MARS
 Belleville IL 62221
 Landholding Agency: Air Force
 Property Number: 18201220035
 Status: Unutilized
 Comments: 3,519 sf.; communication facility; no utilities; possible ground contamination; need repairs and remediation

Bldg. 500
 Plum Hill MARS
 Belleville IL 62221
 Landholding Agency: Air Force
 Property Number: 18201220036
 Status: Unutilized
 Comments: 3,519 sf.; communication facility; no utilities; possible contamination; needs repairs & remediation

Michigan
 3 Buildings
 Selfridge ANGB
 Selfridge MI 48045
 Landholding Agency: Air Force
 Property Number: 18201220020
 Status: Unutilized
 Directions: 326, 780, 710
 Comments: off-site removal only; sf varies; office/school/barracks; fair conditions; need repairs

New Jersey
 4 Buildings
 JBMDL
 Trenton NJ 08641
 Landholding Agency: Air Force
 Property Number: 18201220031
 Status: Unutilized
 Directions: 2606, 2612, 2613, 2621
 Comments: off-site removal only; sf. varies btw. 26,671–27,043 sf.; secured area; need prior approval from Security Police

New Mexico
 Bldg. 310
 103 West Street
 Cannon NM 88103
 Landholding Agency: Air Force
 Property Number: 18201220041
 Status: Underutilized
 Comments: off-site removal only; 20,000 sf.; maintenance shop; secured area; need prior approval to access property

Texas
 6 Buildings
 Medina Trng. Annex
 Lackland AFB TX
 Landholding Agency: Air Force
 Property Number: 18201220038
 Status: Unutilized
 Directions: 587, 595, 596, 597, 598, 599
 Comments: off-site removal only; 2,418 sf. for each; igloos; secured area; prior approval needed to access; deteriorated conditions; needs extensive repairs

Unsuitable Properties

Building

Colorado
 2 Buildings
 Tower/Bulls eye Airfield
 Calhan CO 80808
 Landholding Agency: Air Force
 Property Number: 18201220002
 Status: Underutilized
 Directions: 9603 and 9604
 Comments: nat'l security concerns; public access denied and no alternative method to gain access w/out comprising nat'l security
 Reasons: Secured Area

Florida
 Facilities 28407 & 28411
 1656 Lighthouse Rd.
 Cape Canaveral FL 32925
 Landholding Agency: Air Force
 Property Number: 18201220009
 Status: Excess
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security.
 Reasons: Secured Area

2 Buildings
 Hurlburt Field
 Hurlburt Field FL 32544
 Landholding Agency: Air Force
 Property Number: 18201220010
 Status: Underutilized
 Directions: 90318 and 90319
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security.
 Reasons: Secured Area

10 Buildings
 Cape Canaveral
 Cape Canaveral FL 32925
 Landholding Agency: Air Force
 Property Number: 18201220039
 Status: Excess
 Directions: 28411, 28415, 44500, 49928, 28401, 24445, 24404, 24403, 1715, 70540
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
 Reasons: Secured Area

Illinois
 3 Buildings
 Scott AFB
 Scott AFB IL 62225
 Landholding Agency: Air Force
 Property Number: 18201220034
 Status: Unutilized
 Directions: 1984, 1985, 530
 Comments: High security active duty installation; nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
 Reasons: Secured Area

Indiana
 Facilities 99 & 1371
 Stor Igloos
 Terre Haute IN 47803
 Landholding Agency: Air Force
 Property Number: 18201220019
 Status: Unutilized
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security.
 Reasons: Secured Area

Kansas
 7 Buildings
 McConnell AFB
 McConnell KS 67210
 Landholding Agency: Air Force
 Property Number: 18201220033
 Status: Underutilized
 Directions: 408, 415, 424, 425, 696, 750, 1120
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
 Reasons: Secured Area

Louisiana
 3 Buildings
 Barksdale AFB
 Barksdale AFB LA 71110
 Landholding Agency: Air Force
 Property Number: 18201220032
 Status: Unutilized
 Directions: 5724, 7318, 7136
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
 Reasons: Secured Area

Maryland
 2 Buildings
 Martin State Airport
 Baltimore MD 21220
 Landholding Agency: Air Force
 Property Number: 18201220022
 Status: Excess
 Directions: 1120 & 1121
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security.
 Reasons: Secured Area

Mississippi
 4 Buildings
 Kessler AFB
 Kessler AFB MS 39534
 Landholding Agency: Air Force
 Property Number: 18201220037
 Status: Underutilized
 Directions: 4813, 4815, 4906, 4910
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
 Reasons: Secured Area

Nebraska
 2 Buildings
 Offutt AFB
 Offutt NE 68113
 Landholding Agency: Air Force
 Property Number: 18201220026
 Status: Excess

Directions: 443, 620
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
 Reasons: Secured Area

New Mexico

3 Buildings
 Kirtland AFB
 Kirtland AFB NM 87117
 Landholding Agency: Air Force
 Property Number: 18201220011
 Status: Underutilized
 Directions: 253, 255, 638
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security.
 Reasons: Secured Area

New Mexico

Bldg. 30116
 5801 Manzano St SE
 Kirtland AFB NM 87117
 Landholding Agency: Air Force
 Property Number: 18201220012
 Status: Underutilized
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security.
 Reasons: Secured Area

6 Buildings

Kirtland AFB
 Kirtland AFB NM 87117
 Landholding Agency: Air Force
 Property Number: 18201220013
 Status: Unutilized
 Directions: 37514, 37511, 37509, 37503, 30144, 30108
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security.
 Reasons: Secured Area

Bldgs. 573, 855, 859

Holloman AFB
 Holloman AFB NM 88330
 Landholding Agency: Air Force
 Property Number: 18201220023
 Status: Unutilized
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
 Reasons: Secured Area

5 Buildings

Holloman AFB
 Holloman AFB NM 88330
 Landholding Agency: Air Force
 Property Number: 18201220030
 Status: Unutilized
 Directions: 19, 838, 1197, 847, 1198
 Comments: nat'l security concerns; public access denied due to anti-terrorism & no alternative method to gain access w/out comprising nat'l security
 Reasons: Secured Area

South Carolina

11 Buildings
 Shaw AFB
 Sumter SC 29152
 Landholding Agency: Air Force
 Property Number: 18201220042
 Status: Unutilized
 Directions: 1851, 1850, 1852, 1856, 1858, B413, B420, B1713, B1049, B702, B1128

Comments: facilities are located on a secured military installation; no public access & no alternative method to gain access w/out comprising nat'l security
 Reasons: Secured Area

Texas

11 Buildings
 Ft. Sam Houston
 San Antonio TX 78234
 Landholding Agency: Air Force
 Property Number: 18201220014
 Status: Unutilized
 Directions: 1149, 1151, 1152, 1153, 1154, 1158, 1159, 1160, 1161, 1162, 1163
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security.
 Reasons: Secured Area

12 Buildings
 Ft. Sam Houston
 San Antonio TX 78234
 Landholding Agency: Air Force
 Property Number: 18201220015
 Status: Unutilized
 Directions: 2410, 2411, 2412, 2425, 2427, 2429, 2430, 2432, 3551, 3552, 3553, 3557
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security.
 Reasons: Secured Area

Bldg. 435
 Goodfellow AFB
 Goodfellow AFB TX 76908
 Landholding Agency: Air Force
 Property Number: 18201220016
 Status: Excess
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security.
 Reasons: Secured Area

4 Buildings

Storage Munition Cubicle
 Lackland AFB TX
 Landholding Agency: Air Force
 Property Number: 18201220028
 Status: Unutilized
 Directions: 402, 403, 404, 585
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
 Reasons: Secured Area

Bldg. 1092

Sheppard AFB
 Sheppard AFB TX 76311
 Landholding Agency: Air Force
 Property Number: 18201220029
 Status: Unutilized
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
 Reasons: Secured Area

15 Buildings

Laughlin AFB
 Del Rio TX 78843
 Landholding Agency: Air Force
 Property Number: 18201220040
 Status: Unutilized
 Directions: 47, 64, 113, 125, 136, 257, 284, 358, 360, 401, 510, 511, 2024, 8081, 9007

Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
 Reasons: Secured Area

6 Buildings

BE Stor Shed
 Randolph AFB TX
 Landholding Agency: Air Force
 Property Number: 18201220043
 Status: Underutilized
 Directions: B1281, B1282, B1284, B1285, B1286, B1287
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
 Reasons: Secured Area

Virginia

Bldg. 1994
 Eagle Ave
 Hampton VA 23665
 Landholding Agency: Air Force
 Property Number: 18201220024
 Status: Underutilized
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
 Reasons: Secured Area

9 Buildings

Langley AFB
 Langley AFB VA 23665
 Landholding Agency: Air Force
 Property Number: 18201220027
 Status: Underutilized
 Directions: 1092, 1093, 1094, 1095, 1096, 1097, 1098, 750, 51
 Comments: nat'l security concerns; public access denied & no alternative method to gain access w/out comprising nat'l security
 Reasons: Secured Area

[FR Doc. 2012-13595 Filed 6-7-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

[FWS-R9-IA-2012-N140;
 FXIA1671090000P5-123-FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before July 9, 2012.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and

Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358-2280; or email DMAFR@fws.gov.

FOR FURTHER INFORMATION CONTACT:

Brenda Tapia, (703) 358-2104 (telephone); (703) 358-2280 (fax); DMAFR@fws.gov (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are:

(1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may

be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, “Delivering an Efficient, Effective, and Accountable Government,” and the President’s Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

A. Endangered Species

Applicant: Naples Zoo, Inc., Naples, FL; PRT-701225

The applicant requests renewal and amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genus, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families

Hylobatidae
Lemuridae
Macropodidae

Genus

Ateles

Species

Komodo monitor (*Varanus komodoensis*)
Clouded leopard (*Neofelis nebulosa*)
Malayan tiger (*Panthera tigris corbetti* includes *P.t. jacksoni*)
Leopard (*Panthera pardus*)
Snow leopard (*Uncia uncia*)
African wild dog (*Lycaon pictus*)
Cheetah (*Acinonyx jubatus*)

Applicant: M. Knudsen, Liberal, KS; PRT-841281

The applicant requests renewal and amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genus, and species, to enhance their propagation or survival. This

notification covers activities to be conducted by the applicant over a 5-year period.

Families

Bovidae
Cebidae
Cercopithecidae
Cervidae
Equidae
Hominidae
Hylobatidae
Lemuridae
Tapiridae
Psittacidae (*does not include thick-billed parrot*)
Sturnidae (*does not include *Aplonis pelzelni**).

Applicant: Desert Horn Safaris, El Paso, TX; PRT-73016A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Desert Horn Safaris, El Paso, TX; PRT-73017A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Texas Parks and Wildlife Department, Mason, TX; PRT-75408A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Texas Parks and Wildlife Department, Mason, TX; PRT-75407A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Dos Hijos Ranch-Operations, Inc., Benavides, TX; PRT-75297A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the barasingha (*Rucervus duvaucelii*) and scimitar-horned oryx (*Oryx dammah*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Andrew Barton, Shingle Springs, CA; PRT-75409A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the radiated tortoise (*Astrochelys radiata*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Michael Ryckman, Painted Post, NY; PRT-75285A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the radiated tortoise (*Astrochelys radiata*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Reigleman Enterprises, dba Pymatuning Deer Park, Jamestown, PA; PRT-75109A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Species

- Galapagos tortoise (*Chelonoidis nigra*)
- radiated tortoise (*Astrochelys radiata*)
- salmon-crested cockatoo (*Cacatua moluccensis*)
- ring-tailed lemur (*Lemur catta*)
- black-and-white ruffed lemur (*Varecia variegata*)
- cottontop tamarin (*Saguinus oedipus*)
- Japanese macaque (*Macaca fuscata*)
- lar gibbon (*Hylobates lar*)
- snow leopard (*Uncia uncia*)
- leopard (*Panthera pardus*)
- barasingha (*Rucervus duvaucelii*)
- scimitar-horned oryx (*Oryx dammah*)

- addax (*Addax nasomaculatus*)
- dama gazelle (*Nanger dama*)
- red lechwe (*Kobus leche*)

Applicant: Wildlife Conservation Society, Bronx, NY; PRT-75496A

The applicant requests a permit to import biological samples from American crocodiles (*Crocodylus acutus*) from the University of Havana, Cuba, for the purpose of enhancement of the species through scientific research. This notification covers activities conducted by the applicant for a 5-year period.

Applicant: Turtle Back Zoo, West Orange, NJ; PRT-75693A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Species

- Galapagos tortoise (*Chelonoidis nigra*)
- Radiated tortoise (*Astrochelys radiata*)
- Komodo monitor (*Varanus komodoensis*)
- Jackass penguin (*Spheniscus demersus*)
- Andean condor (*Vultur gryphus*)
- White-naped crane (*Grus vipio*)
- Salmon-crested cockatoo (*Cacatua moluccensis*)
- Snow leopard (*Uncia uncia*)
- Leopard (*Panthera pardus*)

Applicant: University of Cincinnati, Cincinnati, OH; PRT-66809A

The applicant requests a permit to import biologically samples from wild-caught diademmed sifaka (*Propithecus diadema*) and gray bamboo lemur (*Haplemur griseus*) for the purpose of enhancement of the survival of the species.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Cecil Baldwin, Tucson, AZ; PRT-73853A

Applicant: Aaron Rees, Kirkland, WA; PRT-67592A

Applicant: Eric Moore, Yankton, SD; PRT-75399A

Applicant: John Farham, Ft. Collins, CO; PRT-75492A

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2012-13915 Filed 6-7-12; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2012-N141; FXIA1671090000P5-123-FF09A30000]

Endangered Species; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species. We issue these permits under the Endangered Species Act (ESA).

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358-2280; or email DMAFR@fws.gov.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358-2104 (telephone); (703) 358-2280 (fax); DMAFR@fws.gov (email).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 et seq.), as amended, we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Permit No.	Applicant	Receipt of application Federal Register notice	Permit issuance date
33348A	Jerry Brenner	76 FR 7580; February 10, 2011	April 10, 2012.
56284A	Michael Rush	76 FR 65207; October 20, 2011	March 26, 2012.
60276A	Hatada Enterprises, Inc.	77 FR 298; January 4, 2012	April 27, 2012.
63288A	Eudora Farms LLC	77 FR 3493; January 24, 2012	April 11, 2012.
52774A	Michael Moore	77 FR 6139; February 7, 2012	March 29, 2012.
57926A	Zoological Society of San Diego	77 FR 6139; February 7, 2012	May 24, 2012.

Permit No.	Applicant	Receipt of application Federal Register notice	Permit issuance date
680321	John Ball Zoological Garden	77 FR 6816; February 9, 2012	April 11, 2012.
781629	Zoo Boise	77 FR 6816; February 9, 2012	April 11, 2012.
678366	Phoenix Zoo	77 FR 6816; February 9, 2012	April 11, 2012.
60391A	Hatada Enterprises, Inc.	77 FR 6816; February 9, 2012	April 27, 2012.
117181	Mountain Gorilla Veterinary Project	77 FR 12870; March 2, 2012	May 4, 2012.
179119	H. Yturria Land and Cattle Co.	77 FR 14035; March 8, 2012	April 11, 2012.
061184	Donald Henderson	77 FR 14035; March 8, 2012	April 11, 2012.
179117	H. Yturria Land and Cattle Co.	77 FR 14035; March 8, 2012	April 11, 2012.
46687A	Morani River Ranch	77 FR 14035; March 8, 2012	April 11, 2012.
49112A	Morani River Ranch	77 FR 14035; March 8, 2012	April 11, 2012.
672849	Priour Brothers Ranch	77 FR 14035; March 8, 2012	April 11, 2012.
707102	Priour Brothers Ranch	77 FR 14035; March 8, 2012	April 11, 2012.
042637	Michael Soupios	77 FR 14035; March 8, 2012	April 11, 2012.
66322A	John Lattimore	77 FR 14035; March 8, 2012	April 25, 2012.
56216A	Columbus Zoo & Aquarium	77 FR 15383; March 15, 2012	May 18, 2012.
65755A	C.H. Guenther & Son Inc.	77 FR 15383; March 15, 2012	April 16, 2012.
67110A	C.H. Guenther & Son Inc.	77 FR 15383; March 15, 2012	April 16, 2012.
65098A	Kristi Crosby	77 FR 15383; March 15, 2012	April 16, 2012.
65763A	Petty Group, LLP	77 FR 15383; March 15, 2012	April 16, 2012.
65764A	Petty Group, LLP	77 FR 15383; March 15, 2012	April 16, 2012.
66048A	Y. O. Ranch	77 FR 15383; March 15, 2012	April 16, 2012.
66049A	Y. O. Ranch	77 FR 15383; March 15, 2012	April 16, 2012.
66071A	5F Ranch	77 FR 15383; March 15, 2012	April 17, 2012.
66631A	Cotton Mesa Trophy Whitetail	77 FR 15383; March 15, 2012	April 17, 2012.
66632A	Cotton Mesa Trophy Whitetail	77 FR 15383; March 15, 2012	April 17, 2012.
66630A	Forest Land LLC	77 FR 15383; March 15, 2012	April 17, 2012.
67060A	Harkey Ranch	77 FR 15383; March 15, 2012	April 17, 2012.
65707A	Madera Bonita Ranch	77 FR 15383; March 15, 2012	April 17, 2012.
67100A	Madera Bonita Ranch	77 FR 15383; March 15, 2012	April 17, 2012.
66309A	Prater-Pirkle Land Co.	77 FR 15383; March 15, 2012	April 17, 2012.
66626A	Prater-Pirkle Land Co.	77 FR 15383; March 15, 2012	April 17, 2012.
66229A	Britt Rice	77 FR 15383; March 15, 2012	April 17, 2012.
667921	Riverbanks Zoological Park	77 FR 15383; March 15, 2012	April 17, 2012.
66306A	Wildwood Wildlife Park	77 FR 15383; March 15, 2012	April 17, 2012.
67291A	Jimmy Asaff	77 FR 15383; March 15, 2012	April 18, 2012.
67292A	Jimmy Asaff	77 FR 15383; March 15, 2012	April 18, 2012.
67458A	Circle S Ranch, LLC	77 FR 15383; March 15, 2012	April 18, 2012.
67459A	Circle S Ranch, LLC	77 FR 15383; March 15, 2012	April 18, 2012.
65362A	Christopher Karcher	77 FR 15383; March 15, 2012	April 18, 2012.
67448A	Lucky Penny Ranch	77 FR 15383; March 15, 2012	April 18, 2012.
67449A	Lucky Penny Ranch	77 FR 15383; March 15, 2012	April 18, 2012.
67061A	Mayfield Ranch	77 FR 15383; March 15, 2012	April 18, 2012.
67162A	Mayfield Ranch	77 FR 15383; March 15, 2012	April 18, 2012.
199071	Oakland Zoo	77 FR 15383; March 15, 2012	April 18, 2012.
67421A	Safeguard Investments LTD	77 FR 15383; March 15, 2012	April 18, 2012.
691733	Santa Ana Zoo	77 FR 15383; March 15, 2012	April 18, 2012.
785931	Wayne Hahn	77 FR 17494; March 26, 2012	April 27, 2012.
195823	Jack Phillips	77 FR 17494; March 26, 2012	April 27, 2012.
67438A	Jack Phillips	77 FR 17494; March 26, 2012	April 27, 2012.
68172A	James Young	77 FR 17494; March 26, 2012	April 25, 2012.
66557A	David Howerton	77 FR 19312; March 30, 2012	May 23, 2012.
70057A	John Mikkelson	77 FR 20838; April 6, 2012	May 15, 2012.
69571A	Lee Anderson	77 FR 20838; April 6, 2012	May 15, 2012.
71492A	Billy Hablinski	77 FR 22604; April 16, 2012	May 21, 2012.
47905A	Jon Holman	77 FR 22604; April 16, 2012	May 21, 2012.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax

Drive, Room 212, Arlington, VA 22203; fax (703) 358-2280.

Brenda Tapia,
Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2012-13924 Filed 6-7-12; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[USGS-GX11AA0000A1300]

Announcement of the U.S. Geological Survey Science Strategy Planning Feedback Process

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Feedback Process.

SUMMARY: The U.S. Geological Survey is creating 10-year strategies for each of its Mission Areas: Climate and Land Use Change, Core Science Systems, Ecosystems, Energy and Minerals, Environmental Health, Natural Hazards, and Water. This process involves gathering input from the public on draft strategy documents. Feedback can be offered at http://www.usgs.gov/start_with_science.

DATES: The comment period on questions and drafts closes at midnight on August 1, 2012.

FOR FURTHER INFORMATION CONTACT: Listed below are contacts for each USGS Mission Area:

- **Global Change**

Virginia Burkett: 318-256-5628,
virginia_burkett@usgs.gov,
Dave Kirtland: 703-648-4712,
dakirtland@usgs.gov.

- **Core Science Systems**

Sky Bristol: 303-202-4181,
sbristol@usgs.gov,
Chip Euliss: 701-253-5564,
ceuliss@usgs.gov.

- **Ecosystems**

Gary Brewer: 304-724-4507,
gbrewer@usgs.gov,
Ken Williams: 703-648-4260,
byron_ken_williams@usgs.gov.

- **Energy and Minerals**

Jon Kolak: 703-648-6972,
jkolak@usgs.gov,
Rich Ferrero: 206-220-4574,
rferrero@usgs.gov.

- **Environmental Health**

Herb Buxton: 609-771-3944,
hbuxton@usgs.gov,
Patti Bright: 703-648-4238,
pbright@usgs.gov.

- **Natural Hazards**

Lucy Jones: 626-583-7817,
jones@usgs.gov,
Bob Holmes: 573-308-3581,
bholmes@usgs.gov.

- **Water**

Eric Evenson: 609-771-3904,
eevenson@usgs.gov,
Randy Orndorff: 703-648-4316,
rorndorf@usgs.gov.

SUPPLEMENTARY INFORMATION: Feedback can be offered and additional information accessed at www.usgs.gov/start_with_science.

Dated: May 29, 2012.

Barbara Wainman,

USGS Associate Director for Communications and Publishing.

[FR Doc. 2012-13905 Filed 6-7-12; 8:45 am]

BILLING CODE 4311-AM-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000-L19100000-BJ0000-LRCS42800800]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on July 9, 2012.

DATES: Protests of the survey must be filed before July 9, 2012 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101-4669.

FOR FURTHER INFORMATION CONTACT: Thomas Laakso, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101-4669, telephone (406) 896-5125 or (406) 896-5009, tlaakso@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: This survey was executed at the request of the U.S. Army Corps of Engineers, Omaha District, and was necessary to determine federal interest lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 22 N., R. 38 E.

The plat, in one sheet, representing the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines and the subdivision of section 31, Township 22 North, Range 38 East, Principal Meridian, Montana, was accepted May 29, 2012.

We will place a copy of the plat, in one sheet, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in one sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the

protest. We will not officially file this plat, in one sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

James D. Clafin,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2012-13923 Filed 6-7-12; 8:45 am]

BILLING CODE 4310-DN-P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-847]

Certain Electronic Devices, Including Mobile Phones and Tablet Computers, and Components Thereof Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 2, 2012, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Nokia Corporation of Finland; Nokia Inc. of Sunnyvale, California; and Intellisync Corporation of Sunnyvale, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices, including mobile phones and tablet computers, and components thereof by reason of infringement of certain claims of U.S. Patent No. 5,570,369 ("the '369 patent"); U.S. Patent No. 5,884,190 ("the '190 patent"); U.S. Patent No. 6,141,664 ("the '664 patent"); U.S. Patent No. 6,393,260 ("the '260 patent"); U.S. Patent No. 6,728,530 ("the '530 patent"); U.S. Patent No. 7,106,293 ("the '293 patent"); U.S. Patent No. 7,209,911 ("the '911 patent"); U.S. Patent No. 7,365,529 ("the '529 patent"); and U.S. Patent No. 7,415,247 ("the '247 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m.

to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: The Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205-1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2012).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 1, 2012, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electronics devices, including mobile phones and tablet computers, and components thereof that infringe one or more of claims 1-3 and 5-9 of the '369 patent; claim 1 of the '190 patent; claims 3, 4, 21, 27, 28, 37, 38, 43, 44, 61, 67, 68, 77, and 78 of the '664 patent; claims 6, 8, 10, and 11 of the '260 patent; claims 1-4, 7-10, and 14-18 of the '530 patent; claims 7, 9-11, and 13 of the '293 patent; claims 2, 6, and 9-14 of the '911 patent; claims 1, 2, 4-13, 15-27, and 30 of the '529 patent; claims 2, 10, 11, 14, 18, 19, 21, and 23 of the '247 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Nokia Corporation, Keilalahdentie 4, PO Box 226, Espoo, Finland;
Nokia Inc., 200 South Mathilda Avenue, Sunnyvale, CA 94086;
Intellisync Corporation, 200 South Mathilda Avenue, Sunnyvale, CA 94086.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

HTC Corporation, 23 Xinghua Road, Taoyuan City, Taoyuan County 330, Taiwan;
HTC America, Inc., 13920 SE Eastgate Way, Suite 400, Bellevue, WA 98005;
Exedea, Inc., 5950 Corporate Drive, Houston, TX 77036, and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)-(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: June 4, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012-13870 Filed 6-7-12; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of the Consent Decree under the Clean Water Act

Notice is hereby given that on June 4, 2012, a proposed Consent Decree in *United States v. Municipality of Arecibo and the Commonwealth of Puerto Rico*, Civil Action No. 3:12-CV-01419, was lodged with the United States Court for the District of Puerto Rico.

The proposed Consent Decree resolves violations alleged in the Complaint filed against the Municipality of Arecibo ("Arecibo") which generally alleges that: (1) Arecibo failed to timely obtain coverage under the Small MS4 General Permit; (2) Arecibo discharged storm water into waters of the United States without a permit until receiving coverage under the Small MS4 General Permit; (3) Arecibo violates its Small MS4 General Permit by discharging sewage and sewage sludge not permitted by its permit; failing to develop, implement and enforce a program to detect and eliminate illicit discharges or to take all reasonable steps to minimize or prevent any discharges in violation of its permit; and failing to properly operate and maintain its system; and (4) discharges untreated sewage from its MS4 onto public and private property and into residential dwellings and other buildings where the public has or may have come into contact with the sewage.

The proposed Consent Decree addresses the violations identified above by requiring Arecibo to conduct the following: Implement a Storm Water Management Plan (SWMP); provide training to the Municipality's employees who are responsible for complying with the terms of the Consent Decree and annual training for all employees that work at the pump station; comply with the Operation and Preventive Maintenance Plan recently approved by EPA; construct a New Pump Station and three storm water retention ponds; implement interim pump station operation procedures until the New Pump Station is in operation (including cleaning, disinfection, disposal and sampling); and completion of required closed circuit television studies of various watershed areas in the Municipality and repair and/or replace sewers as necessary. The injunctive relief to be completed under the Consent Decree is estimated to cost approximately \$56 million. Arecibo also agrees to pay a civil penalty of \$305,643 in three installment payments over the next two years.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to the matter as *United States v. Municipality of Arecibo and the Commonwealth of Puerto Rico*, D.J. Ref. 90-5-1-1-09891.

The Consent Decree may be examined at the Office of the United States Attorney, Torre Chardon Suite 1201, 350 Carlos Chardon Avenue, San Juan, Puerto Rico 00918, and at U.S. EPA CEPD office, City View Plaza—Suite 7000, #48 Rd. 165 KM. 1.2, Guaynabo, Puerto Rico 00968-8069. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or emailing a request to “Consent Decree Copy” (EESDCopy.ENRD@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$16.00 (25 cents per page reproduction costs of the Consent Decree) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resource Division.

[FR Doc. 2012-13961 Filed 6-7-12; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under The Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Emergency Planning and Community Right-To-Know Act

Notice is hereby given that on June 4, 2012, a proposed Consent Decree (“Consent Decree”) in *United States v. INEOS USA LLC*, Civil Action No. 3:12-cv-01404, was lodged with the United States District Court for the Northern District of Ohio.

In this action, the United States sought injunctive relief and civil penalties from INEOS USA LLC (“INEOS”) for alleged violations of Section 112 of the Clean Air Act (“CAA”), 42 U.S.C. § 7412; the federally enforceable Ohio State Implementation Plan; INEOS’s CAA Permit-to-Install Numbered 03-9227; INEOS’s CAA Title V Permit No. 03-02-02-0015; Section 103(a) of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. 9603(a); and Sections 304(a) and (b) of the Emergency Planning and Community Right-To-Know Act (“EPCRA”), 42 U.S.C. 11004(a) and (b). The alleged violations occurred at INEOS’ chemical manufacturing plant in Lima, Ohio.

Under the Consent Decree, INEOS is required to undertake the following: (i) implement an enhanced leak detection and repair program; (ii) improve training, reporting and recordkeeping on bypassing a control device; and (iii) undertake a root cause analysis of CERCLA/EPCRA reportable quantity releases; review and update CERCLA/EPCRA emergency notification training; and perform a CERCLA/EPCRA audit. INEOS also will pay a civil penalty of \$1,150,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC, 20044-7611, and should refer to *United States v. INEOS USA LLC*, D. J. Ref. No. 90-5-2-1-08875/1.

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, or by faxing or emailing a request to “Consent Decree Copy” (EESDCopy.ENRD@usdoj.gov), fax number (202) 514-0097; phone confirmation number (202) 514-5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of \$ 18.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent

Decree Library at the address given above.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012-13928 Filed 6-7-12; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Modification To Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on June 1, 2012, a proposed Amendment to the Consent Decree in *U.S. v. Allied Signal Inc., et al.*, 96 Civ. 1513 (RPP) was lodged with the United States District Court for the Southern District of New York.

The Original Consent Decree that was entered in 1996 involves the Cortese Landfill Superfund Site, located in the Town of Tusten, Sullivan County, New York. The Amendment to the Consent Decree modifies the Original Consent Decree to require implementation of a modified remedy that the United States Environmental Protection Agency has selected for the Site.

In the course of the performance of the original remedy, two additional sources of contamination were discovered beneath a former drum disposal areas at the Site, which required the selection of an additional response action to address this newly identified source-area contamination. Accordingly, EPA modified the original remedy to provide for air sparging/soil vapor extraction and amendment addition (*i.e.*, injection of soil amendment into the subsurface), subsequent application of in-situ chemical oxidation, if necessary, to address the sources of contamination beneath the former drum disposal areas, and monitored natural attenuation to address the groundwater downgradient from the landfill perimeter.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the Amendment to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *U.S. v. Allied Signal Inc., et al.*, D.J. Ref. 90-11-2-1078/1.

During the public comment period, the Amendment to the Consent Decree may also be examined on the following Department of Justice Web site: http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Amendment to the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or emailing a request to "Consent Decree Copy" (*EESCDCopy. ENRD@usdoj.gov*), fax no. (202) 514-0097, phone confirmation number (202) 514-5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of \$17.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012-13966 Filed 6-7-12; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on May 31, 2012, a proposed Consent Decree in *United States v. SABIC Innovative Plastics US LLC and SABIC Innovative Plastics Mt. Vernon, LLC*, Civil Action No. 12-cv-00076, was lodged with the United States District Court for the Southern District of Indiana, Evansville Division.

In this action, the United States sought injunctive relief and civil penalties from SABIC Innovative Plastics US LLC and SABIC Innovative Plastics Mt. Vernon ("Defendants") for violations of Section 112 of the Clean Air Act ("CAA"), 42 U.S.C. 7412, and the implementing regulations found at 40 CFR part 63, subparts F, G, and H (National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Organic Hazardous Air Pollutants for Equipment Leaks). The violations alleged occurred at Defendants' chemical manufacturing plants located in Mt. Vernon, Indiana and Burkville, Alabama. The proposed Decree resolves the United States' claims against Defendants by requiring Defendants to implement an Enhanced Leak Detection and Repair Program to mitigate any potential excess emissions resulting from past CAA violations;

implement controls on an API oil/water separator as additional injunctive relief; implement controls on certain process vents as a Supplemental Environmental Project, and pay a civil penalty in the amount of \$1,012,873.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to this Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. SABIC Innovative Plastics US LLC and SABIC Innovative Plastics Mt. Vernon, LLC*, D.J. Ref. 90-5-2-1-09010.

During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044-7611 or by faxing or emailing a request to "Consent Decree Copy" (*EESCDCopy.ENRD@usdoj.gov*), fax number (202) 514-0097, phone confirmation number (202) 514-5271. If requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$19.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 2012-13887 Filed 6-7-12; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America v. Dennis Wendt, individually and as Trustee of the Dennis Wendt Trust Co., Wendt Construction Co., Inc., and WWW.PERSSARD.INC.*, Civil Action No. CV-12-2225 (LB), was lodged with the United States District Court for the Northern District of California on May 30, 2012.

This proposed Consent Decree concerns a complaint filed by the United States against Dennis Wendt, individually and as Trustee of the Dennis Wendt Trust Co., Wendt Construction Co., Inc., and *WWW.PERSSARD.INC.*, pursuant to Sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d), to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas and perform mitigation and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Kim Smaczniak, Trial Attorney, P.O. Box 7611, Washington, DC 20044, and refer to *United States v. Wendt et al.*, DJ # 90-5-1-1-18548.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of California, Phillip Burton Federal Building and United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102. In addition, the proposed Consent Decree may be examined electronically at http://www.justice.gov/enrd/Consent_Decrees.html.

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 2012-13873 Filed 6-7-12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on May 9, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Network Centric Operations Industry Consortium, Inc. ("NCOIC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of

antitrust plaintiffs to actual damages under specified circumstances. Specifically, Microsoft Corporation, Redmond, WA; MIT Lincoln Laboratory, Lexington, MA; and Stevens Institute, Hoboken, NJ, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCOIC intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, NCOIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on February 16, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 15, 2012 (77 FR 15394).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012-13990 Filed 6-7-12; 8:45 am]

BILLING CODE 4410-11-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Warheads and Energetics Consortium

Notice is hereby given that, on May 7, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), National Warheads and Energetics Consortium (“NWECC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, 21 CT, Inc., Austin, TX; Cerebrus Corporation, Morris Plains, NJ; Conax Florida Corporation, St. Petersburg, FL; Cyber Research, Inc., Belle Mead, NJ; Cybernet Systems Corporation, Ann Arbor, MI; DRS ICAS, LLC, Buffalo, NY; ENIG Associates, Inc., Bethesda, MD; FIRST RF Corporation, Boulder, CO; HEM Technologies, Lubbock, TX; Intelligent Automation, Inc., Rockville, MD; John Hopkins

University Applied Physics Laboratory LLC, Laurel, MD; Lumimove, Inc., (dba Crosslink), St. Louis, MO; Materials & Electrochemical Research (MER) Corporation, Tucson, AZ; MBDA Inc., Arlington, VA; Meggitt Defense Systems Inc., Irvine, CA; Monte Sano Research Corporation, Huntsville, AL; Prototype Productions, Inc., Ashburn, VA; R. Stresau Laboratory, Inc. (dba Stresau Laboratory, Inc.), Spooner, WI; Stanley Associates, Inc., Huntsville, AL; Surface Optics Corporation, San Diego, CA; The ENSER Corporation, Pinellas Park, FL; and Triton Systems, Inc., Chelmsford, MA, have been added as parties to this venture.

Also, ADEX Machining Technologies, Greenville, SC; CarboMet, LLC, Morristown, NJ; Directed Energy Technologies, Inc., Sumerduck, VA; EFW Inc., Fort Worth, TX; El Dorado Engineering, Inc., Salt Lake City, UT; Mayflower Communications Company, Inc., Burlington, MA; Mear USA Inc., Marshall, TX; Miltec Machining, Inc., Pensacola, FL; and Stevens Institute of Technology, Hoboken, NJ, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NWECC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NWECC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on February 23, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 15, 2012 (77 FR 15394).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012-13994 Filed 6-7-12; 8:45 am]

BILLING CODE 4410-11-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Robotics Technology Consortium, Inc.

Notice is hereby given that, on April 30, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Robotics Technology

Consortium, Inc. (“RTC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Baum Romstedt Technology Research Corp (BRTRC), Fairfax, VA; Dezudio, LLC, Pittsburgh, PA; Kairos Autonomi, Sandy, UT; Kicker Studio, LLC, San Francisco, CA; John H. Northrop & Associates, Inc., Burke, VA; Pratt & Miller Engineering, New Hudson, MI; and rChordata, LLC, Charlotte, NC, have been added as parties to this venture.

Also, Alliant Techsystems, Inc., Minneapolis, MN; American Android Corp., Princeton, NJ; API Defense, Inc., Windber, PA; ATI Industrial Automation, Apex, NC; BBN Technologies Corp., Cambridge, MA; BioRobots, LLC, Cleveland, OH; Defense Research Associates Inc., Beavercreek, OH; Elbit Systems of America, LLC, Ft. Worth, TX; Great Lakes Sound & Vibration, Inc. (GLSV), Houghton, MI; Integration Innovation Inc., Huntsville, AL; John H. Northrop & Associates, Inc., Burke, VA; Lithos Robotics Corporation, Amherst, NY; Mechatron Inc., Somerville, MA; Mercedes-Benz Research & Development North America, Inc., Palo Alto, CA; Oakland University, Rochester, MI; Robotics Research Corporation, Cincinnati, OH; Square One Systems Design, Inc., Jackson, WY; The Boeing Company, Seattle, WA; The George Washington University, Washington, DC; University of Southern California, Marina del Rey, CA; Valde Systems, Inc., Nashua, NH; and Virtus Advanced Sensors, Pittsburgh, PA, have withdrawn as parties from this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and RTC intends to file additional written notifications disclosing all changes in membership.

On October 15, 2009, RTC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 30, 2009 (74 FR 62599).

The last notification was filed with the Department on November 22, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the

Act on December 21, 2011 (76 FR 79218).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012-13992 Filed 6-7-12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Secure Content Storage Association, LLC

Notice is hereby given that, on May 3, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), the Secure Content Storage Association, LLC (“SCSA”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Warner Bros. Entertainment Inc., Burbank, CA; Twentieth Century Fox Innovations, Inc., Los Angeles, CA; SanDisk Corporation, Milpitas, CA; and Western Digital Technologies, Inc., Irvine, CA.

The general area of SCSA’s planned activity is to develop, acquire, own, license and promote technology to facilitate the distribution, use and sale of digital content while allowing content owners to prevent the unauthorized interception, copying and redistribution of that content. This technology will include, but is not necessarily limited to, methods for data encryption, encrypting key management, encryption renewability, and forensic tracing (the “Technology”). The parties anticipate the relevant content will be valuable commercial content protected by copyrights and other intellectual property rights. The Technology is intended to interact with other suitable content protection technologies in order to promote the flexible use of such content by consumers while continuing to maintain appropriate security. Through a limited liability corporation formed by the parties or their affiliates, the parties will promote and license the Technology to

facilitate broad adoption and enable new lines of business in affected industries.

In furtherance of the purposes stated above, the parties and their affiliates may, among other things, engage in theoretical analysis; experimentation; systematic study; research; development; testing; extension of investigative findings or theories of a scientific or technical nature into practical application for experimental and demonstration purposes; collection, exchange and analysis of research or production information; solicitation from industry of feedback on specifications and licenses; develop, publish and license specifications pertaining to the protection of high value digital content on a variety of consumer devices; enter into agreements to carry out the objectives of the parties; establish and operate facilities in the United States for conducting such venture; conduct such venture on a protected and proprietary basis; prosecute applications for patents and grant licenses for the results of such venture; and any combination of these activities.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012-13971 Filed 6-7-12; 8:45 am]

BILLING CODE 4410-11-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on April 30, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), National Center for Manufacturing Sciences, Inc. (“NCMS”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ACE Clearwater Enterprises, Torrance, CA; Autodesk, Inc., San Rafael, CA; Chicago Coatings Group, Skokie, IL; Ciara Technologies, St. Laurent, Quebec, Canada; The Columbia Group, Inc., Washington, DC; Consumers Energy Company, Midland, MI; Curtiss-Wright Surface

Technologies, Paramus, NJ; Fraunhofer USA, Inc., Plymouth, MI; Goodrich Corporation, Brecksville, OH; Parker-Hannifin Corporation, Machesney Park, IL; Perfect Point, Inc., Huntington Beach, CA; and Roush Industries, Inc., Livonia, MI, have been added as parties to this venture.

Also, adapt laser systems, LLC, Kansas City, MO; Advanced Processing Technologies (AVPRO), Norman, OK; Anglicotech LLC, Alpharetta, GA; Assembly Guidance Systems, Inc., Chelmsford, MA; Concurrent Technologies Corporation, Johnstown, PA; GKN Aerospace, Tallassee, AL; The Marlin Group, Arlington, VA; New Mexico Computing Applications Center (NMCAC); One Network Enterprises, Inc., Dallas, TX; Optomec, Inc., Albuquerque, NM; The Pacific Center for Advanced Technology Training (PCATT) at Honolulu Community College, Honolulu, HI; Packer Engineering, Inc., Naperville, IL; Parametric Technology Corporation (PTC), Waltham, MA; PDQ Precision Inc., National City, CA; Portal Dynamics, Inc., Alexandria, VA; REI Systems, Inc., Vienna, VA; Steinbichler Optotechnik GmbH, Neubeuern, Germany; and Superior Controls, Plymouth, MI, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notifications disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on November 22, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 21, 2011 (76 FR 79217).

Patricia A. Brink,

Director of Civil Enforcement Antitrust Division.

[FR Doc. 2012-13976 Filed 6-7-12; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on May 2, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ACT, Iowa City, IA; Framingham State University, Framingham, MA; Global Scholar, Bellevue, WA; McGraw-Hill CTB, Nashville, TN; and VitalSource Technologies, Raleigh, NC, have been added as parties to this venture.

Also, UNICON, Inc., Chandler, AZ; Kyung Hee Cyber University, Seoul, REPUBLIC OF KOREA; and Kaplan Global Solutions, Fort Lauderdale, FL, have withdrawn as parties to this venture.

In addition, Sungard Higher Education has changed its name to Educian, Malvern, PA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on February 6, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 2, 2012 (77 FR 12881).

Patricia A. Brink,
Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–13974 Filed 6–7–12; 8:45 am]

BILLING CODE P

standards activities originating between February and May 2012 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at <http://www.astm.org>.

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on February 10, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2012 (77 FR 14046).

Patricia A. Brink,
Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–13967 Filed 6–7–12; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International Standards

Notice is hereby given that, on May 11, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), ASTM International (“ASTM”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; Research Triangle Institute

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on April 12, 2012, Research Triangle Institute, Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, 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
1-(1-Phenylcyclohexyl)pyrrolidine (7458) .....	|
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470) .....	|
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine (7473) .....	|
1-Butyl-3-(1-naphthoyl)indole (7173) .....	|
1-Pentyl-3-(1-naphthoyl)indole (7118) .....	|
1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)Indole (7200) .....	|
1-Methyl-4-phenyl-4-propionoxypiperidine (9661) .....	|
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine (9663) .....	|
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (7297) .....	|
5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (7298) .....	|
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348) .....	|
2,5-Dimethoxy-4-ethylamphetamine (7399) .....	|
2,5-Dimethoxyamphetamine (7396) .....	|
3,4,5-Trimethoxyamphetamine (7390) .....	|
3,4-Methylenedioxyamphetamine (7400) .....	|
3,4-Methylenedioxyamphetamin (7405) .....	|
3,4-Methylenedioxy-N-ethylamphetamine (7404) .....	|
3-Methylfentanyl (9813) .....	|
3-Methylthiofentanyl (9833) .....	|
4-Bromo-2,5-dimethoxyamphetamine (7391) .....	|
4-Bromo-2,5-dimethoxyphenethylamine (7392) .....	|
4-Methyl-2,5-dimethoxyamphetamine (7395) .....	|

Drug	Schedule
4-Methylaminorex (cis isomer) (1590)	
4-Methoxyamphetamine (7411)	
5-Methoxy-3,4-methylenedioxyamphetamine (7401)	
5-Methoxy-N,N-diisopropyltryptamine (7439)	
Acetorphine (9319)	
Acetyl-alpha-methylfentanyl (9815)	
Acetyldihydrocodeine (9051)	
Acetylmethadol (9601)	
Allylprodine (9602)	
Alphacetylmethadol except levo-alphacetylmethadol (9603)	
Alpha-ethyltryptamine (7249)	
Alphameprodine (9604)	
Alphamethadol (9605)	
Alpha-methylfentanyl (9814)	
Alpha-methylthiofentanyl (9832)	
Alpha-methyltryptamine (7432)	
Aminorex (1585)	
Benzethidine (9606)	
Benzylmorphine (9052)	
Betacetylmethadol (9607)	
Beta-hydroxy-3-methylfentanyl (9831)	
Beta-hydroxyfentanyl (9830)	
Betameprodine (9608)	
Betamethadol (9609)	
Betaprodine (9611)	
Bufotenine (7433)	
Cathinone (1235)	
Clonitazene (9612)	
Codeine methylbromide (9070)	
Codeine-N-Oxide (9053)	
Cyprenorphine (9054)	
Desomorphine (9055)	
Dextromoramide (9613)	
Diampromide (9615)	
Diethylthiambutene (9616)	
Diethyltryptamine (7434)	
Difenoxin (9168)	
Dihydromorphine (9145)	
Dimenoxadol (9617)	
Dimepheptanol (9618)	
Dimethylthiambutene (9619)	
Dimethyltryptamine (7435)	
Dioxaphetyl butyrate (9621)	
Dipipanone (9622)	
Drotebanol (9335)	
Ethylmethylthiambutene (9623)	
Etonitazene (9624)	
Etorphine except HCl (9056)	
Etoxidine (9625)	
Fenethylamine (1503)	
Furethidine (9626)	
Gamma Hydroxybutyric Acid (2010)	
Heroin (9200)	
Hydromorphanol (9301)	
Hydroxypethidine (9627)	
Ibogaine (7260)	
Ketobemidone (9628)	
Levomoramide (9629)	
Levophenacetylmorphan (9631)	
Lysergic acid diethylamide (7315)	
Marihuana (7360)	
Mecloqualone (2572)	
Mescaline (7381)	
Methaqualone (2565)	
Methcathinone (1237)	
Methyldesorphine (9302)	
Methyldihydromorphine (9304)	
Morpheridine (9632)	
Morphine methylbromide (9305)	
Morphine methylsulfonate (9306)	
Morphine-N-Oxide (9307)	
Myrophine (9308)	
N,N-Dimethylamphetamine (1480)	
N-Benzylpiperazine (7493)	

Drug	Schedule
N-Ethyl-3-piperidyl benzilate (7482)	I
N-Ethylamphetamine (1475)	I
N-Ethyl-1-phenylcyclohexylamine (7455)	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402)	I
Nicocodeine (9309)	I
Nicomorphine (9312)	I
N-Methyl-3-piperidyl benzilate (7484)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Normorphine (9313)	I
Norpipanone (9636)	I
Para-Fluorofentanyl (9812)	I
Parahexyl (7374)	I
Peyote (7415)	I
Phenadoxone (9637)	I
Phenampromide (9638)	I
Phenomorphane (9647)	I
Phenoperidine (9641)	I
Pholcodine (9314)	I
Piritramide (9642)	I
Proheptazine (9643)	I
Propiridine (9644)	I
Propiram (9649)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Racemoramide (9645)	I
Tetrahydrocannabinols (7370)	I
Thebacon (9315)	I
Thiofentanyl (9835)	I
Tilidine (9750)	I
Trimeperidine (9646)	I
1-Phenylcyclohexylamine (7460)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
4-Anilino-N-phenethyl-4-piperidine (8333)	II
Alfentanil (9737)	II
Alphaprodine (9010)	II
Amobarbital (2125)	II
Amphetamine (1100)	II
Anileridine (9020)	II
Bezitramide (9800)	II
Carfentanil (9743)	II
Coca Leaves (9040)	II
Cocaine (9041)	II
Codeine (9050)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Dihydrocodeine (9120)	II
Dihydroetorphine (9334)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Etorphine HCl (9059)	II
Fentanyl (9801)	II
Glutethimide (2550)	II
Hydrocodone (9193)	II
Hydromorphone (9150)	II
Isomethadone (9226)	II
Levo-alphaacetylmethadol (9648)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Lisdexamfetamine (1205)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Meperidine intermediate-C (9234)	II
Metazocine (9240)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Metopon (9260)	II
Moramide intermediate (9802)	II
Morphine (9300)	II
Nabilone (7379)	II

Drug	Schedule
Opium, raw (9600)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium poppy/Poppy Straw (9650)	II
Poppy Straw Concentrate (9670)	II
Opium, granulated (9640)	II
Oxycodone (9143)	II
Oxymorphone (9652)	II
Pentobarbital (2270)	II
Phenazocine (9715)	II
Phencyclidine (7471)	II
Phenmetrazine (1631)	II
Phenylacetone (8501)	II
Piminodine (9730)	II
Powdered opium (9639)	II
Racemethorphan (9732)	II
Racemorphan (9733)	II
Remifentanil (9739)	II
Secobarbital (2315)	II
Sufentanil (9740)	II
Tapentadol (9780)	II
Thebaine (9333)	II

The company plans to import small quantities of the listed controlled substances for the National Institute on Drug Abuse (NIDA) for research activities.

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 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than July 9, 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 31, 2012.

Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012-13920 Filed 6-7-12; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Meda Pharmaceuticals, Inc.

By Notice dated April 2, 2012, and published in the Federal Register on April 12, 2012, 77 FR 21998, Meda Pharmaceuticals, Inc., 705 Eldorado Street, Decatur, Illinois 62523, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Nabilone (7379), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for distribution to its customers.

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 Meda Pharmaceuticals 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 Meda Pharmaceuticals 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 31, 2012.

Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012-13916 Filed 6-7-12; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Rhodes Technologies

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 1, 2012, Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of

Morphine (9300), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance in bulk for conversion and sale to dosage form manufacturers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

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 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than August 7, 2012.

Dated: May 31, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012-13919 Filed 6-7-12; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; S&B Pharma, Inc.

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 4, 2012, S&B Pharma Inc., 405 South Motor Avenue, Azusa, California 91702-3232, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Tetrahydrocannabinols (7370)	I
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Nabilone (7379)	II

The company plans to manufacture bulk controlled substances for use in product development and for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

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 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than August 7, 2012.

Dated: May 31, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012-13918 Filed 6-7-12; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Pharmagra Labs, Inc.

By Notice dated January 30, 2012, and published in the **Federal Register** on February 6, 2012, 77 FR 5846, Pharmagra Labs Inc., 158 McLean Road, Brevard, North Carolina 28712, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Pentobarbital (2270), a basic class of controlled substance in schedule II.

The company plans to manufacture the listed substance for analytical research and clinical trials.

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 Pharmagra Labs, Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Pharmagra Labs, 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 class of controlled substance listed.

Dated: May 31, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012-13917 Filed 6-7-12; 8:45 am]

BILLING CODE 4410-09-P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Value Engineering

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Proposed revision to Office of Management and Budget Circular No. A-131, "Value Engineering".

SUMMARY: The Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB) is proposing to revise OMB Circular A-131, Value Engineering, to update and reinforce policies associated with the consideration and use of Value Engineering (VE). VE is an effective technique for cutting waste and inefficiency—helping Federal agencies save billions of dollars in program and acquisition costs, improve performance, enhance quality, and foster the use of innovation. The proposed revisions are designed to ensure that the Federal Government has the capabilities and tools to consider and apply VE techniques to the maximum extent appropriate.

DATES: Interested parties should submit comments in writing to the address below on or before August 7, 2012.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Online at:* <http://www.regulations.gov>.
- *Facsimile:* 202-395-5105.
- *Mail:* Office of Federal Procurement Policy, ATTN: Curtina Smith, New Executive Office Building, Room 9013, 725 17th Street NW., Washington, DC 20503.

Instructions: Please submit comments only and cite "Proposed Revision to OMB Circular A-131" in all correspondence. All comments received will be posted, without change or redaction, to www.regulations.gov, so commenters should not include information that they do not wish to be posted (for example because they consider it personal or business confidential).

FOR FURTHER INFORMATION CONTACT:

Curtina Smith, OFPP, csmith@omb.eop.gov. Availability: Copies of the proposed revision to OMB Circular A-131 are available on OMB's Web site at http://www.whitehouse.gov/omb/circulars_default/.

SUPPLEMENTARY INFORMATION:

A. Overview

Value Engineering (VE) refers to an organized effort to analyze functions of systems, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life-cycle cost consistent with required levels of performance, reliability, quality, and safety. Industry first developed VE during World War II as a means of continuing production despite shortages of critical materials by analyzing functions to generate alternative materials or systems to accomplish the required tasks at a lower cost. The Federal Government subsequently adopted this tool as a mechanism to incentivize contractors to continually think of ways to drive greater efficiency in their production methodologies by allowing them to share with the Government in the savings generated by their value engineering change proposals. VE can reduce program costs and optimize performance.

Currently, several Federal agencies have reported life-cycle savings through the use of VE in a broad range of acquisition programs, such as those involving defense systems, transportation, construction, engineering, environmental, and manufacturing projects. According to annual reports of VE activities submitted by Federal agencies to OMB, value engineering generates billions of dollars in savings and cost avoidance annually for the Federal Government. For example, the Department of Defense (DOD) reported savings of nearly \$2 billion in fiscal year (FY) 2009 and \$3.4 billion in FY 2010. The Department of Transportation's Federal Highway Administration reports that annual savings for Federally-funded state construction projects have ranged from \$1.8 to \$3.2 billion between 2005 and 2009. The Department of State reports that it has used VE to identify hundreds of millions of dollars in total life cycle savings since FY 2008—saving an average of \$46 for every one dollar invested in VE studies. Opportunities for savings exist at other agencies.

OMB Circular A-131 requires agencies to establish VE programs so that the agencies will realize the benefits of using VE techniques to reduce nonessential contract and program costs. OMB first issued the Circular in January 1988 (53 FR 3140), and the Circular was last revised in May 1993 (58 FR 31056). The Circular specifically requires agencies to: (1) Identify a focal point within each agency to monitor, manage and maintain data on agency VE programs;

(2) establish criteria and guidelines for screening programs and projects which might benefit from the application of VE techniques; (3) develop guidelines to evaluate VE proposals; (4) actively solicit VE ideas from contractors; and (5) emphasize, through training and other means, the potential of VE to reduce unnecessary costs. Since issuing the Circular in 1988, OMB has issued three memoranda in April 1995, October 1996, and February 1997 emphasizing the importance and benefits of VE and reminding agencies of their responsibilities under the program. As a result of proposed revisions in this notice, the previously-issued OMB memoranda have been overtaken by events and are hereby formally rescinded.

In this notice, OFPP is proposing to revise Circular A-131 to reflect present-day buying strategies and practices, such as performance-based service contracting, to ensure that the Federal Government is effectively considering and taking full advantage of VE, whenever appropriate, to cut waste and inefficiency and promote greater fiscal responsibility. The revisions that are proposed in this notice would:

- *Reinforce the importance of giving meaningful consideration to VE to save money and improve performance.* The proposal states that VE should be considered for all appropriate agency program management activities and capital assets (as defined in OMB Circular A-11 and the Capital Programming Guide), as well as to appropriate supply, service, architect-engineering, and construction contracts. Through the use of VE, agencies successfully identify and remove nonessential functions and associated costs, ensure realistic budgets, and improve and maintain acceptable levels of quality.

- *Explain that VE can be used with various contract types and methods of contracting.* The proposal explains that VE can be incorporated into the acquisition strategy to improve results achieved from contracts. VE can be used when contracting for services, when using various contract delivery methods, such as design-build, or when using performance-based specifications.

- *Explain that VE can be used with other management tools.* The proposal explains that VE can be used with other management tools designed to improve processes, such as lean six sigma.

- *Increase the threshold for the application of VE.* The proposal would raise the threshold from \$1 million to \$2 million, primarily to take into account inflation since the \$1 million level was adopted. Agencies would have the

discretion to set lower thresholds for those projects that have a significant impact on agency operations.

- *Strengthen training.* The proposal states that agencies should provide training to appropriate program and contract staff in the application and implementation of VE on contracts. OFPP will work with the Federal Acquisition Institute and the Defense Acquisition University on appropriate training materials for the acquisition workforce.

- *Reduce reporting requirements.* The proposal would reduce from 20 to 5 the number of projects to be reported annually to OMB and would update the reporting format to include a description of the methodology used to calculate savings. The proposal would also eliminate Part III of the Circular in its entirety; Part III has required a detailed cost summary of program results from inception to date.

- *Remove outdated terminology and update references.* The proposal would remove outdated terminology and update references to include currently prevalent methodologies and techniques such as performance-based acquisition, the design/build project delivery process, and integrated product/project/process teams.

- *Remove automatic Inspector General (IG) review.* The proposal would remove the provision requiring agency IGs to conduct an automatic audit of VE programs every two years. We expect management review of agency VE programs to be considered over time through internal control assessments of acquisition functions conducted in connection with OMB Circular A-123, *Management Accountability and Control*. Agency management should also work with their IGs, as appropriate, to consider when IG review of VE activities may be warranted.

OMB requests comments on these proposals as well as on other aspects of the Circular.

Joseph G. Jordan,
Administrator for Federal Procurement Policy.

[FR Doc. 2012-13903 Filed 6-7-12; 8:45 am]

BILLING CODE P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 12-07]

Notice of Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

ACTION: Notice of the June 21, 2012, Millennium Challenge Corporation Board of Directors Meeting.

TIME AND DATE: 3:00 p.m. to 5:00 p.m., Wednesday, June 21, 2012.

PLACE: Department of State, 2201 C Street NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Melvin F. Williams, Jr., Vice President, General Counsel and Corporate Secretary via email at corporatesecretary@mcc.gov or by telephone at (202) 521-3600.

STATUS: Meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board of Directors (the "Board") of the Millennium Challenge Corporation ("MCC") will hold a meeting to discuss updates on Malawi and Mali, highlights

of completed compacts, and an audit committee report. The agenda items are expected to involve the consideration of classified information and the meeting will be closed to the public.

Dated: June 5, 2012.

Melvin F. Williams, Jr.,

VP/General Counsel and Corporate Secretary, Millennium Challenge Corporation.

[FR Doc. 2012-14025 Filed 6-6-12; 11:15 am]

BILLING CODE 9211-03-P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 12-06]

Notice of Quarterly Report (January 1, 2012-March 31, 2012)

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Corporation (MCC) is reporting for the quarter January 1, 2012 through March 31, 2012, on assistance provided under section 605 of the Millennium Challenge Act of 2003 (22 U.S.C. 7701 *et seq.*), as amended (the Act), and on transfers or allocations of funds to other federal agencies under section 619(b) of the Act. The following report will be made available to the public by publication in the **Federal Register** and on the Internet Web site of the MCC (www.mcc.gov) in accordance with section 612(b) of the Act.

Dated: June 4, 2012.

T. Charles Cooper,

Vice President, Congressional and Public Affairs, Millennium Challenge Corporation.

ASSISTANCE PROVIDED UNDER SECTION 605

Projects	Obligated	Objectives	Cumulative expenditures	Measures
Country: Madagascar Year: 2012 Quarter 2 Total obligation: \$85,594,779 Entity to which the assistance is provided: MCA Madagascar Total Quarterly Expenditures ¹ : \$0				
Land Tenure Project	\$29,560,718	Increase Land Titling and Security.	\$29,560,718	Area secured with land certificates or titles in the Zones. Legal and regulatory reforms adopted. Number of land documents inventoried in the Zones and Antananarivo. Number of land documents restored in the Zones and Antananarivo. Number of land documents digitized in the Zones and Antananarivo. Average time for Land Services Offices to issue a duplicate copy of a title. Average cost to a user to obtain a duplicate copy of a title from the Land Services Offices. Number of land certificates delivered in the Zones during the period. Number of new guichets fonciers operating in the Zones. The 256 Plan Local d'Occupation Foncier-Local Plan of Land Occupation (PLOFs) are completed.
Financial Sector Reform Project.	\$23,704,219	Increase Competition in the Financial Sector.	\$23,704,220	Volume of funds processed annually by the national payment system. Number of accountants and financial experts registered to become CPA. Number of Central Bank branches capable of accepting auction tenders. Outstanding value of savings accounts from CEM in the Zones. Number of Micro-Finance Institutions (MFIs) participating in the Refinancing and Guarantee funds. Maximum check clearing delay. Network equipment and integrator. Real time gross settlement system (RTGS). Telecommunication facilities. Retail payment clearing system. Number of CEM branches built in the Zones. Number of savings accounts from CEM in the Zones. Percent of Micro-Finance Institution (MFI) loans recorded in the Central Bank database.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objectives	Cumulative expenditures	Measures
Agricultural Business Investment Project.	\$13,854,448	Improve Agricultural Projection Technologies and Market Capacity in Rural Areas.	\$13,854,449	Number of farmers receiving technical assistance. Number of marketing contracts of ABC clients. Number of farmers employing technical assistance. Value of refinancing loans and guarantees issued to participating MFIs (as a measure of value of agricultural and rural loans). Number of Ministère de l'Agriculture, de l'Élevage et de la Pêche- Ministry of Agriculture, Livestock, and Fishing (MAEP) agents trained in marketing and investment promotion. Number of people receiving information from Agricultural Business Center (ABCs) on business opportunities.
Program Administration ² and Control, Monitoring and Evaluation.	\$18,475,394	.....	\$18,475,393	
Pending subsequent reports ³.	.....	.....	\$0	

The compact indicated is closed and therefore will not have any quarterly expenditure amount.

Projects	Obligated	Objective	Cumulative expenditures	Measures
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Country: Honduras Year: 2012 Quarter 2 Total obligation: \$205,000,000
 Entity to which the assistance is provided: MCA Honduras Total Quarterly Expenditures¹: \$0

Rural Development Project.	\$68,273,380	Increase the productivity and business skills of farmers who operate small and medium-size farms and their employees.	\$68,264,510	Number of program farmers harvesting high-value horticulture crops. Number of hectares harvesting high-value horticulture crops. Number of business plans prepared by program farmers with assistance from the implementing entity. Total value of net sales. Total number of recruited farmers receiving technical assistance. Value of loans disbursed to farmers, agribusiness, and other producers and vendors in the horticulture industry, including Program Farmers, cumulative to date, Trust Fund Resources. Number of loans disbursed (disaggregated by trust fund, leveraged from trust fund, and institutions receiving technical assistance from ACDI-VOCA). Number of hectares under irrigation. Number of farmers connected to the community irrigation system.
Transportation Project	\$120,591,240	Reduce transportation costs between targeted production centers and national, regional and global markets.	\$120,584,457	Freight shipment cost from Tegucigalpa to Puerto Cortes. Average annual daily traffic volume—CA-5. International roughness index (IRI)—CA-5. Kilometers of road upgraded—CA-5. Percent of contracted road works disbursed—CA-5. Average annual daily traffic volume—secondary roads. International roughness index (IRI)—secondary roads. Kilometers of road upgraded—secondary roads. Average annual daily traffic volume—rural roads. Average speed—Cost per journey (rural roads). Kilometers of road upgraded—rural roads. Percent disbursed for contracted studies. Value of signed contracts for feasibility, design, supervision and program management contracts. Kilometers (km) of roads under design.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Program Administration ² and Control, Monitoring and Evaluation. Pending subsequent reports ³ .	\$16,135,380 .....	..... .....	\$15,166,048 \$0	Number of Construction works and supervision contracts signed. Kilometers (km) of roads under works contracts.

The compact indicated is closed and therefore will not have any quarterly expenditure amount.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Cape Verde Year: 2012 Quarter 2 Total obligation: \$110,078,488 Entity to which the assistance is provided: MCA Cape Verde Total Quarterly Expenditures ¹ : \$0				

Watershed and Agricultural Support Project.	\$12,011,603	Increase agricultural production in three targeted watershed areas on three islands.	\$11,602,406	Productivity: Horticulture, Paul watershed. Productivity: Horticulture, Faja watershed. Productivity: Horticulture, Mosteiros watershed. Number of farmers adopting drip irrigation: All intervention watersheds (Paul, Faja and Mosteiros). Hectares under improved or new irrigation (All Watersheds Paul, Faja, and Mosteiros). Irrigation Works: Percent contracted works disbursed. All intervention watersheds (Paul, Faja and Mosteiros). Number of reservoirs constructed in all intervention watersheds (Paul, Faja and Mosteiros) (incremental). Number of farmers trained.
Infrastructure Improvement Project.	\$82,630,208	Increase integration of the internal market and reduce transportation costs.	\$82,542,708	Travel time ratio: Percentage of beneficiary population further than 30 minutes from nearest market. Kilometers of roads/bridges completed. Percent of contracted road works disbursed (cumulative). Port of Praia: Percent of contracted port works disbursed (cumulative).
Private Sector Development Project.	\$1,920,018	Spur private sector development on all islands through increased investment in the priority sectors and through financial sector reform.	\$1,824,566	Micro-Finance Institutions portfolio at risk, adjusted (level).
Program Administration ² , and Control, Monitoring and Evaluation. Pending subsequent reports ³ .	\$13,516,659 .....	..... .....	\$12,542,777 \$0	

The compact indicated is closed and therefore will not have any quarterly expenditure amount.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Nicaragua Year: 2012 Quarter 2 Total obligation: \$112,009,390 Entity to which the assistance is provided: MCA Nicaragua Total Quarterly Expenditures: \$0				

Property Regularization Project.	\$7,180,454	Increase Investment by strengthening property rights.	\$6,713,553	Automated database of registry and cadastre installed in the 10 municipalities of Leon. Value of land, urban. Value of land, rural. Time to conduct a land transaction. Number of additional parcels with a registered title, urban. Number of additional parcels with a registered title, rural. Area covered by cadastral mapping. Cost to conduct a land transaction. Annual Average daily traffic volume: N1 Section R1.
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Projects	Obligated	Objective	Cumulative expenditures	Measures
Rural Development Project.	\$31,530,722	Increase the value added of farms and enterprises in the region.	\$31,291,352	Annual Average daily traffic volume: N1 Section R2. Annual Average daily traffic volume: Port Sandino (S13). Annual Average daily traffic volume: Villanueva—Guasaule Annual. Average daily traffic volume: Somotillo-Cinco Pinos (S1). Annual average daily traffic volume: León-Poneloya-Las Peñitas. International Roughness Index: N-I Section R1. International Roughness Index: N-I Section R2. International Roughness Index: Port Sandino (S13). International roughness index: Villanueva—Guasaule. International roughness index: Somotillo-Cinco Pinos. International roughness index: León-Poneloya-Las Peñitas. Kilometers of NI upgraded: R1 and R2 and S13. Kilometers of NI upgraded: Villanueva—Guasaule. Kilometers of S1 road upgraded. Kilometers of S9 road upgraded. Number of beneficiaries with business plans. Numbers of <i>manzanas</i> (1 <i>manzana</i> = 1.7 <i>hectares</i>), by sector, harvesting higher-value crops. Number of beneficiaries with business plans prepared with assistance of Rural Business Development Project. Number of beneficiaries implementing forestry business plans under Improvement of Water Supplies Activity. Number of Manzanas reforested. Number of Manzanas with trees planted.
Program Administration ² , Due Diligence, Monitoring and Evaluation.	\$15,562,166	.....	\$15,379,676	
Pending subsequent reports ³.	.....	.....	\$2,606,245	

The compact indicated is closed and therefore will not have any quarterly expenditure amount.

Projects	Obligated	Objective	Cumulative expenditures	Measures
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Country: Georgia Year: 2012 Quarter 2 Total obligation: \$395,300,000
 Entity to which the assistance is provided: MCA Georgia Total Quarterly Expenditures¹: \$0

Regional Infrastructure Rehabilitation Project.	\$314,240,000	Key Regional Infrastructure Rehabilitated.	\$309,899,714	Household savings from Infrastructure Rehabilitation Activities. Savings in vehicle operating costs (VOC). International roughness index (IRI). Annual average daily traffic (AADT). Travel Time. Kilometers of road completed. Signed contracts for feasibility and/or design studies. Percent of contracted studies disbursed. Kilometers of roads under design. Signed contracts for road works. Kilometers of roads under works contracts. Sites rehabilitated (phases I, II, III)—pipeline. Construction works completed (phase II)—pipeline. Savings in household expenditures for all RID subprojects. Population Served by all RID subprojects. RID Subprojects completed. Value of Grant Agreements signed. Value of project works and goods contracts Signed. Subprojects with works initiated.
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Projects	Obligated	Objective	Cumulative expenditures	Measures
Regional Enterprise Development Project.	\$52,040,800	Enterprises in Regions Developed.	\$52,040,749	Jobs Created by Agribusiness Development Activity (ADA) and by Georgia Regional Development Fund (GRDF). Household net income—ADA and GRDF. Jobs created—ADA. Firm income—ADA. Household net income—ADA. Beneficiaries (direct and indirect)—ADA. Grant agreements signed—ADA. Increase in gross revenues of portfolio companies. Increase in portfolio company employees. Increase in wages paid to the portfolio company employees. Portfolio companies. Funds disbursed to the portfolio companies.
Program Administration ² , Due Diligence, Monitoring and Evaluation. Pending subsequent reports ³ .	\$29,019,200 .....	..... .....	\$25,238,006 \$51	

In November 2008, MCC and the Georgian government signed a Compact amendment making up to \$100 million of additional funds available under the Compact to complete works in the Roads, Regional Infrastructure Development, and Energy Rehabilitation Projects contemplated by the original Compact. The amendment was ratified by the Georgian parliament and entered into force on January 30, 2009.

The compact indicated is closed and therefore will not have any quarterly expenditure amount.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Vanuatu Year: 2012 Quarter 2 Total obligation: \$65,403,519 Entity to which the assistance is provided: MCA Vanuatu Total Quarterly Expenditures: \$0				
Transportation Infrastructure Project.	\$60,084,299	Facilitate transportation to increase tourism and business development.	\$60,084,299	Traffic volume (average annual daily traffic)—Efate Ring Road. Traffic Volume (average annual daily traffic)—Santo East Coast Road. Kilometers of road upgraded—Efate Ring Road. Kilometers of roads upgraded—Santo East Coast Road. Percent of MCC contribution disbursed to “adjusted” signed contracts of roads works; including approved variations.
Program Administration ² , Due Diligence, Monitoring and Evaluation. Pending subsequent reports ³ .	\$5,319,220 .....	..... .....	\$5,319,220 \$0	

The compact indicated is closed and therefore will not have any quarterly expenditure amount.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Armenia Year: 2012 Quarter 2 Total obligation: \$177,650,000 Entity to which the assistance is provided: MCA Armenia Total Quarterly Expenditures ¹ : \$ - 360				
Irrigated Agriculture Project (Agriculture and Water).	\$153,892,467	Increase agricultural productivity Improve and Quality of Irrigation.	\$143,685,712	Training/technical assistance provided for On-Farm Water Management. Training/technical assistance provided for Post-Harvest Processing. Loans Provided. Value of irrigation feasibility and/or detailed design contracts signed. Value of irrigation feasibility and/or detailed design contracts disbursed. Number of farmers using better on-farm water management. Number of enterprises using improved techniques. Value of irrigation feasibility and/or detailed design contracts signed. Additional Land irrigated under project.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Rural Road Rehabilitation Project.	\$9,100,000	Better access to economic and social infrastructure.	\$8,441,028	Value of irrigation feasibility and/or detailed design contracts signed. Value of irrigation feasibility and/or detailed design contracts disbursed. Average annual daily traffic on Pilot Roads. International roughness index for Pilot Roads. Road Sections Rehabilitated—Pilot Roads. Pilot Roads: Percent of Contracted Roads Works Disbursed of Works Completed.
Program Administration ² , Due Diligence, Monitoring and Evaluation.	\$14,657,533	.....	\$13,176,463	
Pending subsequent reports ³.	.....	.....	\$11,332,414	

The negative quarterly expenditure for Armenia is due to a return of funds to the permitted account for compact closure.

Projects	Obligated	Objective	Cumulative expenditures	Measures
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Country: Benin Year: 2012 Quarter 2 Total obligation: \$307,298,039
 Entity to which the assistance is provided: MCA Benin Total Quarterly Expenditures¹: \$4,345,977

Access to Financial Services Project.	\$17,688,674	Expand Access to Financial Services.	\$15,495,910	Value of credits granted by Micro-Finance Institutions (at the national level). Value of savings collected by MFI institutions (at the national level). Average portfolio at risk >90 days of microfinance institutions at the national level. Operational self-sufficiency of MFIs at the national level. Number of institutions receiving grants through the Facility. Number of MFIs inspected by Cellule Supervision Microfinance.
Access to Justice Project	\$20,075,580	Improved Ability of Justice System to Enforce Contracts and Reconcile Claims.	\$19,383,915	Average time to enforce a contract. Percent of firms reporting confidence in the judicial system. Passage of new legal codes. Average time required for Tribunaux de premiere instance-arbitration centers and courts of first instance (TPI) to reach a final decision on a case. Average time required for Court of Appeals to reach a final decision on a case. Percent of cases resolved in TPI per year. Percent of cases resolved in Court of Appeals per year. Number of Courthouses completed. Average time required to register a business (société). Average time required to register a business (sole proprietorship).
Access to Land Project ..	\$32,182,938	Strengthen property rights and increase investment in rural and urban land.	\$30,978,490	Percentage of households investing in targeted urban land parcels. Percentage of households investing in targeted rural land parcels. Average cost required to convert occupancy permit to land title through systematic process. Share of respondents perceiving land security in the Conversions from Occupancy permit to land title (PH-TF) or Rural Land Plan (PFR) areas. Number of preparatory studies completed. Number of Legal and Regulatory Reforms Adopted. Amount of Equipment Purchased. Number of new land titles obtained by transformation of occupancy permit. Number of land certificates issued within MCA-Benin implementation. Number of PFRs established with MCA Benin implementation. Number of permanent stations installed.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Access to Markets Project.	\$188,866,208	Improve Access to Markets through Improvements to the Port of Cotonou.	\$188,683,879	Number of stakeholders trained. Number of communes with new cadastres. Number of operational land market information systems. Volume of merchandise traffic through the Port Autonome de Cotonou. Bulk ship carriers waiting times at the port. Port design-build contract awarded. Annual number of thefts cases. Average time to clear customs. Port meets—international port security standards (ISPS).
Program Administration ² , Due Diligence, Monitoring and Evaluation. Pending subsequent reports ³ .	\$48,484,639	.....	\$47,125,946	
	.....	.....	\$81,588	
Projects	Obligated	Objective	Cumulative expenditures	Measures

Country: Ghana Year: 2012 Quarter 2 Total obligation: \$547,009,000
 Entity to which the assistance is provided: MCA Ghana Total Quarterly Expenditures¹: \$39,208,886

Agriculture Project	\$208,528,167	Enhance Profitability of cultivation, services to agriculture and product handling in support of the expansion of commercial agriculture among groups of smallholder farms.	\$202,305,873	Number of farmers trained in commercial agriculture. Number of agribusinesses assisted. Number of preparatory land studies completed. Legal and regulatory land reforms adopted. Number of landholders reached by public outreach efforts. Number of hectares under production. Number of personnel trained. Number of buildings rehabilitated/constructed. Value of equipment purchased. Feeder roads international roughness index. Feeder roads annualized average daily traffic. Value of signed contracts for feasibility and/or design studies of feeder roads. Percent of contracted design/feasibility studies completed for feeder roads. Value of signed works contracts for feeder roads. Percent of contracted feeder road works disbursed. Value of loans disbursed to clients from agriculture loan fund. Value of signed contracts for feasibility and/or design studies (irrigation). Percent of contracted (design/feasibility) studies complete (irrigation). Value of signed contracts for irrigation works (irrigation). Rural hectares mapped. Percent of contracted irrigation works disbursed. Percent of people aware of their land rights in Pilot Land Registration Areas. Total number of parcels surveyed in the Pilot Land Registration Areas (PLRAs). Volume of products passing through post-harvest treatment.
Rural Development Project.	\$78,312,596	Strengthen the rural institutions that provide services complementary to, and supportive of, agricultural and agriculture business development.	\$75,479,928	Number of students enrolled in schools affected by Education Facilities Sub-Activity. Number of schools rehabilitated. Number of school blocks constructed. Distance to collect water. Time to collect water. Incidence of guinea worm. Number of people affected by Water and Sanitation Facilities Sub-Activity. Number of stand-alone boreholes/wells/non-conventional water systems constructed/rehabilitated.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Transportation Project	\$218,367,447	Reduce the transportation costs affecting agriculture commerce at sub-regional levels.	\$223,556,573	Number of small-town water systems designed and due diligence completed for construction. Number of pipe extension projects designed and due diligence completed for construction. Number of agricultural processing plants in target districts with electricity due to Rural Electrification Sub-Activity. Trunk roads international roughness index. N1 International roughness index. N1 Annualized average daily traffic. N1 Kilometers of road upgraded. Value of signed contracts for feasibility and/or design studies of the N1. Percent of contracted design/feasibility studies completed of the N1. Value of signed contracts for road works N1, Lot 1. Value of signed contracts for road works N1, Lot 2. Trunk roads annualized average daily traffic. Trunk roads kilometers of roads completed. Percent of contracted design/feasibility studies completed of trunk roads. Percent of contracted trunk road works disbursed. Ferry Activity: annualized average daily traffic vehicles. Ferry Activity: annual average daily traffic (passengers). Landing stages rehabilitated. Ferry terminal upgraded. Rehabilitation of Akosombo Floating Dock completed. Rehabilitation of landing stages completed. Percent of contracted road works disbursed: N1, Lot 2. Percent of contracted road works disbursed: N1, Lot 2. Percent of contracted work disbursed: ferry and floating dock. Percent of contracted work disbursed: landings and terminals. Value of signed contracts for feasibility and/or design studies of Trunk Roads. Value of signed contracts for trunk roads.
Program Administration ² , Due Diligence, Monitoring and Evaluation. Pending subsequent reports ³ .	\$46,800,791	.....	\$39,529,223	
	.....	.....	\$3,318,046	
Projects	Obligated	Objective	Cumulative expenditures	Measures

Country: El Salvador Year: 2012 Quarter 2 Total obligation: \$460,940,000

Entity to which the assistance is provided: MCA El Salvador Total Quarterly Expenditures¹: \$37,021,518

Human Development Project.	\$89,146,523	Increase human and physical capital of residents of the Northern Zone to take advantage of employment and business opportunities.	\$73,532,244	Employment rate of graduates of middle technical schools. Graduation rates of middle technical schools. Middle technical schools remodeled and equipped. New Scholarships granted to students of middle technical education. Students of non-formal training. Cost of water. Time collecting water. Number of households with access to improved water supply. Value of contracted water and sanitation works disbursed. Cost of electricity.
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Projects	Obligated	Objective	Cumulative expenditures	Measures
Productive Development Project.	\$71,824,000	Increase production and employment in the Northern Zone.	\$26,483,228	Households benefiting with a connection to the electricity network. Households benefiting with the installation of isolated solar systems. Kilometers of new electrical lines with construction contracts signed. Population benefiting from strategic infrastructure. Number of hectares under production with MCC support. Number of beneficiaries of technical assistance and training—Agriculture. Number of beneficiaries of technical assistance and training—Agribusiness. Value of agricultural loans to farmers/agribusiness.
Connectivity Project	\$269,212,588	Reduce travel cost and time within the Northern Zone, with the rest of the country, and within the region.	\$215,261,446	Average annual daily traffic. International roughness index. Kilometers of roads rehabilitated. Kilometers of roads with construction initiated.
Productive Development Project.	\$68,215,522	.....	\$61,035,582	
Program Administration ² and Control, Monitoring and Evaluation.	\$34,365,368	.....	\$24,112,281	
Pending Subsequent Report ³.	.....	.....	\$0	
Projects	Obligated	Objective	Cumulative expenditures	Measures

Country: Mali Year: 2012 Quarter 2 Total obligation: \$460,811,163
 Entity to which the assistance is provided: MCA Mali Total Quarterly Expenditures¹: \$48,807,192

Bamako-Senou Airport Improvement Project.	\$176,252,117	.....	\$121,687,704	Number of full time jobs at the ADM and firms supporting the airport. Average number of weekly flights(arrivals). Passenger traffic (annual average). Percent works complete. Time required for passenger processing at departures and arrivals. Percent works complete. Security and safety deficiencies corrected at the airport.
Alatona Irrigation Project	\$239,884,675	Increase the agricultural production and productivity in the Alatona zone of the ON.	\$240,454,297	Main season rice yields. International roughness index (IRI) on the Niono-Goma Coura Route. Traffic on the Niono-Diabalay road segment. Traffic on the Diabalay-Goma Coura road segment. Percentage works completed on Niono-Goma Coura road. Hectares under improved irrigation. Irrigation system efficiency on Alatona Canal. Percentage of contracted irrigation construction works disbursed. Number market gardens allocated in Alatona zones to PAPs or New Settler women. Net primary school enrollment rate (in Alatona zone). Percent of Alatona population with improved access to drinking water. Number of schools available in Alatona. Number of health centers available in the Alatona. Number of affected people who have been compensated. Number of farmers that have applied improved techniques. Hectares under production (rainy season). Hectares under production (dry season). Number of farmers trained. Value of agricultural and rural loans. Number of active MFI clients. Loan recovery rate among Alatona farmers.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Industrial Park Project	\$2,637,472	Terminated	\$2,637,472	
Program Administration ² and Control, Monitoring and Evaluation.	\$42,036,899	.....	\$31,309,488	
Pending Subsequent Report ³.	.....	.....	\$2,146,164	

On May 4, 2012, the Millennium Challenge Corporation's (MCC) Board of Directors concurred with the recommendation of MCC to terminate the Mali Compact following the undemocratic change of government in the country.

Projects	Obligated	Objective	Cumulative expenditures	Measures
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Country: Mongolia Year: 2012 Quarter 2 Total obligation: \$284,911,363
 Entity to which the assistance is provided: MCA Mongolia Total Quarterly Expenditures¹: \$24,286,241

Property Rights Project ..	\$27,202,619	Increase security and capitalization of land assets held by lower-income Mongolians, and increased peri-urban herder productivity and incomes.	\$13,691,326	Number of legal and regulatory framework or preparatory studies completed (Peri-Urban and Land Plots). Number of Legal and regulatory reforms adopted. Number of stakeholders (Peri-Urban and Land Plots). Stakeholders Trained (Peri-Urban and Land Plots). Number of Buildings Built/Rehabilitated. Equipment purchased. Rural hectares Mapped. Urban Parcels Mapped. Leaseholds Awarded.
Vocational Education Project.	\$47,355,638	Increase employment and income among unemployed and underemployed Mongolians.	\$29,600,792	Rate of employment. Vocational school graduates in MCC-supported educational facilities. Percent of active teachers receiving certification training. Technical and vocational education and training (TVET) legislation passed.
Health Project	\$38,973,259	Increase the adoption of behaviors that reduce non-communicable diseases (NCDs) among target populations and improved medical treatment and control of NCDs.	\$22,933,730	Treatment of diabetes. Treatment of hypertension. Early detection of cervical cancer. Recommendations on road safety interventions available.
Roads Project	\$88,440,123	More efficient transport for trade and access to services.	\$16,300,161	Kilometers of roads completed. Annual average daily traffic. Travel time. International Roughness Index. Kilometers of roads under design. Percent of contracted roads works disbursed.
Energy and Environmental Project.	\$45,266,205	Increased wealth and productivity through greater fuel use efficiency and decreasing health costs from air.	\$20,467,556	Household savings from decreased fuel costs. Product testing and subsidy setting process adopted. Health costs from air pollution in Ulaanbaatar. Reduced particulate matter concentration. Capacity of wind power generation.
Rail Project	\$369,560	Terminated	\$369,560	Terminated.
Program Administration ² and Control, Monitoring and Evaluation.	\$37,303,959	.....	\$19,680,768	
Pending subsequent reports ³.	.....	.....	\$312,277	

In late 2009, the MCC's Board of Directors approved the allocation of a portion of the funds originally designated for the rail project to the expansion of the health, vocational education and property right projects from the rail project, and the remaining portion to the addition of a road project.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Country: Mozambique Year: 2012 Quarter 2 Total obligation: \$506,924,053 Entity to which the assistance is provided: MCA Mozambique Total Quarterly Expenditures ¹ : \$41,806,853				
Water Supply and Sanitation Project.	\$207,385,393	Increase access to reliable and quality water and sanitation facilities.	\$58,227,556	Percent of urban population with improved water sources. Time to get to non-private water source. Percent of urban population with improved sanitation facilities. Percent of rural population with access to improved water sources. Number of private household water connections in urban areas. Number of rural water points constructed. Number of standpipes in urban areas. Five cities: Final detailed design submitted. Three cities: Final detailed design submitted.
Road Rehabilitation Project.	\$176,307,480	Increase access to productive resources and markets.	\$43,865,078	Kilometers of road rehabilitated. Namialo-Rio Lúrio Road-Metoro: Percent of feasibility, design, and supervision contract disbursed. Rio Ligonha-Nampula: Percent of feasibility, design, and supervision contract disbursed. Chimuara-Nicoadala: Percent of feasibility, design, and supervision contract disbursed. Namialo-Rio Lúrio: Percent of road construction contract disbursed. Rio Lúrio-Metoro: Percent of road construction contract disbursed. Rio Ligonha-Nampula: Percent of road construction contract disbursed. Chimuara-Nicoadala: Percent of road construction contract disbursed. Namialo-Rio Lúrio Road: Average annual daily traffic volume. Rio Lúrio-Metoro Road: Average annual daily traffic volume. Rio-Ligonha-Nampula Road: Average annual daily traffic volume. Chimuara-Nicoadala Road: Average annual daily traffic volume. Namialo-Rio Lúrio Road: Change in International Roughness Index (IRI). Rio Lúrio-Metoro Road: Change in International Roughness Index (IRI). Rio-Ligonha-Nampula Road: Change in International Roughness Index (IRI). Chimuara-Nicoadala Road: Change in International Roughness Index (IRI).
Land Tenure Project	\$39,068,307	Establish efficient, secure land access for households and investors.	\$19,883,913	Time to get land usage rights (DUAT), urban. Time to get land usage rights (DUAT), rural Number of buildings rehabilitated or built. Total value of procured equipment and materials. Number of people trained. Rural hectares mapped in Site Specific Activity. Urban parcels mapped. Rural hectares formalized through Site Specific Activity. Urban parcels formalized. Number of communities delimited and formalized. Number of urban households having land formalized.
Farmer Income Support Project.	\$18,400,117	Improve coconut productivity and diversification into cash crop.	\$12,178,148	Number of diseased or dead palm trees cleared. Survival rate of Coconut seedlings. Hectares under production. Number of farmers trained in pest and disease control. Number of farmers trained in crop diversification technologies. Income from coconuts and coconut products (estates). Income from coconuts and coconuts products (households).

Projects	Obligated	Objective	Cumulative expenditures	Measures
Program Administration ² and Control, Monitoring and Evaluation. Pending Subsequent Report ³ .	\$65,762,756	.....	\$30,636,826	
	.....	.....	\$1,445,392	
Projects	Obligated	Objective	Cumulative expenditures	Measures

Country: Lesotho Year: 2012 Quarter 2 Total obligation: \$362,527,119
 Entity to which the assistance is provided: MCA Lesotho Total Quarterly Expenditures¹: \$28,964,908

Water Project	\$164,027,999	Improve the water supply for industrial and domestic needs, and enhance rural livelihoods through improved watershed management.	\$57,068,977	School days lost due to water borne diseases. Diarrhea notification at health centers. Households with access to improved water supply. Households with access to improved Latrines. Knowledge of good hygiene practices. Households with reliable water services. Enterprises with reliable water services. Households with reliable water services. Volume of treated water. Area re-vegetation.
Health Project	\$121,353,942	Increase access to life-extending ART and essential health services by providing a sustainable delivery platform.	\$75,201,886	People with HIV still alive 12 months after initiation of treatment. TB notification (per 100,000 pop.). People living with HIV/AIDS (PLWA) receiving Antiretroviral treatment. Deliveries conducted in the health facilities. Immunization coverage rate.
Private Sector Development Project.	\$36,470,318	Stimulate investment by improving access to credit, reducing transaction costs and increasing the participation of women in the economy.	\$12,682,603	Time required to enforce a contract. Value of commercial cases. Cases referred to Alternative Dispute Resolution (ADR) that are successfully completed. Portfolio of loans. Loan application processing time. Performing loans. Electronic payments—salaries. Electronic payments—pensions. Debit/smart cards issued. Mortgage bonds registered. Value of registered mortgage bonds. Clearing time—Country. Clearing time—Maseru. Land transactions recorded. Land parcels regularized and registered. People trained on gender equality and economic rights. Eligible population with ID cards. Monetary cost to process a lease application.
Program Administration ² and Control, Monitoring and Evaluation. Pending Subsequent Report ³ .	\$40,674,860	.....	\$26,097,107	
	\$1,608,060	

Projects	Obligated	Objective	Cumulative expenditures	Measures
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Country: Morocco Year: 2012 Quarter 2 Total obligation: \$697,500,000
 Entity to which the assistance is provided: MCA Morocco Total Quarterly Expenditures¹: \$49,148,726

Fruit Tree Productivity Project.	\$328,453,084	Reduce volatility of agricultural production and increase volume of fruit agricultural production.	\$175,312,594	Number of farmers trained. Number of agribusinesses assisted. Number of hectares under production. Value of agricultural production.
Small Scale Fisheries Project.	\$125,174,973	Improve quality of fish moving through domestic channels and assure the sustainable use of fishing resources.	\$24,742,736	Landing sites and ports rehabilitated. Mobile fish vendors using new equipment. Fishing boats using new landing sites. Average price of fish at auction markets. Average price of fish at wholesale. Average price of fish at ports.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Artisan and Fez Medina Project.	\$94,283,145	Increase value added to tourism and artisan sectors.	\$24,165,123	Average revenue of Small and Micro Enterprise (SME) pottery workshops. Construction and rehabilitation of Fez Medina Sites. Tourist receipts in Fez. Training of potters.
Enterprise Support Project.	\$26,811,445	Improved survival rate of new SMEs and INDH-funded income generating activities; increased revenue for new SMEs and INDH-funded income generating activities.	\$14,175,608	Value added per enterprise. Survival rate after two years.
Financial Services Project.	\$43,700,000	To be determined ("TBD").	\$27,152,870	Portfolio at risk at 30 days. Portfolio rate of return. Number of clients of Microcredit Associations (AMCs) reached through mobile branches.
Program Administration ² and Control, Monitoring and Evaluation.	\$79,677,353	.....	\$48,320,641	
Pending Subsequent Report ³.	.....	.....	\$3,801,422	
Projects	Obligated	Objective	Cumulative expenditures	Measures

Country: Tanzania Year: 2012 Quarter 2 Total obligation: \$698,135,999
 Entity to which the assistance is provided: MCA Tanzania Total Quarterly Expenditures¹: \$1,512,225

Energy Sector Project	\$203,465,542	Increase value added to businesses.	\$118,017,159	Current power customers: Morogoro D1, Morogoro T1, Morogoro T2 & T3, Tanga D1, Tanga T1, Tanga T2 & T3, Mbeya D1, Mbeya T1, Mbeya T2 & T3, Iringa D1, Iringa T1, Iringa T2 & T3, Dodoma D1, Dodoma T1, Dodoma T2 & T3, Mwanza D1, Mwanza T1 and Mwanza T2 & T3. Transmission and distribution sub-station capacity: Morogoro, Tanga, Mbeya, Iringa, Dodoma and Mwanza. Collection efficiency (Morogoro). Collection efficiency (Tanga). Collection efficiency (Mbeya). Collection efficiency (Iringa). Collection efficiency (Dodoma). Collection efficiency (Mwanza). Technical and nontechnical losses (Morogoro). Technical and nontechnical losses (Tanga). Technical and nontechnical losses (Mbeya). Technical and nontechnical losses (Iringa). Technical and nontechnical losses (Dodoma). Technical and nontechnical losses (Mwanza).
Transport Sector Project	\$368,847,428	Increase cash crop revenue and aggregate visitor spending.	\$197,196,419	International roughness index: Tunduma Sumbawanga. International roughness index: Tanga Horohoro. International roughness index: Namtumbo Songea. International roughness index: Peramiho Mbinga. Annual average daily traffic: Tunduma Sumbawanga. Annual average daily traffic: Tanga Horohoro. Annual average daily traffic: Namtumbo Songea. Annual average daily traffic: Peramiho Mbinga. Kilometers upgraded/completed: Tunduma Sumbawanga. Kilometers upgraded/completed: Tanga Horohoro. Kilometers upgraded/completed: Namtumbo Songea. Kilometers upgraded/completed: Peramiho Mbinga. Percent disbursed on construction works: Tunduma Sumbawanga.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Water Sector Project	\$65,692,145	Increase investment in human and physical capital and to reduce the prevalence of water-related disease.	\$28,130,025	Percent disbursed on construction works: Tanga Horohoro. Percent disbursed on construction works: Namtumbo Songea. Percent disbursed on construction works: Peramiho Mbinga. Percent disbursed for feasibility and/or design studies: Tunduma Sumbawanga. Percent disbursed for feasibility and/or design studies: Tanga Horohoro. Percent disbursed for feasibility and/or design studies: Namtumbo Songea. Percent disbursed for feasibility and/or design studies: Peramiho Mbinga. International roughness index: Pemba. Average annual daily traffic: Pemba. Kilometers upgraded/completed: Pemba. Percent disbursed on construction works: Pemba. Signed contracts for construction works (Zanzibar Rural Roads). Percent disbursed on signed contracts for feasibility and/or design studies: Pemba. Passenger arrivals: Mafia Island. Percentage of upgrade complete: Mafia Island. Percent disbursed on construction works: Mafia Island.
Program Administration ² and Control, Monitoring and Evaluation. Pending Subsequent Report ³ .	\$56,130,884	.....	\$23,385,406	Number of domestic customers (Dar es Salaam). Number of domestic customers (Morogoro). Number of non-domestic (commercial and institutional) customers (Dar es Salaam). Number of non-domestic (commercial and institutional) customers (Morogoro). Volume of water produced (Lower Ruvu). Volume of water produced (Morogoro). Percent disbursed on feasibility design update contract Lower Ruvu Plant Expansion.
	.....	.....	\$99,857	
Projects	Obligated	Objective	Cumulative expenditures	Measures

Country: Burkina Faso Year: 2012 Quarter 2 Total obligation: \$480,085,358

Entity to which the assistance is provided: MCA Burkina Faso Total Quarterly Expenditures¹: \$20,475,679

Roads Project	\$194,130,681	Enhance access to markets through investments in the road network.	\$14,639,792	Annual average daily traffic: Dedougou-Nouna. Annual average daily traffic: Nouna-Bomborukuy. Annual average daily traffic: Bomborukuy-Mali border. Kilometers of road under works contract. Kilometers of road under design/feasibility contract. Access time to the closest market via paved roads in the Sourou and Comoe (minutes). Kilometers of road under works contract. Kilometers of road under design/feasibility contract. Personnel trained in procurement, contract management and financial systems. Periodic road maintenance coverage rate (for all funds) (percentage).
Rural Land Governance Project.	\$59,934,615	Increase investment in land and rural productivity through improved land tenure security and land management.	\$15,204,582	Trend in incidence of conflict over land rights reported in the 17 pilot communes (Annual percentage rate of change in the occurrence of conflicts over land rights). Number of legal and regulatory reforms adopted. Number of stakeholders reached by public outreach efforts. Personnel trained.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Agriculture Development Project.	\$141,910,059	Expand the productive use of land in order to increase the volume and value of agricultural production in project zones.	\$30,542,691	Number of Services Fonciers Ruraux (rural land service offices) installed and functioning. Rural hectares formalized. Number of parcels registered in Ganzourou project area. New irrigated perimeters developed in Di (Hectares). Technical water management core teams (noyaux techniques) installed and operational in the two basins (Sourou and Comoe). Number of farmers trained. Number of agro-sylvo-pastoral groups which receive technical assistance. Number of loans provided by the rural finance facility. Volume of loans intended for agro-sylvo-pastoral borrowers (million CFA).
Bright II Schools Project	\$27,971,458	Increase primary school completion rates.	\$26,582,359	Number of girls/boys graduating from BRIGHT II primary schools. Percent of girls regularly attending (90% attendance) BRIGHT schools. Number of girls enrolled in the MCC/USAID-supported BRIGHT schools. Number of additional classrooms constructed. Number of teachers trained through 10 provincial workshops.
Program Administration ² and Control, Monitoring and Evaluation. Pending Subsequent Report ³ .	\$56,138,545	.....	\$27,441,397	
	.....	.....	\$0	
Projects	Obligated	Objective	Cumulative expenditures	Measures

Country: Namibia Year: 2012 Quarter 2 Total obligation: \$304,477,815
 Entity to which the assistance is provided: MCA Namibia Total Quarterly Expenditures¹: \$8,590,528

Education Project	\$144,976,558	Improve the quality of the workforce in Namibia by enhancing the equity and effectiveness of basic.	\$34,906,402	Percentage of students who are new entrants in grade 5 for 47 schools. Percent of contracted construction works disbursed for 47 schools. Percent disbursed against design/supervisory contracts for 47 schools. Percentage of schools with a learner-textbook ratio of 1 to 1 in science, math, and English. Number of textbooks delivered. Number of teachers and managers trained in textbook management, utilization, and storage. Percent disbursed against works contracts for Regional Study Resource Centers Activity (RSRCS). Percent disbursed against design/supervisory contracts for RSRCS. Number of vocational trainees enrolled through the MCA-N grant facility. Value of vocational training grants awarded through the MCA-N grant facility. Percent disbursed against construction, rehabilitation, and equipment contracts for Community Skills and Development Centres (COSDECS). Percent disbursed against design/supervisory contracts for COSDECS.
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Projects	Obligated	Objective	Cumulative expenditures	Measures
Tourism Project	\$66,994,941	Grow the Namibian tourism industry with a focus on increasing income to households in communal.	\$10,974,515	Percent of condition precedents and performance targets met for Etosha National Park (ENP) activity. Number of game translocated with MCA–N support. Number of unique visits on Namibia Tourism Board (NTB) web site. Number of North American tourism businesses (travel agencies and tour operators) that offer Namibian tours or tour packages. Value of grants issued by the conservancy grant fund (Namibian dollars). Amount of private sector investment secured by MCA–N assisted conservancies (Namibian dollars). Number of annual general meetings with financial reports submitted and benefit distribution plans discussed.
Agriculture Project	\$47,835,474	Enhance the health and marketing efficiency of livestock in the NCAs of Namibia and to increase income.	\$15,536,855	Number of participating households registered in the Community-based Rangeland and Livestock Management (CBRLM) sub-activity. Number of grazing area management implementation agreements established under CBRLM sub-activity Number of community land board members and traditional authority members trained. Number of cattle tagged with radio frequency identification (RFID) tags. Percent disbursed against works contracts for State Veterinary Offices. Percent disbursed against design/supervisory contracts for State Veterinary Offices. Value of grant agreements signed under Livestock Market Efficiency Fund. Number of Indigenous Natural Product (INP) producers selected and mobilized. Value of grant agreements signed under INP Innovation Fund.
Program Administration ² and Control, Monitoring and Evaluation. Pending Subsequent Report ³ .	\$44,670,841	.....	\$16,809,968	
			\$6,305,828	
Projects	Obligated	Objective	Cumulative expenditures	Measures

Country: Moldova Year: 2012 Quarter 2 Total obligation: \$262,000,000
 Entity to which the assistance is provided: MCA Moldova Total Quarterly Expenditures¹: \$3,695,071

Road Rehabilitation Project.	\$132,840,000	Enhance transportation conditions.	\$525,929	Reduced cost for road users. Average annual daily traffic. Road maintenance expenditure. Kilometers of roads completed. Percent of contracted roads works disbursed. Kilometers of roads under works contracts. Resettlement Action Plan (RAP) implemented. Final design. Kilometers of roads under design.
Transition to High Value Agriculture Project.	\$101,773,402	Increase incomes in the agricultural sector; Create models for transition to HVA in CIS areas and an enabling environment (legal, financial and market) for replication.	\$8,944,959	Hectares under improved or new irrigation. Centralized irrigation systems rehabilitated. Percent of contracted irrigation feasibility and/or design studies disbursed. Value of irrigation feasibility and/or detailed design contracts signed. Water user associations (WUA) achieving financial sustainability. WUA established under new law. Revised water management policy framework—with long-term water rights defined—established. Contracts of association signed.

Projects	Obligated	Objective	Cumulative expenditures	Measures
Program Administration ² and Monitoring and Evaluation. Pending Subsequent Report ³ .	\$27,386,598	.....	\$3,260,089	Irrigation Sector Reform (ISRA) Contractor mobilized. Additionally factor of Access to Agricultural Finance (AAF) investments. Value of agricultural and rural loans. Number of all loans. Number of all loans (female). High value agriculture (HVA) Post-Harvest Credit Facility launched. HVA Post-Harvest Credit Facility Policies and Procedures Manual (PPM) Finalized. Number of farmers that have applied improved techniques (Growing High Value Agriculture Sales [GSH]). Number of farmers that have applied improved techniques (GHS) (female). Number of farmers trained. Number of farmers trained (female). Number of enterprises assisted. Number of enterprises assisted (female). GHS activity launched.
	.....	.....	\$251,108	
Projects	Obligated	Objective	Cumulative expenditures	Measures

Country: Philippines Year: 2012 Quarter 2 Total obligation: \$432,829,526
Entity to which the assistance is provided: MCA Philippines Total Quarterly Expenditures¹: \$11,379,502

Kalahi-CIDSS Project	\$120,000,000	Improve the responsiveness of local governments to community needs, encourage communities to engage in development activities.	\$12,016,874	Percentage of Municipal Local Government Units (MLGUs) that provide funding support for KC subproject operations and maintenance. Number of completed KC sub-projects implemented in compliance with technical plans and within schedule and budget. Percentage of communities with KC sub-projects that have sustainability evaluation rating of satisfactory or better.
Secondary National Roads Development Project.	\$213,412,526	Reduce transportation costs and improve access to markets and social services.	\$5,393,202	Motorized traffic time cost. Kilometers of road sections completed. Value of road construction contracts disbursed. Value of signed road feasibility and design contracts. Value of road feasibility and design contracts disbursed.
Revenue Administration Reform Project.	\$54,300,000	Increase tax revenues over time and support the Department of Finance's initiatives to detect and deter corruption within its revenue agencies.	\$4,010,877	Number of audits performed. Number of Revenue District Offices using the electronic tax information system (eTIS). Number of successful case resolutions.
Program Administration ² and Control, Monitoring and Evaluation. Pending Subsequent Reports ³ .	\$45,117,000	.....	\$2,491,252	
	.....	.....	\$1,859,797	
Projects	Obligated	Objective	Cumulative expenditures	Measures

Country: Senegal Year: 2012 Quarter 2 Total obligation: \$540,000,000
Entity to which the assistance is provided: MCA Senegal Total Quarterly Expenditures¹: \$1,590,061

Road Rehabilitation Project.	\$324,712,499	Expand Access to Markets and Services.	\$2,366,527	Tons of irrigated rice production. Kilometers of roads rehabilitated on the RN#2. Annual average daily traffic Richard-Toll—Ndioum. Percentage change in travel time on the RN#2.
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Projects	Obligated	Objective	Cumulative expenditures	Measures
Irrigation and Water Resources Management Project.	\$170,008,860	Improve productivity of the agricultural sector.	\$437,433	International Roughness Index on the RN#2 (Lower number = smoother road). Kilometers (km) of roads covered by the contract for the studies, the supervision and management of the RN#2. Kilometers of roads rehabilitated on the RN#6. Annual average daily traffic Ziguinchor—Tanaff. Annual average daily traffic Tanaff—Kolda. Annual average daily traffic Kolda—Kouankané. Percentage change in travel time on the RN#6. International Roughness Index on the RN#6 (Lower number = smoother road). Kilometers (km) of roads covered by the contract for the studies, the supervision and management of the RN#6. Tons of irrigated rice production. Potentially irrigable lands area (Delta and Ngallenka). Hectares under production. Total value of feasibility, design and environmental study contracts signed for the Delta and the Ngallenka (including RAPs). Cropping intensity (hectares under production per year/cultivable hectares). Number of hectares mapped to clarify boundaries and land use types. Percent of new conflicts resolved. Number of people trained on land security tools.
Program Administration ² and Monitoring and Evaluation. Pending Subsequent Report ³ .	\$45,278,641	.....	\$7,006,105	
		\$82,456	

Projects	Obligated	Objective	Cumulative expenditures	Measures
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Country: Jordan Year: 2012 Quarter 2 Total obligation: \$275,100,000
 Entity to which the assistance is provided: MCA Jordan Total Quarterly Expenditures: \$ - 32,288

Water Network Restructuring and Rehabilitation.	\$102,570,034	TBD .....	.....	TBD.
Wastewater Collection	\$58,224,386	TBD .....	.....	TBD.
Expansion of Wastewater Treatment Capacity.	\$93,025,488	TBD .....	.....	TBD.
Program Administration ² and Monitoring and Evaluation. Pending Subsequent Report ³ .	\$21,280,092	.....	\$10,828	

The negative expense relates to expense accruals and disbursements for the quarter.

¹ Expenditures are the sum of cash outlays and quarterly accruals for work in process and invoices received but not yet paid.

² Program administration funds are used to pay items such as salaries, rent, and the cost of office equipment.

³ These amounts represent disbursements made that will be allocated to individual projects in the subsequent quarter(s) and reported as such in subsequent quarterly report(s).

619(b) TRANSFER OR ALLOCATION OF FUNDS

U.S. Agency to which Funds were Transferred or Allocated	Amount	Description of program or project
None	None	None

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**[Notice: (12-040)]****NASA Advisory Council; Science Committee; Heliophysics Subcommittee; Meeting.****AGENCY:** National Aeronautics and Space Administration.**ACTION:** Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Heliophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, July 2, 2012, 9 a.m. to 5 p.m., and Tuesday, July 3, 2012, 8:30 a.m. to 5 p.m., Local Time.

ADDRESSES: NASA Headquarters, 300 E Street SW., Room 6H45, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358-4452, fax (202) 358-1377, or mnorris@nasa.gov.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

- Heliophysics Division Overview and Program Status
- Flight Mission Status Report
- Heliophysics Science Performance Assessment

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country,

expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Marian Norris via email at mnorris@nasa.gov or by fax at (202) 358-1377. U.S. citizens and green card holders are requested to submit their name and affiliation 3 working days prior to the meeting to Marian Norris.

Patricia D. Rausch,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

[FR Doc. 2012-13936 Filed 6-7-12; 8:45 am]

BILLING CODE 7510-13-P**NUCLEAR REGULATORY COMMISSION****[Docket No. 72-08; NRC-2011-0085]****License Renewal for Calvert Cliffs Nuclear Power Plant, LLC's****AGENCY:** Nuclear Regulatory Commission.**ACTION:** Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering the renewal of NRC License SNM-2505 for the continued operation of the Independent Spent Fuel Storage Installation (ISFSI) at the Calvert Cliffs Nuclear Power Plant site near Lusby, Maryland. The NRC has prepared an Environmental Assessment (EA) of this proposed license renewal in accordance with its regulations. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The NRC also is conducting a safety evaluation of the proposed license renewal.

ADDRESSES: Please refer to Docket ID NRC-2011-0085 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, using the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0085. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; email: Carol.Gallagher@nrc.gov.

- *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 ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *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.

FOR FURTHER INFORMATION CONTACT:

James R. Park, Project Manager, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6935; email: James.Park@nrc.gov.

SUPPLEMENTARY INFORMATION:**I. Environmental Assessment Summary**

By letter dated September 17, 2010, Calvert Cliffs Nuclear Power Plant, LLC (CCNPP) submitted an application to the NRC to renew NRC License SNM-2505 for the CCNPP site-specific Independent Spent Fuel Storage Installation (ISFSI) that expires on November 30, 2012. CCNPP is requesting renewal of NRC License SNM-2505 for a 40-year period to authorize CCNPP to continue ISFSI operations at the Calvert Cliffs site near Lusby, Maryland. CCNPP supplemented its application on February 10, 2011. On March 11, 2011, the NRC staff found CCNPP's application to be acceptable for a detailed review. In response to NRC staff requests for additional information, CCNPP provided supplemental information on June 14, June 28, and December 15, 2011.

The NRC staff has prepared an EA to document its environmental review of the proposed license renewal. The NRC staff considered the following environmental resource areas in its evaluation: land use; transportation; socioeconomics; air quality; water quality and use; geology and soils; ecology; noise; historical and cultural; scenic and visual; public and occupational health and safety; and waste management. Based on the NRC staff's evaluation, the potential environmental impacts on these resource areas were determined to be small. In its license renewal request, CCNPP is proposing no changes in how it handles or stores spent fuel at the ISFSI, and no significant changes in CCNPP's authorized operations for the ISFSI are planned during the proposed

license renewal period. Approval of the proposed action is not expected to result in any new construction or expansion of the existing ISFSI footprint beyond that previously approved by the NRC. The ISFSI is a passive facility that produces no liquid or gaseous effluents and requires no power or regular maintenance. No significant radiological or non-radiological impacts are expected from continued normal operations. Occupational dose estimates from routine monitoring activities and transfer of spent fuel for disposal are expected to be maintained as low as is reasonably achievable and are expected to be within the limits of Title 10 of the Code of Federal Regulations (10 CFR) 20.1201. The estimated annual dose to the nearest potential member of the public from ISFSI activities is less than 0.02 mSv/yr (2 mrem/yr), which is significantly less than limits specified in 10 CFR 72.104 and 10 CFR 20.1301(a). The staff concluded that the proposed 40-year renewal of NRC License SNM-

2505 will not result in a significant impact to the environment.

The NRC staff consulted with other federal and state agencies and Native American Indian tribes regarding the proposed action, including: The U.S. Fish and Wildlife Service, the National Oceanic and Atmospheric Administration (National Marine Fisheries Service), the Maryland Department of Natural Resources, the Maryland Department of the Environment, the Maryland Historic Trust, the Piscataway Indian Nation, the Piscataway Conoy Confederacy and Subtribes, the Cedarville Band of Piscataway Indians, and the Maryland Commission on African American History and Culture. These consultations ensured that the requirements of Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act were met and provided the designated state liaison agency the opportunity to comment on the proposed action and the EA.

II. Finding of No Significant Impact

On the basis of the EA, the NRC has concluded that the proposed license renewal will not significantly affect the quality of the human environment. Therefore, preparation of an environmental impact statement is not warranted for the proposed action and a finding of no significant impact is appropriate.

III. Further Information

Documents related to this action, including the license renewal application and supporting documentation, are available online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are provided in the following table:

Document	ADAMS Accession No.
CCNPP License Renewal Application	ML102650247
CCNPP License Renewal Application—Supplemental Information	ML110620120
NRC March 11, 2011 Letter to CCNPP—Acceptance of License Renewal Application for Detailed Review	ML110730101
NRC April 15, 2011 Letter to CCNPP—Request for Additional Information (RAI)	ML110900524
CCNPP June 14, 2011 Letter to NRC—Response to RAI	ML11167A014
NRC April 28, 2011 Letter to CCNPP—First RAI Request	ML111180260
CCNPP June 28, 2011 Letter to NRC—Response to First RAI Request	ML11180A270
NRC October 7, 2011 Letter to CCNPP—Second RAI Request	ML112840455
CCNPP December 15, 2011 Letter to NRC—Response to Second RAI Request	ML11364A024
<i>NRC Consultation Letters:</i>	
NRC Letter to U.S. Fish and Wildlife Service	ML110560670
NRC Letter to National Oceanic and Atmospheric Administration (National Marine Fisheries Service)	ML110670385
NRC Letter to Maryland Historic Trust	ML110560720
NRC Letter to Maryland Department of Natural Resources	ML110560647
NRC Letter to Maryland Department of the Environment	ML110560787
NRC Letter to Piscataway Indian Nation	ML111250187
NRC Letter to Piscataway Conoy Confederacy and Subtribes	ML110670403
NRC Letter to Cedarville Band of Piscataway Indians	ML110560754
NRC Letter to Maryland Commission on African American History and Culture	ML110560771
NRC Draft EA transmittal letter to Maryland Department of Natural Resources	ML120530497
Maryland Department of Natural Resources response to EA review request	ML121180580
Final Environmental Assessment	ML121220084

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, 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.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Hard copies of the documents are available from the PDR for a fee.

Dated at Rockville, Maryland, this 31 day of May 2012.

For the Nuclear Regulatory Commission.

Andrew Persinko,
Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2012-13926 Filed 6-7-12; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2012-0002]

Notice of Sunshine Act Meeting

AGENCY: Nuclear Regulatory Commission.

DATE: Week of June 4, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of June 4, 2012

Thursday, June 7, 2012

8:45 a.m. Discussion of Management and Personnel Issues (Closed—Ex. 2 and 6)

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415-1292. Contact person for more information: Rochelle Baval, (301) 415-1651.

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Additional Information

By a vote of 5-0 on June 5, 2012, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that the above referenced Discussion of Management and Personnel Issues be held with less than one week notice to the public. The meeting is scheduled on June 7, 2012.

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The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/public-involve/public-meetings/schedule.html>.

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301-415-6200, TDD: 301-415-2100, or by email at william.dosch@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

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This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969), or send an email to darlene.wright@nrc.gov.

Dated: June 5, 2012.

Rochelle C. Baval,
Policy Coordinator, Office of the Secretary.
[FR Doc. 2012-14050 Filed 6-6-12; 11:15 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30093; 812-13946]

Federated Investment Management Company and Federated ETF Trust; Notice of Application

June 1, 2012.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: Federated Investment Management Company ("Federated") and Federated ETF Trust (the "Trust").

SUMMARY OF APPLICATION: Applicants request an order that permits: (a) Series of certain actively managed open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

FILING DATES: The application was filed on August 26, 2011, and amended on February 22, 2012, March 21, 2012, May 8, 2012, and May 22, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 25, 2012, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state

the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants: c/o Stacy L. Fuller, Esq., K&L Gates LLP, 1601 K Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551-6817 or Daniele Marchesani, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. The Trust is a statutory trust organized under the laws of Delaware and will be registered as an open-end management investment company under the Act. The Trust will initially offer one actively-managed investment series: Federated Active Ultrashort Fixed Income ETF (the "Initial Fund"). The investment objective of the Initial Fund will be to seek to outperform the 3-month LIBOR by investing in fixed and floating rate fixed income instruments.

2. Applicants request that the order apply to the Initial Fund and any future series of the Trust or of other existing or future open-end management companies that may utilize active management investment strategies ("Future Funds"). Any Future Fund will (a) be advised by Federated or an entity controlling, controlled by, or under common control with Federated (together with Federated, an "Advisor"), and (b) comply with the terms and conditions of the application.¹ The Initial Fund and Future Funds together are the "Funds." Each Fund will consist of a portfolio of securities (including

¹ All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Investing Fund (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

fixed income securities² and/or equity securities) and/or currencies and other assets (“Portfolio Instruments”).³ Funds may also invest in “Depository Receipts.” A Fund will not invest in any Depository Receipts that the Advisor deems to be illiquid or for which pricing information is not readily available.⁴ Each Fund will operate as an actively managed exchange-traded fund (“ETF”). The Future Funds might include one or more ETFs which invest in other open-end and/or closed-end investment companies and/or ETFs.

3. Federated, a Pennsylvania corporation, will be the investment advisor to the Initial Fund. Each Advisor is or will be registered as an “investment adviser” under the Investment Advisers Act of 1940 (the “Advisers Act”). The Advisor may retain investment advisers as sub-advisers in connection with the Funds (each, a “Subadvisor”). Any Subadvisor will be registered under the Advisers Act. A registered broker-dealer under the Securities Exchange Act of 1934 (“Exchange Act”), which may be an affiliate of the Advisor, will act as the distributor and principal underwriter of the Funds (“Distributor”). Applicants request that the order apply also to any future Distributor of Shares that complies with the terms and conditions of the application.

4. Shares of each Fund will be purchased from the Trust only in Creation Units through the Distributor on a continuous basis at net asset value (“NAV”) next determined after an order in proper form is received.⁵ Applicants anticipate that a Creation Unit will consist of at least 50,000 Shares and that the price of a Share will range from \$20 to \$200. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into a participant agreement with the Distributor and the transfer agent of the Trust (“Authorized Participant”) with respect to the

creation and redemption of Creation Units. An Authorized Participant is either: (a) a broker or dealer registered under the Exchange Act (“Broker”) or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation, a clearing agency registered with the Commission and affiliated with the Depository Trust Company (“DTC”), or (b) a participant in the DTC (such participant, “DTC Participant”).

5. The Initial Fund and certain Future Funds will generally be purchased entirely for cash as permissible under the procedures described below and will generally be redeemed in-kind. However, the Trust reserves the right to accept and deliver Creation Units of the Initial Fund and any Future Fund by means of an in-kind tender of specified instruments. Purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (“Deposit Instruments”), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (“Redemption Instruments”).⁶ On any given Business Day the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or a redemption, as the “In-Kind Basket.” In addition, the In-Kind Basket will correspond pro rata to the positions in the Fund’s portfolio (including cash positions),⁷ except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;⁸ or (c) TBA Transactions, short positions and other positions that cannot be transferred in

kind⁹ will be excluded from the In-Kind Basket.¹⁰ If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the In-Kind Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the “Cash Amount”).

6. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount, as described above; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC Process or DTC Process; or (ii) in the case of Funds holding non-U.S. investments (“Global Funds”), such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.¹¹

7. Each Business Day, before the open of trading on the national securities

⁹ This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

¹⁰ Because these instruments will be excluded from the In-Kind Basket, their value will be reflected in the determination of the Cash Amount (defined below).

¹¹ A “custom order” is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

² Fixed income securities may include “to-be-announced transactions” (“TBA Transactions”). A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

³ Neither the Initial Fund nor any Future Fund will invest in options contracts, futures contracts or swap agreements.

⁴ Depository Receipts are typically issued by a financial institution, a “depository”, and evidence ownership in a security or pool of securities that have been deposited with the depository. No affiliated persons of applicants will serve as the depository bank for any Depository Receipts held by a Fund.

⁵ A Trust will issue, sell and redeem Creation Units of the applicable Fund on any day that the Trust is open for business, including as required by section 22(e) of the Act (each, a “Business Day”).

⁶ The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act. In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

⁷ The portfolio used for this purpose will be the same portfolio used to calculate the Fund’s NAV for that Business Day.

⁸ A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

exchange as defined in section 2(a)(26) of the Act (“Stock Exchange”) upon which its Shares are listed and traded, the Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the In-Kind Basket, as well as the estimated Cash Amount (if any), for that day. The published In-Kind Basket will apply until a new In-Kind Basket is announced on the following Business Day, and there will be no intra-day changes to the In-Kind Basket except to correct errors in the published In-Kind Basket. The Stock Exchange will disseminate every 15 seconds throughout the trading day an amount representing, on a per Share basis, the sum of the current value of the Portfolio Instruments that were publicly disclosed prior to the commencement of trading in Shares on the Stock Exchange.

8. An investor purchasing a Creation Unit from a Fund may be charged a fee (“Transaction Fee”) to protect existing shareholders of the Funds from the dilutive costs associated with the purchase and redemption of Creation Units.¹² All orders to purchase Creation Units will be placed with the Distributor and the Distributor will transmit all purchase orders to the relevant Fund. The Distributor will be responsible for delivering a prospectus (“Prospectus”) to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

9. Shares will be listed and traded at negotiated prices on the Stock Exchange and traded in the secondary market. Applicants expect that Stock Exchange specialists (“Specialists”) or market makers (“Market Makers”) will be assigned to Shares. The price of Shares trading on the Stock Exchange will be based on a current bid/offer market. Transactions involving the purchases and sales of Shares on the Stock Exchange will be subject to customary brokerage commissions and charges.

10. Applicants expect that purchasers of Creation Units will include arbitrageurs, Specialists or Market Makers, acting in their unique role to provide a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities.¹³ Applicants

¹² Where a Fund permits an in-kind purchaser to substitute cash in lieu of depositing one or more Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to offset the cost to the Fund of buying those particular Deposit Instruments.

¹³ If Shares are listed on NASDAQ, no Specialist will be contractually obligated to make a market in

expect that secondary market purchasers of Shares will include both institutional and retail investors.¹⁴ Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV should ensure that the Shares will not trade at a material discount or premium in relation to NAV per individual Share.

11. Neither the Trust nor any Fund will be marketed or otherwise held out as a “mutual fund.” Instead, each Fund will be marketed as an “actively-managed exchange-traded fund.” Any advertising material where features of obtaining, buying or selling Creation Units are described or where there is reference to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only.

12. The Funds’ Web site, which will be publicly available prior to the public offering of Shares, will include the Prospectus for each Fund and additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day’s NAV and the market closing price or mid-point of the bid/ask spread at the time of the calculation of such NAV (“Bid/Ask Price”), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments and other assets held by the Fund that will form the basis for the Fund’s calculation of NAV at the end of the Business Day.¹⁵

Applicants’ Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under

Shares. Rather, under NASDAQ’s listing requirements, two or more Market Makers will be registered in Shares and required to make a continuous, two-sided market or face regulatory sanctions.

¹⁴ Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

¹⁵ Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day will be booked and reflected in NAV on the current Business Day. Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an “open-end company” as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer’s current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust to register as an open-end management investment company and redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV.

Section 22(d) of the Act and Rule 22c-1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution system of investment company shares by eliminating price competition from Brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity should ensure that the

difference between the market price of Shares and their NAV remains low.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that settlement of redemptions of Creation Units of Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 14 calendar days. With respect to Future Funds that are Global Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances exist similar to those described in the application. Except as disclosed in the SAI for a Fund, deliveries of redemption proceeds for Global Funds are expected to be made within seven days.¹⁶

8. Applicants submit that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of 14 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days needed to deliver the proceeds for each affected Global Fund.

9. Applicants request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Instruments of each Global Fund customarily clear and settle, but in all cases no later than 14 calendar days following the tender of a Creation Unit.

¹⁶Rule 15c6-1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade date. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that they have under rule 15c6-1.

Applicants are not seeking relief from section 22(e) with respect to Global Funds that do not effect creations or redemptions in-kind.

Section 12(d)(1) of the Act

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request relief to permit Investing Funds (as defined below) to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Brokers to sell Shares to Investing Funds in excess of the limits in section 12(d)(1)(B) of the Act. Applicants request that these exemptions apply to: (a) any Fund that is currently or subsequently part of the same "group of investment companies" as the Initial Fund within the meaning of section 12(d)(1)(G)(ii) of the Act as well as any principal underwriter for the Funds and any Brokers selling Shares of a Fund to an Investing Fund; and (b) each management investment company or unit investment trust registered under the Act that is not part of the same "group of investment companies" as the Funds and that enters into a FOF Participation Agreement (as defined below) with a Fund (such management investment companies are referred to herein as "Investing Management Companies," such unit investment trusts are referred to herein as "Investing Trusts," and Investing Management Companies and Investing Trusts together are referred to herein as "Investing Funds").¹⁷ Investing Funds do not include the Funds. Each Investing Trust will have a

¹⁷ Applicants anticipate that there may be Investing Funds that are not part of the same group of investment companies as the Funds but may be subadvised by an Advisor.

sponsor (“Sponsor”) and each Investing Management Company will have an investment adviser within the meaning of section 2(a)(20)(A) of the Act (“Investing Fund Advisor”) that does not control, is not controlled by or under common control with the Advisor. Each Investing Management Company may also have one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each, an “Investing Fund Sub-Advisor”). Each Investing Fund Advisor and any Investing Fund Sub-Advisor will be registered as an investment adviser under the Advisers Act.

12. Applicants submit that the proposed conditions to the requested relief are designed to address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

13. Applicants propose a condition to prohibit an Investing Fund or Investing Fund Affiliate¹⁸ from causing an investment by an Investing Fund in a Fund to influence the terms of services or transactions between an Investing Fund or an Investing Fund Affiliate and the Fund or Fund Affiliate. Applicants propose a condition to limit the ability of the Investing Fund Advisor, or Sponsor, any person controlling, controlled by or under common control with such Advisor or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Advisor, the Sponsor, or any person controlling, controlled by, or under common control with such Advisor or Sponsor (“Investing Fund’s Advisory Group”) from (individually or in the aggregate) controlling a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Investing Fund Sub-Advisor, any person controlling, controlled by, or under common control with the Investing Fund Sub-Advisor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Sub-Advisor or any person controlling,

controlled by or under common control with the Investing Fund Sub-Advisor (“Investing Fund’s Sub-Advisory Group”).

14. Applicants propose other conditions to limit the potential for an Investing Fund and certain affiliates of an Investing Fund (including Underwriting Affiliates) to exercise undue influence over a Fund and certain of its affiliates, including that no Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (“Affiliated Underwriting”). An “Underwriting Affiliate” is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Sub-Advisor, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Advisor or Investing Fund Sub-Advisor, employee or Sponsor is an affiliated person. An Underwriting Affiliate does not include any person whose relationship to the Fund is covered by section 10(f) of the Act.

15. Applicants propose several conditions to address the concerns regarding layering of fees and expenses. Applicants note that the board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not “interested persons” within the meaning of section 2(a)(19) of the Act (“disinterested directors or trustees”), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. In addition, an Investing Fund Advisor, trustee of an Investing Trust (“Trustee”) or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-1 under the Act) received from a Fund by the Investing Fund Advisor, Trustee or Sponsor or an affiliated person of the Investing Fund Advisor, Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor, Trustee or Sponsor or its affiliated person by a Fund, in connection with

the investment by the Investing Fund in the Fund. Applicants also propose a condition to prevent any sales charges or service fees on shares of an Investing Fund from exceeding the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.¹⁹

16. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on sections 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

17. To ensure that the Investing Funds understand and comply with the terms and conditions of the requested order, any Investing Fund that intends to invest in a Fund in reliance on the requested order will be required to enter into a participation agreement (“FOF Participation Agreement”) with the Fund. The FOF Participation Agreement will include an acknowledgment from the Investing Fund that it may rely on the order only to invest in the Funds and not in any other investment company.

Sections 17(a)(1) and (2) of the Act

18. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (“second tier affiliate”), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines “affiliated person” to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines “control” as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person’s voting securities. Each Fund may be deemed to be controlled by an Advisor and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment

¹⁸ An “Investing Fund Affiliate” is defined as the Investing Fund Advisor, Investing Fund Sub-Advisor, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. A “Fund Affiliate” is defined as an investment adviser, promoter or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

¹⁹ Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule that may be adopted by FINRA.

company (or series thereof) advised by an Advisor (an "Affiliated Fund").

19. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25% of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25% of the Shares of one or more Affiliated Funds.²⁰ Applicants also request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, certain Investing Funds of which the Funds are affiliated persons or a second-tier affiliate.²¹

20. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Absent the unusual circumstances discussed in the application, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchases and redemptions, respectively, and will correspond *pro rata* to the Fund's portfolio instruments. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the relevant Funds. Therefore, applicants state that the in-kind purchases and redemptions create no opportunity for affiliated persons or the Applicants to effect a transaction detrimental to other holders of Shares of that Fund. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

²⁰ Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Investing Fund because an investment adviser to the Funds is also an investment adviser to an Investing Fund.

²¹ Applicants expect most Investing Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Investing Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. The requested relief is also intended to cover any in-kind transactions that may accompany such sales and redemptions.

21. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund meets the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.²² Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. *Actively-Managed Exchange-Traded Fund Relief*

1. As long as a Fund operates in reliance on the requested order, the Shares of the Fund will be listed on a Stock Exchange.
2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.
3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis, for each Fund the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.
4. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments and other held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.
5. The Advisor or any Subadvisor, directly or indirectly, will not cause any

²² Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of the Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively-managed exchange-traded funds.

B. *Section 12(d)(1) Relief*

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Sub-Advisory Group with respect to a Fund for which the Investing Fund Sub-Advisor or a person controlling, controlled by or under common control with the Investing Fund Sub-Advisor acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Investing Fund Advisor and any Investing Fund Sub-Advisor are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in Shares of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of a Fund, including a

majority of the disinterested Board members, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Advisor, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-1 under the Act) received from a Fund by the Investing Fund Advisor, or Trustee or Sponsor, or an affiliated person of the Investing Fund Advisor, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor, or Trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Sub-Advisor will waive fees otherwise payable to the Investing Fund Sub-Advisor, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Sub-Advisor, or an affiliated person of the Investing Fund Sub-Advisor, other than any advisory fees paid to the Investing Fund Sub-Advisor or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Sub-Advisor. In the event that the Investing Fund Sub-Advisor waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of the Fund, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in

an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their

responsibilities under the order. At the time of its investment in shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on this section 12(d)(1) relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-13860 Filed 6-7-12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Notice of Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the

Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission held a Closed Meeting on Monday, June 4, 2012 at 3:00 p.m.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions as set forth in 5 U.S.C. 552b(c)(2), (6), (8) and (9)(A) and 17 CFR 200.402(a)(2), (6), (8) and (9)(A) permit consideration of the scheduled matters at the Closed Meeting. Certain staff members who had an interest in the matters were present.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matters of the Closed Meeting on June 4, 2012 were a matter related to financial institutions and markets and a personnel matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

Dated: June 5, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012-14031 Filed 6-6-12; 11:15 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67107; File No. SR-NYSEArca-2012-50]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of the First Trust CBOE VIX Tail Hedge Index Fund Under NYSE Arca Equities Rule 5.2(j)(3)

June 4, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”) ¹ and Rule 19b-4 thereunder, ² notice is hereby given that, on May 25, 2012, NYSE Arca, Inc. (“Exchange” or “NYSE Arca” or “Corporation”) 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 substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the

proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares (“Shares”) of the First Trust CBOE VIX Tail Hedge Index Fund under NYSE Arca Equities Rule 5.2(j)(3). The text of the proposed rule change is available on the Exchange’s Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the First Trust CBOE VIX Tail Hedge Index Fund (“Fund”) under NYSE Arca Equities Rule 5.2(j)(3), the Exchange’s listing standards for Investment Company Units (“Units”).³

The Shares will be offered by First Trust Exchange-Traded Fund (“Trust”), which is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company.⁴ The

³ An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). See NYSE Arca Equities Rule 5.2(j)(3)(A).

⁴ The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”). On October 17, 2011, the Trust filed with the Commission an amendment to the Trust’s registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-125751 and 811-21774) (“Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the

investment adviser to the Fund will be First Trust Advisors L.P. (“Adviser” or “First Trust”). First Trust Portfolios L.P. (“Distributor”) will be the principal underwriter and distributor of the Fund’s Shares. The Bank of New York Mellon Corporation (“BNY”) will serve as administrator, custodian, and transfer agent for the Fund (“Custodian”).

According to the Registration Statement, the Fund will seek investment results that correspond generally to the price and yield, before the Fund’s fees and expenses, of an equity index called the CBOE S&P VIX Tail Hedge Index (“Index”). The Fund will normally invest at least 90% of its net assets (plus the amount of any borrowings for investment purposes) in common stocks included in the Index. In addition, the Fund will normally invest 0.0% to 1.0% of its net assets in VIX call options, as described below.

The Exchange is submitting this proposed rule change because the Index for the Fund does not meet all of the “generic” listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of Units based upon an index of US Component Stocks.⁵ Specifically, Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3)⁶ sets forth the requirements to be met by components of an index or portfolio of US Component Stocks. As described further below, the Index consists of an S&P 500 Index stock portfolio and a position in specified VIX Index (“VIX”) call options.⁷ The Index meets all requirements of NYSE Arca Equities Rule 5.2(j)(3) and Commentary .01(a)(A) thereto except that the Index includes VIX call options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS. As described below, the Index is predominately S&P 500 companies and includes an exposure to

Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 27068 (September 20, 2005) (File No. 812-13000) (“Exemptive Order”).

⁵ NYSE Arca Equities Rule 5.2(j)(3) provides that the term “US Component Stock” shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Exchange Act or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Exchange Act.

⁶ Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) states, in part, that the components of an index of US Component Stocks, upon the initial listing of a series of Units pursuant to Rule 19b-4(e) under the Exchange Act, shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Exchange Act.

⁷ According to the Registration Statement, the VIX Index is a measure of estimated near-term future volatility based upon the weighted average of the implied volatilities of near-term put and call options on the S&P 500.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

VIX call options ranging from 0.00% to 1.00% of the weight of the Index. All securities in the S&P 500 Index are listed and traded on a national securities exchange. Options on the VIX are traded on the Chicago Board Options Exchange (“CBOE”). Notwithstanding that the Index does not meet all of the generic listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3), the Exchange believes that the Index is sufficiently broad-based to deter potential manipulation in that the S&P 500 Index stocks are among the most actively traded, highly capitalized stocks traded in the U.S. In addition, VIX call options are highly liquid, with trading volume on the CBOE during the first quarter of 2012 of 257,220 contracts per day. VIX call options would represent, at most, only 1% of the total weight of the Index. All Index components are traded on exchanges that are members of the Intermarket Surveillance Group (“ISG”), and the Exchange, therefore, is able to share surveillance information with such exchanges with respect to trading in all Index components.

The CBOE S&P VIX Tail Hedge Index

The Index is rules-based and is owned and was developed by Standard & Poor’s Financial Services LLC (“S&P” or “Index Provider”).⁸ The Index Provider will calculate and maintain the Index. The Index is designed to provide a benchmark for investors interested in hedging tail risk in an S&P 500 portfolio.⁹ Index components are reviewed quarterly for eligibility, and the weights are re-set according to that distribution. As of the Index rebalance on March 21, 2012, the Index was comprised of 99.0% S&P 500 stocks and 1.00% VIX call options. The Index consists of an S&P 500 stock portfolio (with dividends reinvested), and an amount of one-month, 30-delta VIX call options that is determined by the level of forward volatility. On the day of the monthly expiration of VIX call options, previously purchased VIX call options

⁸ The Index Provider is not a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

⁹ According to the Registration Statement, tail hedging, in the context used by the Index Provider, is the practice of trying to hedge the portfolio from extreme market moves that are the result of random, unexpected, and unpredictable events. Unexpected events of this nature often result in rapid increases in market volatility, both realized and implied volatility. The Fund will utilize a tail hedging strategy which attempts to profit from the sudden rise in implied volatility due to any unexpected event. The gains from the “tail hedge” would then hopefully offset some of the losses incurred in the common stock portfolio due to the unexpected events.

are cash-settled and new VIX call options are purchased at the 10:00 a.m., Central Time asking price. The percent of money allocated to VIX call options depends on the level of forward volatility at the next call expiration as measured by the opening price of VIX futures with the same expiration as the VIX call options as follows:

- VIX futures price less than or equal to 15,¹⁰ no VIX call options are purchased;
- VIX futures price greater than 15 and less than or equal to 30, 1% Index weight in VIX call options;
- VIX futures price greater than 30 and less than or equal to 50, 0.50% Index weight in VIX call options; and
- VIX futures price above 50, no VIX call options are purchased.

According to the Registration Statement, this dynamic allocation to VIX call options is designed to reduce hedging costs by limiting the number of VIX call options that are purchased during periods of expected low volatility, and also has the effect of taking VIX call option profits when extreme volatility levels are reached. The Index is reconstituted and rebalanced monthly.

The Index Provider will, in most cases, use the quantitative ranking and screening system described herein. However, subjective screening based on fundamental analysis or other factors may be used, if, in the opinion of the Index Provider, certain components should be included or excluded from the Index.

The Fund intends to qualify annually and to elect to be treated as a regulated investment company (“RIC”) under the Internal Revenue Code of 1986, as amended.¹¹

¹⁰ VIX futures represent the level of expected future 30-day volatility as measured in standard deviation units, expressed in percent terms (expected volatility multiplied by 100). For example, assume that on September 21, 2011, the September VIX call options expired and new call options expiring on October 19, 2011 were included within the Index. The amount or weighting assigned to the October VIX call options within the Index would have been determined by the opening price on September 21 of the October 2011 VIX futures contract. CBOE data indicate that the opening price was 31.15. Because the opening price of the October VIX futures contract was greater than 30.00 but less than or equal to 50.00, the allocation to VIX call options within the Index would have been equal to 0.50% and the S&P 500 weighting would have been 99.50%. If the opening futures price had been equal to or below 15.0 or greater than 50.0, the allocation to the call options would have been 0% and the Index’s composition would have been equal to the S&P 500’s weightings. If the opening futures price had been greater than 15.0 but less than or equal to 30.0, the allocation to VIX call options within the Index would have been equal to 1.0% and the S&P 500 weighting would have been equal to 99.0%.

¹¹ 26 U.S.C. 851. According to the Registration Statement, to qualify for the favorable U.S. federal

The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Act,¹² as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value (“NAV”) per Share will be calculated daily and will be made available to all market participants at the same time.

Creations and Redemptions

The Fund will issue and redeem Shares on a continuous basis, at NAV, only in large specified blocks each consisting of 50,000 Shares (each such block of Shares called a “Creation Unit”). Each group of Creation Units of such specified number of individual Fund Shares is referred to as a “Creation Unit Aggregation.” The Creation Units will be issued and redeemed for securities in which the Fund invests, cash or both securities and cash.

The consideration for purchase of Creation Unit Aggregations of the Fund may consist of (i) cash in lieu of all or a portion of the Deposit Securities, as defined below, and/or (ii) a designated portfolio of equity securities determined by First Trust—the “Deposit Securities”—per each Creation Unit Aggregation (“Fund Securities”) and

income tax treatment generally accorded to RICs, the Fund must, among other things, (a) derive in each taxable year at least 90% of its gross income from dividends, interest, payments with respect to securities loans and gains from the sale or other disposition of stock, securities or foreign currencies or other income derived with respect to its business of investing in such stock, securities or currencies, or net income derived from interests in certain publicly traded partnerships; (b) diversify its holdings so that, at the end of each quarter of the taxable year, (i) at least 50% of the market value of the Fund’s assets is represented by cash and cash items (including receivables), U.S. Government securities, the securities of other RICs and other securities, with such other securities of any one issuer generally limited for the purposes of this calculation to an amount not greater than 5% of the value of the Fund’s total assets and not greater than 10% of the outstanding voting securities of such issuer, and (ii) not more than 25% of the value of its total assets is invested in the securities (other than U.S. Government securities or the securities of other RICs) of any one issuer, or two or more issuers which the Fund controls which are engaged in the same, similar or related trades or businesses, or the securities of one or more of certain publicly traded partnerships; and (c) distribute at least 90% of its investment company taxable income (which includes, among other items, dividends, interest and net short-term capital gains in excess of net long-term capital losses) and at least 90% of its net tax-exempt interest income each taxable year. There are certain exceptions for failure to qualify if the failure is for reasonable cause or its [sic] de minimis, and certain action is taken and certain tax payments are made by the Fund.

¹² 17 CFR 240.10A-3.

generally an amount of cash—the “Cash Component.” Together, the Deposit Securities and the Cash Component (including the cash in lieu amount) constitute the “Fund Deposit,” which represents the minimum initial and subsequent investment amount for a Creation Unit Aggregation of the Fund.

BNY, through the National Securities Clearing Corporation (“NSCC”) (as discussed below), will make available on each business day, prior to the opening of business of the New York Stock Exchange (“NYSE”) (currently 9:30 a.m., Eastern Time (“E.T.”)), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund.

In addition to the list of names and numbers of securities constituting the current Deposit Securities of a Fund Deposit, BNY, through the NSCC, also will make available, on each business day, the estimated Cash Component, effective through and including the previous business day, per outstanding Creation Unit Aggregation of the Fund.

All orders to create Creation Unit Aggregations must be received by the transfer agent no later than the closing time of the regular trading session on the NYSE (“Closing Time”) (ordinarily 4 p.m., E.T.) in each case on the date such order is placed in order for creation of Creation Unit Aggregations to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

Fund Shares may be redeemed only in Creation Unit Aggregations at their NAV next determined after receipt of a redemption request in proper form by the Fund through the transfer agent and only on a business day. The Fund will not redeem Shares in amounts less than Creation Unit Aggregations. With respect to the Fund, the Custodian, through the NSCC, will make available prior to the opening of business on the NYSE (currently 9:30 a.m., E.T.) on each business day, the identity of the Fund Securities that will be applicable to redemption requests received in proper form on that day.

Availability of Information

The Fund’s Web site (www.ftportfolios.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund’s Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading

volume, the prior business day’s reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (“Bid/Ask Price”),¹³ and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the portfolio of securities and financial instruments that will form the basis for the Fund’s calculation of NAV at the end of the business day.¹⁴

On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Fund the following information on the Fund’s Web site: ticker symbol (if applicable), name of security and financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for the Fund’s Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via NSCC. The basket represents one Creation Unit of the Fund.

In addition, an Intraday Indicative Value (“IIV”) for the Shares will be widely disseminated at least every 15 seconds during the Core Trading Session (9:30 a.m. to 4 p.m., E.T.) by one or more major market data vendors.¹⁵ The IIV should not be viewed as a “real-time” update of the NAV per Share of the Fund because the IIV may not be calculated in the same manner as the

¹³ The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund’s NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

¹⁴ Under accounting procedures followed by the Fund, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

¹⁵ Currently, it is the Exchange’s understanding that several major market data vendors widely disseminate IIVs taken from the Consolidated Tape Association (“CTA”) or other data feeds.

NAV, which is computed once a day, generally at the end of the business day.

In addition, the Index value will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors such as Bloomberg. Additional information regarding the Index and the underlying components (S&P 500 stock portfolio (with dividends reinvested) and the allocation of VIX call options) will be available at www.cboe.com.

Investors can also obtain the Trust’s Statement of Additional Information (“SAI”), the Fund’s Shareholder Reports, and the Trust’s Form N–CSR and Form N–SAR, filed twice a year. The Trust’s SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission’s Web site at www.sec.gov. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information for the Shares will be available via the CTA high-speed line and, for the securities, including VIX call options, held by the Fund, will be available from the exchange on which they are listed. The intra-day, closing, and settlement prices of the portfolio securities will also be readily available from the securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

The Exchange represents that the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares. The Exchange further represents that the VIX options components of the Index, if any, must remain listed and traded on a national securities exchange. In addition, the Exchange represents that the Fund and the Shares will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the dissemination of key information such as the value of the Index, IIV, and NAV, rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers, and Information Bulletin to Equity Trading Permit (“ETP”) Holders (each as

described in more detail herein), as set forth in Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.¹⁶

The Fund's NAV will be determined as of the close of trading (normally 4 p.m., E.T.) on each day the NYSE is open for business. NAV will be calculated for the Fund by taking the market price of the Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, and dividing such amount by the total number of Shares outstanding. The result, rounded to the nearest cent, will be the NAV per Share. All valuations will be subject to review by the Trust's Board of Trustees ("Board") or its delegate.¹⁷

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.¹⁸ If the IIV or the Index value is not being disseminated as required, the Corporation may halt trading during the day in which the interruption to the dissemination of the applicable IIV or Index value occurs. If the interruption to the dissemination of the applicable IIV or Index value persists past the trading day in which it occurred, the Corporation will halt trading. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may

include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Fund's portfolio; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares on the Exchange until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m., E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Investment Company Units) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.¹⁹ The

equity securities and VIX options in which the Fund will invest will trade in markets that are ISG members or are parties to comprehensive surveillance sharing agreements with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m., E.T. each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)²⁰ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange

¹⁶ See, e.g., Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14) (order approving generic listing standards for ICUs and Portfolio Depository Receipts); Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-98-29) (order approving rules for listing and trading of ICUs).

¹⁷ The Fund's investments will be valued at market value or, in the absence of market value with respect to any portfolio securities, at fair value in accordance with valuation procedures adopted by the Board and in accordance with the 1940 Act.

¹⁸ See NYSE Arca Equities Rule 7.12, Commentary .04.

¹⁹ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Fund's portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

²⁰ 15 U.S.C. 78f(b)(5).

pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 5.2(j)(3). The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Index Provider is not a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index. The Index is predominately S&P 500 companies and includes an exposure to VIX call options. All securities in the S&P 500 Index are listed and traded on a national securities exchange. Options on the VIX are traded on the CBOE. All components of the Index have active, liquid markets on national securities exchanges. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The equity securities and VIX options in which the Fund will invest will trade in markets that are ISG members or are parties to comprehensive surveillance sharing agreements with the Exchange.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the IIV and the Index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. If the IIV or the Index value is not being disseminated as required, the Corporation may halt trading during the day in which the interruption to the dissemination of the applicable IIV or Index value occurs. If the interruption to the dissemination of the applicable IIV or Index value persists past the trading day in which it occurred, the Corporation will halt trading. In addition, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares on the Exchange until such time as the NAV is available to all market participants. On each business day, before commencement of trading in Shares in the Core Trading

Session on the Exchange, the Fund will disclose on its Web site the securities and other financial instruments in the Fund's portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last-sale information will be available via the CTA high-speed line. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, Index value, and quotation and last-sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of Units that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, Index value, and quotation and last-sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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-NYSEArca-2012-50 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-2012-50. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2012-50 and should be submitted on or before June 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-13964 Filed 6-7-12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67102; File No. SR-BX-2012-039]

Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Dissolve the BOX Committee

June 4, 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 25, 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to dissolve the BOX Committee of the Board of Directors. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com>, at the

Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to dissolve the BOX Committee of the Board of Directors. After NASDAQ OMX Group, Inc. acquired the Boston Stock Exchange, Inc., the Exchange adopted resolutions ("Resolutions") to establish a committee of its Board of Directors, referred to as the BOX Committee.³ The Exchange delegated to the BOX Committee all actions and decisions governing the Boston Options Exchange LLC ("BOX") Market. Because BOX is no longer a facility of the Exchange,⁴ there is no longer a reason for the BOX Committee to exist. Moreover, BOX and the BX Board of Directors have approved the dissolution of the Committee.

The Exchange believes the Resolutions are rules of an exchange which are concerned solely with the administration of the self-regulatory organization (as defined in Rule 19b-4 under the Act) of the Exchange. Accordingly, to dissolve the Committee, the Exchange is filing this proposal.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Section 6(b)(5) of the Act,⁶ in particular, in that the

³ See Securities Exchange Act Release No. 34-58324 (August 7, 2008); 73 FR 46936 (August 12, 2008) (File Nos. SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01) ("Order approving the Acquisition of the Boston Stock Exchange, Incorporated by The NASDAQ OMX Group, Inc.)."

⁴ See Securities Exchange Act Release No. 66871 (April 27, 2012), 77 FR 86 (May 3, 2012).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is consistent with these provisions in that the Exchange is dissolving a Committee that no longer has a purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(3) thereunder,⁸ the Exchange has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization. Accordingly, the Exchange believes this proposal should become immediately effective. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BX-2012-039 on the subject line.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(3).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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-2012-039. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2012-039, and should be submitted on or before June 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-13963 Filed 6-7-12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67106; File No. SR-Phlx-2012-74]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Extending the Pilot Period To Allow Cabinet Trading To Take Place Below \$1 per Option Contract

June 4, 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 29, 2012, NASDAQ OMX PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange submits this proposed rule change to extend the pilot program in Rule 1059, Accommodation Transactions, to allow cabinet trading to take place below \$1 per option contract under specified circumstances (the "pilot program").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot program in Commentary .02 of Exchange Rule 1059, Accommodation Transactions, which sets forth specific procedures for engaging in cabinet trades, to allow the Commission adequate time to consider permanently allowing transactions to take place on the Exchange in open outcry at a price of at least \$0 but less than \$1 per option contract.⁴ Prior to the pilot program, Rule 1059 required that all orders placed in the cabinet were assigned priority based upon the sequence in which such orders were received by the specialist. All closing bids and offers would be submitted to the specialist in writing, and the specialist effected all closing cabinet transactions by matching such orders placed with him. Bids or offers on orders to open for the accounts of customer, firm, specialists and ROTs could be made at \$1 per option contract, but such orders could not be placed in and must yield to all orders in the cabinet. Specialists effected all cabinet transactions by matching closing purchase or sale orders which were placed in the cabinet or, provided there was no matching closing purchase or sale order in the cabinet, by matching a closing purchase or sale order in the cabinet with an opening purchase or sale order.⁵ All cabinet transactions were reported to the Exchange following the close of each business day.⁶ Any (i) Member, (ii) member organization, or (iii) other person who was a non-member broker or dealer and who directly or indirectly controlled, was controlled by, or was under common control with, a member or member organization (any such other person being referred to as an affiliated person) could effect any transaction as principal in the over-the-counter market in any class of option contracts listed on the Exchange for a premium not in excess of \$1.00 per contract.

On December 30, 2010, the Exchange filed an immediately effective proposal that established the pilot program being

⁴ Cabinet or accommodation trading of option contracts is intended to accommodate persons wishing to effect closing transactions in those series of options dealt in on the Exchange for which there is no auction market.

⁵ Specialists and ROTs are not subject to the requirements of Rule 1014 in respect of orders placed pursuant to this Rule. Also, the provisions of Rule 1033(b) and (c), Rule 1034 and Rule 1038 do not apply to orders placed in the cabinet. Cabinet transactions are not reported on the ticker.

⁶ See Exchange Rule 1059.

⁹ 17 CFR 200.30-3(a)(12).

extended by this filing. The pilot program allowed transactions to take place in open outcry at a price of at least \$0 but less than \$1 per option contract until June 1, 2011.⁷ These lower priced transactions are traded pursuant to the same procedures applicable to \$1 cabinet trades, except that pursuant to the pilot program (i) bids and offers for opening transactions are only permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures are also made available for trading in options participating in the Penny Pilot Program.⁸ On May 31, 2011, the Exchange filed an immediately effective proposal that extended the pilot program until December 1, 2011 to consider whether to seek permanent approval of the temporary procedure.⁹ On November 30, 2011, the Exchange filed an immediately effective proposal that extended the pilot program until June 1, 2012.¹⁰ On April 27, 2012, the Exchange filed for permanent approval of the temporary procedures under the pilot program.¹¹ The Exchange now proposes an extension of the pilot program to allow consideration of the request for permanent approval of the temporary procedures under this program.

The Exchange believes that allowing a price of at least \$0 but less than \$1 will better accommodate the closing of options positions in series that are worthless or not actively traded, particularly due to recent market conditions which have resulted in a significant number of series being out-of-the-money. For example, a market participant might have a long position in a call series with a strike price of \$100 and the underlying stock might now be trading at \$30. In such an instance, there might not otherwise be a market for that person to close-out its

position even at the \$1 cabinet price (e.g., the series might be quoted no bid).

The Exchange hereby seeks to extend the pilot period for such \$1 cabinet trading until December 1, 2012, or upon permanent approval of this pilot program by the Commission, whichever occurs first. The Exchange seeks this extension to allow the procedures to continue without interruptions while the Commission considers permanently allowing transactions to take place on the Exchange in open outcry at a price of at least \$0 but less than \$1 per option contract.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹² in general, and with Section 6(b)(5) of the Act,¹³ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that allowing for liquidations at a price less than \$1 per option contract pursuant to the pilot program will better facilitate the closing of options positions that are worthless or not actively trading, especially in Penny Pilot issues where cabinet trades are not otherwise permitted. The Exchange believes the extension is of sufficient length to allow the Commission to assess the impact of the Exchange's authority to allow transactions to take place in open outcry at a price of at least \$0 but less than \$1 per option in accordance with its attendant obligations and conditions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6)(iii) thereunder.¹⁷

A proposed rule change filed under Rule 19b-4(f)(6)¹⁸ normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)¹⁹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the pilot may continue without interruption while the Commission considers making permanent the temporary procedures under this pilot program.

The Commission believes that waiving operative delay as of June 1, 2012 is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative on June 1, 2012.²⁰

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

²⁰ For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ PHLX Rule 1059, Commentary .02; See Securities Exchange Act Release No. 63626 (December 30, 2010), 76 FR 812 (January 6, 2011) (SR-PHLX-2010-185).

⁸ Prior to the pilot, the \$1 cabinet trading procedures were limited to options classes traded in \$0.05 or \$0.10 standard increments. The \$1 cabinet trading procedures were not available in Penny Pilot Program classes because in those classes, an option series could trade in a standard increment as low as \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier). The pilot allows trading below \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier) in all classes, including those classes participating in the Penny Pilot Program.

⁹ See Securities Exchange Act Release No. 64571 (May 31, 2011), 76 FR 32385 (June 6, 2011) (SR-Phlx-2011-72).

¹⁰ See Securities Exchange Act Release No. 65852 (November 30, 2011), 76 FR 76212 (December 6, 2011) (SR-Phlx-2011-156).

¹¹ See SR-Phlx-2012-59 (April 27, 2012).

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(5).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File No. SR-Phlx-2012-74 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-Phlx-2012-74. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-Phlx-2012-74 and should be submitted on or before June 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-13896 Filed 6-7-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67105; File No. SR-NASDAQ-2012-065]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Strike Price Intervals and Position Limits for OSX, SOX, and HGX

June 4, 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 24, 2012, The NASDAQ Stock Market LLC ("NASDAQ") 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 NASDAQ. 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

NASDAQ is filing with the Commission a proposal for the NASDAQ Options Market ("NOM" or "Exchange") to amend Chapter XIV (Index Rules), Sections 7 (Position Limits for Industry and Micro Narrow-Based Index Options) and 11 (Terms of Index Options Contracts) to copy into NOM rules the established rules of another options exchange regarding strike price intervals and position limits for options on the PHLX Oil Service SectorSM (OSXSM), the PHLX Semiconductor SectorSM (SOXSM), and the PHLX Housing SectorTM (HGXSM) (together the "Specified Indexes").³ The Exchange also proposes to amend Chapter XIV, Sections 2 (Definitions) and 11 to add the names of the

Specified Indexes to lists of index reporting authorities, European-style indexes, and \$2.50-eligible index options.

The text of the proposed rule change is available from NASDAQ's Web site at <http://nasdaq.cchwallstreet.com/Filings/>, at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ 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. NASDAQ has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Chapter XIV (Index Rules), Sections 7 and 11 to copy into NOM rules the established rules of another options exchange regarding strike price intervals and position limits for options on OSX, SOX, and HGX. The proposed rule change would allow NOM to list and trade options on these three Specified Indexes.⁴ The Exchange also proposes to amend Chapter XIV, Sections 2 and 11 to add the names of the Specified Indexes to lists of index reporting authorities, European-style indexes, and \$2.50-eligible index options.

The rule changes proposed herein in respect of position limits and strike price intervals are based almost verbatim on the established rules of another options market and self regulatory organization ("SRO"), Phlx. The proposed rule changes are based on Phlx Rules 1001A (Position Limits) and 1101A (Terms of Option Contracts).⁵

⁴ The options will be listed pursuant to Rule 19b-4(e) of the Act. 17 CFR 240.19b-4(e). Rule 19b-4(e) enables an exchange to list an option pursuant to generic listing standards set forth in the rules of such exchange and, within five business days after the commencement of trading of the option, to file Form 19b-4(e) with the Commission to indicate the listing.

⁵ See Securities Exchange Act Release Nos. 61590 (February 25, 2010), 75 FR 9988 (March 4, 2010) (SR-Phlx-2009-113) (order approving 54,000,

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Options on Specified Indexes that will be listed and traded on NOM subsequent to this proposal will be identical to the same Specified Index options that are listed and traded on NASDAQ OMX Phlx LLC ("Phlx"). Specified Index options will have the same specifications whether listed on NOM or Phlx.

Background

Options on the narrow-based indexes⁶ known as PHLX Oil Service Sector, PHLX Semiconductor Sector, and PHLX Housing Sector, when listed on NOM subsequent to this proposal, will be identical to options on these Specified Indexes that are currently listed and trading on Phlx.⁷ Thus, options on the Specified Indexes that will be listed and traded on NOM will, like on Phlx, remain European style⁸ (PHLX Oil Service Sector and PHLX Housing Sector options) and American style (PHLX Semiconductor Sector options), and will be A.M.-settled.⁹

The PHLX Oil Service Sector (OSX) is a price-weighted index composed of fifteen companies that provide oil drilling and production services, oil field equipment, support services and geophysical/reservoir services.¹⁰ OSX provides exposure to the dynamic oil industry. When investors want information and investment opportunities specific to the oil industry they very often turn to the PHLX Oil Service Sector and the OSX options traded thereon.¹¹ The PHLX Oil Service

72,000, and 94,500 contract position limits for options on OSX, SOX, and HGX); 53243 (February 7, 2006), 71 FR 7607 (February 13, 2006) (SR-Phlx-2005-43) (order approving no less than \$2.50 strike price intervals for options on OSX, SOX, and HGX, if the strike price is less than \$200); and 60840 (October 20, 2009), 74 FR 55593 (October 28, 2009) (SR-Phlx-2009-77) (order approving \$1 strike price intervals for options on OSX, SOX, and HGX).

⁶ The term “narrow-based index” and “industry index” is defined in Chapter XIV, Section 2(i) as an index designed to be representative of a particular industry or a group of related industries.

⁷ The contract specifications for the PHLX Oil Service Sector, the PHLX Semiconductor Sector, and the PHLX Housing Sector can be found at <https://www.nasdaqtrader.com/micro.aspx?id=phlxsectorscontractspeccs>. A listing of the components of the respective Specified Indexes can be found at <https://indexes.nasdaqomx.com/weighting.aspx?IndexSymbol=XSOX&menuIndex=0>.

⁸ The term “European-style index option” is defined in Chapter XIV, Section 2(g) as an option on an industry or market index (a market index is a broad-based index) that can be exercised only on the last business day prior to the day it expires.

⁹ The term “A.M.-settled index option” is defined in Chapter XIV, Section 2(c) as an index options contract for which the current index value at expiration shall be determined as provided in Section 11(a)(5) of Chapter XIV.

¹⁰ The Exchange understands that OSX expansion and weighting changes are being evaluated, and intends to make equivalent changes. See Securities Exchange Act Release No. 64478 (May 12, 2011), 76 FR 28840 (May 18, 2011) (SR-Phlx-2011-28) (approval order allowing expanding number of OSX components and changing to modified capitalization-weighting).

¹¹ Other currently available investment products that evaluate the oil industry, albeit differently from OSX, include Market Vectors Oil Service ETF (OIH), iShares Dow Jones U.S. Oil Equipment & Services Index Fund (IEZ), SPDR S&P Oil & Gas Equip & Services ETF (XES), and PowerShares Dynamic Oil Services Portfolio (PXJ).

Sector has served as an important market indicator and OSX options as a viable trading and investing vehicle in respect of the oil services sector.¹²

The PHLX Semiconductor Sector (SOX) is a modified capitalization-weighted index composed of thirty companies primarily involved in the design, distribution, manufacture, and sale of semiconductors.¹³ SOX provides exposure to the fast-growing (yet extremely volatile) semiconductor industry. When investors want information and investment opportunities specific to semiconductors, they look most often to the SOX.¹⁴ Indeed, the popularity of SOX is reflected in its trading volumes.¹⁵ It has been observed that a rise or decline in the SOX usually precedes a similar move in the broader technology market. As such, SOX has served as a leading indicator for technology stocks. Recognizing the market-leading aspects of the PHLX Semiconductor Sector, the Exchange is proposing a rule change that would allow SOX options to trade on NOM.

The PHLX Housing Sector (HGX) is a modified capitalization-weighted index composed of nineteen companies whose primary lines of business are directly associated with the U.S. housing construction market.¹⁶ The index composition encompasses residential builders, suppliers of aggregate, lumber and other construction materials, manufactured housing and mortgage insurers. HGX is currently composed of many of the largest housing-related stocks (e.g., Hovnanian ENT Inc., KB Home, Ryland Group, Inc., Toll Brothers, Inc., and Weyerhaeuser Company). HGX has developed into a respected index providing exposure to

¹² During 2011, OSX has traded an average of 7,374 contracts per month and has traded as much as 11,498 contracts in a day (October 4, 2011). As of December 31, 2011, there were 13,771 contracts of open interest in OSX.

¹³ See Securities Exchange Act Release No. 61796 (March 29, 2010), 75 FR 16887 (April 2, 2010) (SR-Phlx-2010-20) (order approving expanding SOX components to thirty).

¹⁴ Other currently available investment products that evaluate the semiconductor market, albeit differently from SOX, include Market Vectors Semiconductor ETF (SMH) and iShares S&P North American Technology Sector Index Fund (IGM).

¹⁵ During 2011, SOX has traded an average of 8,839 contracts per month and has traded as much as 7,259 contracts in a day (January 13, 2011). As of December 31, 2011, there were 4,077 contracts of open interest in SOX.

¹⁶ See Securities Exchange Act Release No. 52512 (September 27, 2005), 70 FR 57919 (October 4, 2005) (SR-Phlx-2005-50) (notice of filing and immediate effectiveness to reduce the value of HGX options by half). HGX is listed on Phlx per Form 19b-4(e).

the housing sector for hedging and trading purposes.

The options on Specified Indexes will be listed on NOM pursuant to the generic Rule 19b-4(e) initial listing standards (“generic standards”) for narrow-based indexes and will be identical to the options on Specified Indexes that are already listed and trading on Phlx. The generic standards are found in Section 6(b) of Chapter XIV and discuss, among other things, weighting methodologies, market capitalization, trading volume, component weighting and concentration, that each component security must be an “NMS stock” as defined in Rule 600 of Regulation NMS of the Act, reporting, and rebalancing.¹⁷

The Exchange notes that this rule change proposal does not propose or make any changes to the NOM generic listing standards. The proposal does no more than almost verbatim copy the language regarding position limits and strike price intervals that are in use on Phlx for the same options on Specified Indexes.

Proposed Position Limits

Position limits on NOM are currently discussed in Section 7 of Chapter XIV. Section 7 states that NOM options traders (known as Options Participants) shall comply with the applicable rules of CBOE with respect to position limits for narrow based index options traded on NOM and also on the CBOE, or with the applicable rules of NOM for industry index options traded on NOM but not traded on the CBOE. Because Specified Index options are not traded on CBOE, the Exchange is, as noted, copying the Phlx position limits for options on the Specified Indexes into its rules.¹⁸ The position limits proposed by the Exchange are exactly the same 54,000, 72,000, and 94,500 contract position limits that have been established and in use for years on Phlx for options on Specified Indexes per Phlx Rule 1001A.

Thus, the Exchange proposes to copy the Phlx position limits into proposed Section 7(d) of Chapter XIV to state that options on Specified Index position limits will be:

¹⁷ Subsection (c) of Section 6 discusses maintenance listing criteria once an option is listed on the Exchange pursuant to 19b-4(e) generic listing standards.

¹⁸ The Exchange notes that independently of the proposed specific OSX, SOX, and HGX rule position limits (or strike price intervals) copied from Phlx rules through this proposal, by virtue of Section 7 of Chapter XIV, CBOE position limit rules and processes (e.g., hedge exemptions, firm facilitation exemptions) will continue to apply to Exchange members.

(1) 54,000 contracts for options on the PHLX Oil Service Sector, PHLX Semiconductor Sector, and PHLX Housing Sector, if the Exchange determines, at the time of a review conducted pursuant to this Section 7, that any single underlying stock accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the review; or

(2) 72,000 contracts for options on the PHLX Oil Service Sector, PHLX Semiconductor Sector, and PHLX Housing Sector, if the Exchange determines, at the time of a review conducted pursuant to this Section 7, that any single underlying stock accounted, on average, for 20% or more of the index value or that any five underlying stocks together accounted, on average, for more than 50% of the index value, but that no single stock in the group accounted, on average, for 30% or more of the index value, during the 30-day period immediately preceding the review; or

(3) 94,500 contracts for options on the PHLX Oil Service Sector, PHLX Semiconductor Sector, and PHLX Housing Sector if the Exchange determines that the conditions specified above which would require the establishment of a lower limit have not occurred.¹⁹

In addition, the Exchange proposes to add Section 7(e) setting forth the procedure to be followed at the time of a review pursuant to Section 7(d).²⁰ The proposed review procedure is, like the

¹⁹ By operation of Section 9 of Chapter XIV, the exercise limits for options on Specified Indexes are the same as the position limits.

²⁰ Proposed Section 7(e) states: (e) The Exchange shall make the determinations required by subparagraph (d) of this Section 7 with respect to options on each industry index at the commencement of trading of such options on the Exchange and thereafter review the determination semi-annually on January 1 and July 1. (1) If the Exchange determines, at the time of a semi-annual review, that the position limit in effect with respect to options on a particular industry index is lower than the maximum position limit permitted by the criteria set forth in subparagraph (d) of this Section 7, the Exchange may affect an appropriate position limit increase immediately. If the Exchange determines, at the time of a semi-annual review, that the position limit in effect with respect to options on a particular industry index exceeds the maximum position limit permitted by the criteria set forth in subparagraph (d) of this Section 7, the Exchange shall reduce the position limit applicable to such options to a level consistent with such criteria; provided, however, that such a reduction shall not become effective until after the expiration date of the most distantly expiring option series relating to such particular industry index, which is open for trading on the date of the review; and provided further that such a reduction shall not become effective if the Exchange determines, at the next succeeding semi-annual review, that the existing position limit applicable to such options is consistent with the criteria set forth in subparagraph (d) of this Section 7.

proposed position limits for OSX, SOX, and HGX in Section 7, copied from Phlx Rule 1001A.

The proposed Specified Index option position limits are, as noted, identical to the position limits for the same Specified Index options that have been listed and traded on Phlx for years. The Exchange is doing nothing more than directly transferring the position limits from Phlx Rule 1001A to proposed new Section 7(d) and (e) of Chapter XIV in the NOM rules, without change.²¹

Proposed Strike Price Increments

Section 11(c) of Chapter XIV currently states that the interval between strike prices will be no less than \$5.00. Section 11(c) also states that for the classes of index options that are listed in the rule the interval between strike prices will be no less than \$2.50 if the strike price is less than \$200.²² Currently, options on the Specified Indexes are listed and traded on Phlx at \$1 strike price intervals and the Exchange proposes to transfer the strike price interval rule language from Phlx to NOM.

Specifically, the Exchange proposes to copy the Phlx \$1 strike price interval rule almost verbatim from Phlx Rule 1101A into proposed Section 11(i) of Chapter XIV as follows: The interval between strike prices of series of options on the PHLX Oil Service Sector, PHLX Semiconductor Sector, and PHLX Housing Sector (which are known in the proposed rule as the "\$1 Indexes") will be \$1 or greater, subject to the immediately following conditions:

(1) Regarding initial series, the Exchange may list such series at \$1 or greater strike price intervals for each \$1 Index, and will list at least two strike prices above and two strike prices below the current value of each \$1 Index at about the time a series is opened for trading on the Exchange. The Exchange shall list strike prices for each \$1 Index that are within 5 points from the closing value of each \$1 Index on the preceding day.

(2) Regarding additional Series, such series of the same class of each \$1 Index may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when each underlying \$1 Index moves substantially from the initial exercise

²¹ As with all direct transfers of language from the rule set of one exchange to another, non-substantive formatting changes are made to conform the new rule language to the structure of the existing rule set.

²² The Exchange proposes to add the Specified Indexes to the list of \$2.50-eligible index options that are already noted in Section 11(c).

price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices shall be within thirty percent (30%) above or below the closing value of each \$1 Index. The Exchange may also open additional strike prices that are more than 30% above or below each current \$1 Index value provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers.²³

(3) The Exchange shall not list LEAPS on \$1 Indexes at intervals less than \$2.50.

The Exchange also proposes to add a delisting policy to Section 11(i) of Chapter XIV.²⁴ The proposed delisting policy is almost verbatim from Phlx Rule 1101A.

The proposed \$1 strike price interval rule is, as discussed, identical to the \$1 strike price interval rule that is in effect for the same Specified Index options that have been listed and traded on Phlx for years. The Exchange is doing nothing more than directly transferring the \$1 strike price interval rule text language from Phlx Rule 1101A to proposed Section 11 of Chapter XIV of the NOM rules, without change.

Contract Specifications

The contract specifications for the Specified Index options that will be listed and traded on NOM are identical to the same three narrow-based Specified Index options that are currently listed and traded on Phlx.²⁵ Specified Index options that will be traded on NOM will be European [sic]-style (PHLX Oil Service Sector and PHLX Housing Sector options) and American style (PHLX Semiconductor Sector options), and will be A.M. cash-settled. The Exchange's general trading hours for options (9:30 a.m. to 4 p.m. ET), will apply to options on the

²³ Market-Makers trading for their own account shall not be considered when determining customer interest under this provision. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each series in \$1 Indexes.

²⁴ The proposed delisting policy states: with respect to each \$1 Index added pursuant to the above paragraphs, the Exchange will regularly review series that are outside a range of five (5) strikes above and five (5) strikes below the current value of each \$1 Index, and in each \$1 Index may delist series with no open interest in both the put and the call series having a: (A) strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (B) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month. Notwithstanding the delisting policy, customer requests to add strikes and/or maintain strikes in \$1 Index options eligible for delisting may be granted.

²⁵ See *supra* note 8.

Specified Indexes.²⁶ Exchange rules that are applicable to the trading of options on indexes on the Exchange will continue to apply to the trading of options on the three Specified Indexes.²⁷

The strike price intervals for Specified Index options contracts will be no less than \$5.00 generally, no less than \$2.50 if the strike price is below \$200, and \$1 if certain conditions are met.²⁸ The minimum increment size for series trading below \$3 will be \$0.05, and for series trading at or above \$3 will be \$0.10.²⁹ The Exchange's margin rules will be applicable.³⁰ The Exchange intends to list options on Specified Indexes in up to three months from the March, June, September, December cycle plus two additional near-term months (that is, as many as five months at all times).³¹ The trading of Specified Index options will continue to be subject to the same rules that govern the trading of all of the Exchange's index options, including sales practice rules, margin requirements, and trading rules.

Surveillance and Capacity

The Exchange represents that it has an adequate surveillance program in place for options traded on the Specified Indexes and intends to apply those same program procedures that it applies to the Exchange's current equity and index options. Trading of Specified Index options on the Exchange will be subject to FINRA's surveillance procedures for derivative products.³² The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members or affiliates of the ISG³³; and from public and non-public data sources such as, for example, Bloomberg. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses.

The Exchange represents that it has the necessary systems capacity to

support listing and trading Specified Index options.

Housekeeping Changes

In terms of technical housekeeping changes, the Exchange proposes to simply add the names of the Specified Indexes to the current lists of indexes in two sections of Chapter XIV. The first such proposed change is to add the names of the Specified Indexes to Supplementary Material to Section 2, which currently has a list of indexes for which NASDAQ is the index reporting authority. And the second proposed change is to add the names of the Specified Indexes to Section 11: OSX and HGX to subsection (a)(4), which currently has a list of European-style indexes; and OSX, SOX, and HGX to subsection (a)(5), which currently has a list of A.M.-settled index options.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act³⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act³⁵ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that by copying into its rules the same exact position limits and strike price intervals that are used on another options exchange for trading options on the PHLX Oil Service Sector, the PHLX Semiconductor Sector, and the PHLX Housing Sector, it will enable the listing and trading of Specified Index options on the Exchange. This will give traders, investors, and public customers expanded flexibility and opportunity to closely tailor their investment and hedging decisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

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: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act³⁶ and Rule 19b-4(f)(6) thereunder.³⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2012-065 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2012-065. 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

²⁶ See Section 2 of Chapter VI. However, option contracts on fund shares or broad-based indexes may trade until 4:15 p.m. ET.

²⁷ For rules applicable to index options specifically, see Chapter XIV of the NOM rules. For trading rules applicable to options trading in general, see Chapter I *et seq.*

²⁸ See proposed Section 11(c) and (i) of Chapter XIV.

²⁹ See Section 5 of Chapter VI.

³⁰ See Chapter XIII.

³¹ See Section 11 to Chapter XIV.

³² FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

³³ For a list of the current members and affiliate members of ISG, see www.isgportal.com.

³⁴ 15 U.S.C. 78f(b).

³⁵ 15 U.S.C. 78f(b)(5).

³⁶ 15 U.S.C. 78s(b)(3)(A).

³⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NASDAQ has fulfilled this requirement.

Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2012-065 and should be submitted on or before June 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67103; File No. SR-BX-2012-038]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation Date for Its Excess Order Fee

June 4, 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 24, 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.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes a rule change to delay the implementation date for its Excess Order Fee. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com/>, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX recently submitted a proposed rule change to introduce an Excess Order Fee,³ aimed at reducing inefficient order entry practices of certain market participants that place excessive burdens on the systems of BX and its members and that may negatively impact the usefulness and life cycle cost of market data. In order to provide market participants with additional time to enhance their efficiency so as to avoid the fee, BX is delaying the implementation date of the fee until July 2, 2012.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Section 6(b)(5) of the Act,⁵ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in

regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, BX believes that delaying the implementation date of the Excess Order Fee will provide market participants with additional time to enhance the efficiency of their systems, and that implementation of the fee on July 2, 2012 will benefit investors and the public interest by encouraging more efficient order entry practices by all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, BX believes that the fee will constrain market participants from pursuing certain inefficient and potentially abusive trading strategies. To the extent that this change may be construed as a burden on competition, BX believes that it is appropriate in order to further the purposes of Section 6(b)(5) of the Act.⁶ BX further believes that the proposed delay of one month in the implementation of the fee will not have any effect on competition.

C. Self-Regulatory Organization's Statement on Comments 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act.⁷ 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.

³ Securities Exchange Act Release No. 67007 (May 17, 2012), 77 FR 30579 (May 23, 2012) (SR-BX-2012-033).

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(a)(i) [sic].

³⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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-2012-038 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-2012-038. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2012-038, and should be submitted on or before June 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-13894 Filed 6-7-12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67101; File No. SR-NYSEArca-2012-48]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31(h) To Add a PL Select Order Type

June 4, 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 22, 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, 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 NYSE Arca Equities Rule 7.31(h) to add a PL Select Order type. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(h) to add a PL Select Order type.

Pursuant to NYSE Arca Equities Rule 7.31(h)(4), a Passive Liquidity ("PL") Order is an order to buy or sell a stated amount of a security at a specified, undisplayed price. The PL Order was initially designed to attract liquidity to the Exchange by permitting market participants to express their trading interest more accurately than was possible with other order types available at the time.³ PL Orders were also designed to offer potential price improvement to incoming marketable orders submitted by any User.⁴

The Exchange believes that it is appropriate to provide Users who enter PL Orders with the flexibility to be able to select what type of contra-side interest that would interact with their PL Order. The Exchange believes that by restricting specified contra-side interest from interacting with PL Orders, Users may be incentivized to enter larger-sized, more aggressively-priced orders. In particular, the Exchange believes that market participants interested in providing liquidity that would offer potential price improvement should be provided the option to select that their "provider" interest would not interact with pure "taker" interest, i.e., interest that will execute immediately with interest at the Exchange without ever resting on the Exchange's order book.

The Exchange also believes that it would be able to attract larger-sized, more aggressively priced PL Orders if the User has the choice not to execute against contra-side orders that are larger sized than the resting PL Order. Because large-sized orders are more likely to trade at multiple price points, such an incoming order would likely sweep up the PL order as it executes through multiple price points. In such scenario, the PL Order would not serve its primary function of providing price improvement, but would instead be an execution among many that would ultimately be at an inferior price. The Exchange believes that if Users entering PL Orders can select not to trade with an incoming order that is larger in size,

³ See Securities Exchange Act Release No. 54511 (September 26, 2006), 71 FR 58460, 58461 (October 3, 2006) (SR-PCX-2005-53).

⁴ *Id.* The term "User" means any ETP Holder or Sponsored Participant who is authorized to obtain access to the NYSE Arca Marketplace pursuant to Rule 7.29. See NYSE Arca Equities Rule 1.1(yy).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the PL Order will remain available on the Arca Book to provide price improvement for smaller incoming orders.

To provide such flexibility, the Exchange proposes to add a new order type, the PL Select Order, which would be a subset of a PL Order. As proposed, NYSE Arca Equities Rule 7.31(h)(7) would define the PL Select Order as a PL Order that would not interact with an incoming order that: (i) has an immediate-or-cancel (“IOC”) time in force condition,⁵ (ii) is an ISO,⁶ or (iii) is larger than the size of the PL Select Order. The Exchange believes that the first two restrictions on trading with incoming IOC or ISO orders would enable Users to designate that their PL Orders would not trade with interest that would never become displayed or passive liquidity at the Exchange. The Exchange believes that the third restriction would serve to attract larger-sized PL Orders because the User would not have to risk having the PL Select Order being swept up by larger-sized contra interest thereby obviating the primary purpose of the PL Order to provide price improvement.

As proposed, except for the specified restrictions on trading with certain incoming orders, the PL Select Order would otherwise operate as a PL order and would retain its standing in execution priority among PL Orders. The Exchange notes, however, that for those instances when an incoming order meets one of the PL Select Order restrictions, the PL Select Order would be skipped and can be traded through.

For example, assume that the protected best bid and offer is \$19.00–\$19.50 and a User enters a PL Select Order to buy 5,000 at \$19.25 (B1). A second User enters an order to buy 1,000 at \$19.00 (B2). If an incoming ISO sell order at \$19.00 for 500 shares arrives (S1), S1 would not trade with B1, and would instead trade with B2 for 500 shares at \$19.00. Because B1 is a PL Select Order, and is restricted from trading with an ISO, it would be skipped. If another sell order at \$19.00 for 700 shares arrives (S2), and it is not marked IOC or ISO, S2 would execute against B1, 700 shares at \$19.25. In this situation, because S2 does not meet any of the restrictions of the PL Select Order, B1, which arrived before B2, would receive the entire execution.

In order to be placed on the Exchange’s book initially, the Exchange further proposes that incoming PL Select Orders that are marketable would execute against all available contra-side

interest, which potentially could include IOCs, ISOs, or larger-sized interest. After any marketable interest of the arriving PL Select Order executes, any remaining balance of the PL Select Order would be subject to the restrictions and would not trade with any incoming IOCs, ISOs, or larger-sized interest.

The Exchange further proposes to add that upon notice to ETP Holders, the Corporation may suspend the entry of PL Select Orders. If such provision is invoked, Users may continue to submit PL Orders, but would not be able to enter PL Select Orders and all open PL Select Orders on the NYSE Arca trading book would be cancelled back to the User. The Exchange believes that it is appropriate to be able to suspend the entry of PL Select Orders in circumstances where the volume of orders creates an issue with the ability of the Exchange to timely process inbound orders to the Exchange.

Because of the related technology changes that this proposed rule change would require, the Exchange proposes to announce the initial implementation date via Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ 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 rule change would help prevent fraudulent and manipulative acts and practices because it would provide the ability for Users to select that a market participant that may be seeking only to probe the availability of hidden interest, and not add liquidity to the market, cannot execute against their passive liquidity. In particular, in today’s equities market structure, the type of order flow that generally gets routed to the Exchange, and other registered exchanges, is order flow of the last resort. As evidenced by the increased use of off-Exchange trading venues, whether at dark pools or via

internalization agreements at broker-dealers, by the time trading interest reaches an exchange, it is often cast-off trading interest, rather than the primary order flow of a broker-dealer. The Exchange sees this with the high volumes of pinging-type of interest that arrives at the Exchange, and relatively low volumes of trading interest that is intended to be displayed or become passive interest. Such “pinging” interest generally comes from professional traders, rather than from public customers, and is seeking to ferret out hidden liquidity at an exchange, rather than to become passive liquidity.

In seeking to attract more interest that is intended to be displayed interest and therefore promote just and equitable principles of trade, the Exchange proposes to add the PL Select Order type. As discussed in greater detail above, the PL Select Order type would be available to execute against any incoming interest that has the potential to become displayed or passive liquidity at the Exchange. The Exchange believes that the availability of the PL Select Order type could potentially incentivize the routing of interest to the Exchange that is intended to be displayed, which would support the goals of Regulation NMS to encourage the display of limit orders. In particular, Users interested in routing displayable interest to the Exchange would be aware that there is more likely to be hidden interest against which to execute because such hidden interest would not have been “taken” by pinging interest. To the extent there is any disadvantage because a PL Select Order skips an execution, it would be to professional traders who are choosing to send pinging interest, rather than to the investing public.

Likewise, the Exchange believes that skipping executions with larger-sized incoming interest would similarly incentivize Users to route PL Orders to the Exchange because such orders would remain available to provide price improvement and would not be swept up by such larger-sized incoming orders. Because such PL Select Orders would remain available to provide price improvement, it could similarly incentivize Users to route displayable interest to the Exchange because the likelihood of receiving price improvement could increase.

The Exchange further believes that the rule proposal promotes just and equitable principles of trade, and fosters cooperation and coordination with market participants because it provides additional flexibility for Users to specify against which interest their PL Orders would execute. The Exchange notes that Users can continue to enter PL Orders;

⁵ See NYSE Arca Equities Rule 7.31(e).

⁶ See NYSE Arca Equities Rule 7.31(jj).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

the ability to enter PL Select Orders would be an additional option for Users. Furthermore, the Exchange believes that the proposed PL Select Order furthers the goals of a free and open market and national market system by providing Users with the ability to add additional instructions to PL Orders to ensure that such orders are used primarily for liquidity providing, price improvement purposes.

The Exchange further believes that providing the Exchange with the ability to suspend the entry of PL Select Orders supports the principle of promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market. Currently, the technology process associated with the proposed PL Select Orders would be to assess each incoming order to determine whether it can interact with resting PL Select Orders. If, in the rare circumstances, the volume of orders received by the Exchange, including of PL Select Orders, and the attendant need to assess each order, results in reduced trading performance and increased latency, the Exchange believes that it is appropriate to suspend the entry of PL Select Orders, which would also result in cancelling any open PL Select Orders, until such time that the potential cause of increased latencies has been resolved.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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-NYSEArca-2012-48 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-2012-48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2012-48 and should be submitted on or before June 29, 2012.

⁹ 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-13893 Filed 6-7-12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67100; File No. SR-NYSEArca-2012-49]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow the Use of Swap Agreements Under Limited Circumstances by the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF, Which Are Listed and Traded on the Exchange Under NYSE Arca Equities Rule 8.200, Commentary .02

June 4, 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 22, 2012, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to accommodate the use of swap agreements under limited circumstances by the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF, which are listed and traded on the Exchange under NYSE Arca Equities Rule 8.200, Commentary .02. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Arca Equities Rule 8.200, Commentary .02 permits the trading of Trust Issued Receipts ("TIRs") either by listing or pursuant to unlisted trading privileges ("UTP").³ The Commission has approved listing and trading on the Exchange of shares ("Shares") of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF ("Funds") under NYSE Arca Equities Rule 8.200, Commentary .02,⁴ and the Shares have commenced listing and trading on the Exchange.

The Funds seek to provide investment results (before fees and expenses) that match the performance of a benchmark that seeks to offer exposure to market volatility through publicly traded futures markets. The benchmark for ProShares VIX Short-Term Futures ETF is the S&P 500 VIX Short-Term Futures Index, and the benchmark for ProShares VIX Mid-Term Futures ETF is the S&P 500 VIX Mid-Term Futures Index (each, an "Index," and collectively, "Indexes").⁵ To pursue their respective investment objectives, the Funds invest in futures contracts that comprise their respective Index and that are based on the Chicago Board Options Exchange ("CBOE") Volatility Index or "VIX" ("VIX Futures Contracts"). VIX Futures Contracts are traded on the CBOE

Futures Exchange ("CFE"). Each Fund also may invest in cash or cash equivalents such as U.S. Treasury securities or other high credit quality, short-term fixed-income or similar securities (including shares of money market funds, bank deposits, bank money market accounts, certain variable rate-demand notes, and repurchase agreements collateralized by government securities) that may serve as collateral for the futures contracts.

ProShare Capital Management LLC ("Sponsor"), a Maryland limited liability company, serves as the Sponsor of ProShares Trust II ("Trust").⁶ The Sponsor is a commodity pool operator and commodity trading advisor. Brown Brothers Harriman & Co. serves as the administrator ("Administrator"), custodian, and transfer agent of the Funds and their respective Shares. SEI Investments Distribution Co. ("Distributor") serves as Distributor of the Shares. Wilmington Trust Company, a Delaware banking corporation, is the sole trustee of the Trust.

According to the Registration Statement, if a Fund is successful in meeting its objective, its value (before fees and expenses) should gain approximately as much on a percentage basis as the level of its corresponding Index when it rises. Conversely, its value (before fees and expenses) should lose approximately as much on a percentage basis as the level of its corresponding Index when it declines. Each Fund acquires exposure through VIX Futures Contracts such that each Fund has exposure intended to approximate the benchmark at the time of the net asset value ("NAV") calculation.⁷

Under the current proposal, the Funds seek to utilize swap agreements and futures contracts other than VIX Futures Contracts (as further described herein) to pursue their respective investment objectives.⁸

Going forward, in the event position accountability rules are reached with respect to VIX Futures Contracts, the Sponsor, may, in its commercially reasonable judgment, cause the Funds to obtain exposure through swaps referencing the relevant Index or particular VIX Futures Contracts, or invest in other futures contracts or swaps not based on the particular VIX Futures Contracts if such instruments tend to exhibit trading prices or returns that correlate with the Indexes or any VIX Futures Contract and will further the investment objective of the Funds.⁹ The Funds may also invest in swaps if the market for a specific futures contract experiences emergencies (e.g., natural disaster, terrorist attack, or an act of God) or disruptions (e.g., a trading halt or a flash crash) that prevent the Funds from obtaining the appropriate amount of investment exposure to the affected VIX Futures Contracts directly or other futures contract.¹⁰

TIRs under NYSE Arca Equities Rule 8.200, Commentary .02 that may hold swaps under limited circumstances. *See, e.g.*, Securities Exchange Act Release Nos. 62527 (July 19, 2010), 75 FR 43606 (July 26, 2010) (SR-NYSEArca-2010-44) (order approving Exchange listing and trading of United States Commodity Index Fund); 63869 (February 8, 2011), 76 FR 8799 (February 15, 2011) (SR-NYSEArca-2010-119) (order approving Exchange listing and trading of Teucrium WTI Crude Oil Fund); and 65134 (August 15, 2011), 76 FR 52034 (August 19, 2011) (SR-NYSEArca-2011-23) (order approving Exchange listing and trading of ProShares Short VIX Short-Term Futures ETF, ProShares Short VIX Mid-Term Futures ETF, ProShares Ultra VIX Short-Term Futures ETF, ProShares Ultra VIX Mid-Term Futures ETF, ProShares UltraShort VIX Short-Term Futures ETF, and ProShares UltraShort VIX Mid-Term Futures ETF).

⁹ To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house. Each Fund also may invest in cash or cash equivalents, such as U.S. Treasury securities or other high credit quality, short-term fixed-income or similar securities (including shares of money market funds, bank deposits, bank money market accounts, certain variable rate-demand notes, and repurchase agreements collateralized by government securities) that may serve as collateral for the futures contracts and swap agreements.

¹⁰ The Sponsor will also attempt to mitigate the Funds' credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. The Sponsor will take various steps to limit counterparty credit risk, which will be described in the Registration Statement. The Funds will enter into swap agreements only with financial institutions that meet certain credit quality standards and monitoring policies. The Funds may use various techniques to minimize credit risk including early termination or reset and payment, using different counterparties, and limiting the net amount due from any individual counterparty. The Funds generally will collateralize swap agreements with cash and/or certain securities. Such collateral will generally be held for the benefit of the counterparty in a segregated tri-party account at the custodian to protect the counterparty against non-payment by the Funds. In the event of a default by the counterparty, and the Funds are owed money

³ Commentary .02 to NYSE Arca Equities Rule 8.200 applies to TIRs that invest in "Financial Instruments." The term "Financial Instruments," as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

⁴ *See* Securities Exchange Act Release No. 63610 (December 27, 2010), 76 FR 199 (January 3, 2011) (SR-NYSEArca-2010-101) ("Prior Order"). The notice with respect to the Prior Order was published in Securities Exchange Act Release No. 63317 (November 16, 2010), 75 FR 71158 (November 22, 2010) ("Prior Notice" and, together with the Prior Order, "Prior Release").

⁵ Standard & Poor's Financial Services LLC, the index sponsor with respect to the Indexes, is not a broker-dealer or affiliated with a broker-dealer, and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Indexes.

⁶ The Trust has filed a registration statement on Form S-3 under the Securities Act of 1933 (15 U.S.C. 77a), dated November 5, 2010, relating to the Funds (File No. 333-163511) ("Registration Statement"). The description of the Funds and the Shares contained in the Prior Release were based, in part, on the Registration Statement. The changes described herein will become effective upon filing with the Commission of an amendment to the Trust's Registration Statement. The Sponsor represents that the Sponsor has managed and will continue to manage the Funds in the manner described in the Prior Release, and will not implement the changes described herein until the instant proposed rule change becomes operative and an amendment to the Registration Statement has become effective.

⁷ Terms relating to the Funds, the Shares, and the Indexes referred to, but not defined, herein are defined in the Registration Statement.

⁸ The Commission previously has approved listing and trading on the Exchange of issues of

The above representations regarding the Funds' prospective use of swaps and other futures contracts are substantially the same as those made with respect to other funds of the Trust that utilize VIX Futures Contracts and that have been approved by the Commission for listing and trading on the Exchange.¹¹ The Sponsor believes it is necessary and appropriate to have additional flexibility to utilize swaps and futures contracts other than VIX Futures Contracts in a manner that will further the investment objective of the Funds, in the event position accountability rules are reached with respect to VIX Futures Contracts. Such procedures would be the same as those applicable to other funds of the Trust based on VIX Futures Contracts that are currently listed on the Exchange. The Sponsor believes application by the Sponsor of consistent investment procedures among funds of the Trust that hold VIX Futures Contracts, including the Funds, with respect to utilization of swaps and futures contracts other than VIX Futures Contracts, will promote efficient operation of the Funds in furtherance of each Fund's investment objective.

In addition, with respect to any Fund's holdings of futures contracts traded on exchanges, not more than 10% of the weight of such futures contracts in the aggregate shall consist of components whose principal trading market is not a member of the Intermarket Surveillance Group ("ISG") or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The intra-day futures prices, closing price, and settlement prices of the VIX Futures Contracts or other futures contracts, as applicable, held by the Funds will be available from the CFE, other futures exchanges, automated quotation systems, published or other public sources, or on-line information services. Information relating to cleared swaps will be available from major market data vendors. The value of swaps and futures contracts other than VIX Futures Contracts, as applicable, will be included in: (1) The calculation of the NAV for the Shares, which is disseminated daily; and (2) the Indicative Optimized Portfolio Value ("IOPV") for the Shares, which is widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market

data vendors.¹² The portfolio disclosure for the Funds, which is disseminated daily, will include swaps and futures contracts other than VIX Futures Contracts, if any, in addition to VIX Futures Contracts.

All other representations in the Prior Release remain as stated therein and no other changes are being made.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹³ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Under normal market conditions, the Funds invest in VIX Futures Contracts, which are traded on CFE, an ISG member. Going forward, in the event position accountability rules are reached with respect to VIX Futures Contracts, the Sponsor, may, in its commercially reasonable judgment, cause the Funds to obtain exposure through swaps or other futures contracts, as described above. To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house. The Sponsor will attempt to mitigate the Funds' credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. The intra-day futures prices, closing price, and settlement prices of the VIX Futures Contracts or other futures contracts, as applicable, held by the

Funds will also be available from the CFE, other futures exchanges, automated quotation systems, published or other public sources, or on-line information services. Information relating to cleared swaps and futures contracts other than VIX Futures Contracts, as applicable, held by the Funds will be available from major market data vendors. The value of swaps and futures contracts other than VIX Futures Contracts, as applicable, will be included in: (1) The calculation of NAV for the Shares, which is disseminated daily, and (2) the IOPV for the Shares. The portfolio disclosure for the Funds, which is disseminated daily, will include swaps and futures contracts other than VIX Futures Contracts, if any, in addition to VIX Futures Contracts. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association. Each Fund's total portfolio composition will be disclosed on the Funds' Web site or another relevant Web site. The Exchange represents that the Exchange may halt trading during the day in which the interruption to the dissemination of the IOPV, the value of the Indexes, the VIX, or the value of the underlying VIX Futures Contracts occurs. If the interruption to the dissemination of the IOPV, the value of the Indexes, the VIX, or the value of the underlying VIX Futures Contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. With respect to any Fund's holdings of futures contracts traded on exchanges, not more than 10% of the weight of such futures contracts in the aggregate shall consist of components whose principal trading market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. One or more major market data vendors will disseminate the level of each Index at least every 15 seconds both in real time from 9:30 a.m. to 4:15 p.m. Eastern time and at the close of trading on each

in the swap transaction, the Funds will seek withdrawal of this collateral from the segregated account and may incur certain costs exercising its right with respect to the collateral.

¹¹ See note 9, *supra*, regarding Commission approval of SR-NYSEArca-2011-23.

¹² Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IOPVs taken from the Consolidated Tape Association or other data feeds.

¹³ 15 U.S.C. 78f(b)(5).

business day. The NAV per Share is calculated daily and made available to all market participants at the same time. One or more major market data vendors will disseminate for the Funds on a daily basis information with respect to the recent NAV per Share and Shares outstanding. The IOPV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, IOPV, and quotation and last-sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ Because the

proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Arca has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that waiver of the operative delay would permit the Funds to utilize, under certain limited circumstances, swap agreements and futures contracts other than VIX Futures Contracts to pursue their respective investment objectives.

The Funds may invest in swaps and futures contracts other than VIX Futures Contracts in the event position accountability rules are reached with respect to VIX Futures Contracts, and may also invest in swaps if the market for a specific futures contract experiences certain emergencies or disruptions. NYSE Arca represents that any investments in swaps or futures contracts other than VIX Futures Contracts would be consistent with the Funds' respective investment objectives. To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearinghouse. In addition, the Sponsor will attempt to mitigate swap counterparty credit risk by transacting only with large, well-capitalized institutions. The value of swaps and futures contracts other than VIX Futures Contracts will be included in the calculation of the NAV and IOPV for the Shares. Each Fund's total portfolio composition, including any swaps and futures contracts other than VIX Futures Contracts held by the Funds, will be disclosed on the Funds' Web site or another relevant Web site. In addition, not more than 10% of the

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.

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

weight of futures contracts traded on exchanges held by each Fund in the aggregate shall consist of components whose principal trading market is not a member of the ISG or is a market with which NYSE Arca does not have a comprehensive surveillance sharing agreement. Further, NYSE Arca represents that the Funds' respective investment objectives are not changing, all other representations made in the Prior Release remain unchanged, and the Funds will continue to comply with initial and continued listing requirements under NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. For the foregoing reasons, the Commission believes that the proposed change does not raise novel or unique regulatory issues that should delay the implementation of the Funds' proposed investments in swaps and futures contracts other than VIX Futures Contracts. Accordingly, the Commission waives the 30-day operative delay requirement because the proposed rule change is consistent with the protection of investors and the public interest.¹⁷

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-2012-49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 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

100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–49. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–49 and should be submitted on or before June 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012–13892 Filed 6–7–12; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 7918]

Culturally Significant Objects Imported for Exhibition Determinations: “Revealing the African Presence in Renaissance Europe”

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 “Revealing the African Presence in Renaissance Europe” 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 Walters Art Museum, Baltimore, MD, from on or about October 14, 2012, until on or about January 21, 2013; at the Princeton University Art Museum, Princeton, NJ, from on or about February 16, 2013, until on or about June 9, 2013, 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: June 5, 2012.

J. Adam Erel,
Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–13977 Filed 6–7–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7917]

Culturally Significant Objects Imported for Exhibition Determinations: “Lucian Freud: Portraits”

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, and 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 “Lucian Freud: Portraits,” imported from abroad

by The Modern Art Museum of Fort Worth for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit object at The Modern Art Museum of Fort Worth in Fort Worth, Texas from on or about July 1, 2012, until on or about October 28, 2012; and 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 listing of the exhibit object, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: June 5, 2012.

J. Adam Erel,
Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–13975 Filed 6–7–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7916]

Designation and Determination Pursuant to the Foreign Missions Act Concerning the Designation of Entities in the United States That Are Substantially Owned or Effectively Controlled by the Government of Azerbaijan as Foreign Missions and the Determination That Property Transactions on the Part of Such Entities Are Subject to Foreign Mission Act Regulation

In order to adjust for costs and procedures of obtaining benefits for the United States Embassy in Azerbaijan and to protect the interests of the United States, pursuant to the authority vested in the Secretary of State under the Foreign Missions Act, 22 U.S.C. 4301–4316 as amended (“the Act”), which has been delegated to me in accordance with the Department of State's Delegation of Authority No. 214, dated September 20, 1994, I hereby designate the State Oil Company of the Republic of Azerbaijan (SOCAR), an entity engaged in activities in the United States that is substantially owned or effectively controlled by the Government of Azerbaijan and all other entities, including any that are

¹⁸ 17 CFR 200.30–3(a)(12).

designated by the Department of State as "Miscellaneous Foreign Government Offices", as "foreign missions" within the meaning of Section 4302(a)(3) of the Act. I also determine that the provisions of Section 4305 of the Act apply to the acquisition or disposition of real property by or on behalf of such entities.

Pursuant to Section 4305 of the Act, the aforementioned entities are obligated to notify and obtain the approval of the Department of State's Office of Foreign Missions (OFM) before finalizing a proposed acquisition of real property in the United States. Accordingly, all such proposals are subject to disapproval by OFM.

I further determine that such entities shall request approval of their proposed acquisitions of real property by transmitting an official letter to OFM, which at a minimum includes the following information:

1. The exact physical address of the property;
2. A description of the proposed use of the property; and
3. The name and contact information of an individual authorized to discuss the proposed property acquisition with OFM.

Prior to receiving a response from OFM concerning such requests, such entities may not enter into a contract for the purchase of real property, unless the agreement expressly states that its execution is subject to disapproval by the Department of State.

This determination will remain in effect until such time as the Department of State finalizes its acquisition of a new site in Baku, Azerbaijan, on which it can construct a secure, safe, and modern chancery compound.

Dated: May 31, 2012.

Eric J. Boswell,

Director, Office of Foreign Missions.

[FR Doc. 2012-13973 Filed 6-7-12; 8:45 am]

BILLING CODE 4710-43-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket DOT-OST-2011-0169]

Application of Sun Air Express, LLC, d/b/a Sun Air International for Commuter Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2012-6-1); Docket DOT-OST-2011-0169.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should

not issue an order finding Sun Air Express, LLC d/b/a Sun Air International fit, willing, and able, and awarding it Commuter Air Carrier Authorization.

DATES: Persons wishing to file objections should do so no later than June 15, 2012.

ADDRESSES: Objections and answers to objections should be filed in Docket DOT-OST-2011-0169 and addressed to U.S. Department of Transportation, Docket Operations, (M-30, Room W12-140), 1200 New Jersey Avenue SE., West Building Ground Floor, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Damon Walker, Air Carrier Fitness Division (X-56, Room W86-487), U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366-9721.

Dated: June 1, 2012.

Robert A. Letteney,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2012-13953 Filed 6-7-12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for the Perris Valley Line project, Riverside County, CA. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject project and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before December 5, 2012.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353-2577 or Terence Plaskon,

Environmental Protection Specialist, Office of Human and Natural Environment, (202) 366-0442. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation project listed below. The actions on this project, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the project. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information on the project. Contact information for FTA's Regional Offices may be found at <http://www.fta.dot.gov>.

This notice applies to all FTA decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321-4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401-7671q]. This notice does not, however, alter or extend the limitation period of 180 days for challenges of project decisions subject to previous notices published in the **Federal Register**. The project and actions that are the subject of this notice are:

Project name and location: Perris Valley Line, Riverside County, CA.
Project sponsor: Riverside County Transportation Commission.
Project description: The Perris Valley Line project would extend Southern California Regional Rail Authority commuter rail service from the City of Riverside to south of the City of Perris, CA. The project includes installation and rehabilitation of track; construction of four stations compliant with the Americans with Disabilities Act and a layover facility; improvements to existing grade crossings and selected culverts; installation of new traffic signals; replacement of two existing bridges along the San Jacinto Branch Line at the San Jacinto River; and construction of communication towers and landscape walls.
Final agency actions: No use of Section 4(f) resources; Section 106 finding of no adverse effect; project-level air quality conformity; and Finding of No Significant Impact

(FONSI), dated May 24, 2012.
Supporting documentation:
 Supplemental Environmental
 Assessment, dated February 2012.

Issued on: June 4, 2012.

Lucy Garliauskas,

*Associate Administrator for Planning and
 Environment, Washington, DC.*

[FR Doc. 2012-13904 Filed 6-7-12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2012-0063]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for
 comments.

SUMMARY: In accordance with the
 Paperwork Reduction Act of 1995, this
 notice announces the Maritime
 Administration's (MARAD's) intention
 to request extension of approval for
 three years of a currently approved
 information collection.

DATES: Comments should be submitted
 on or before August 7, 2012.

FOR FURTHER INFORMATION CONTACT:
 Dennis Brennan, Maritime
 Administration, 1200 New Jersey
 Avenue SE., Washington, DC 20590.
 Telephone: 202-366-1029; or email:
dennis.brennan@dot.gov. Copies of this
 collection also can be obtained from that
 office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Monthly Report of
 Ocean Shipments Moving Under
 Export-Import Bank Financing.

Type of Request: Extension of
 currently approved information
 collection.

OMB Control Number: 2133-0013.

Form Numbers: MA-518.

Expiration Date of Approval: Three
 years from date of approval by the
 Office of Management and Budget.

*Summary of Collection of
 Information:* 46 App. U.S.C. 1241-1,
 Public Resolution 17, required MARAD
 to monitor and enforce the U.S.-flag
 shipping requirements relative to the
 loans/guarantees extended by the
 Export-Import Bank (EXIMBANK) to
 foreign borrowers. Public Resolution 17
 requires that shipments financed by
 Eximbank and that move by sea, must
 be transported exclusively on U.S.-flag
 registered vessels unless a waiver is
 obtained from MARAD.

Need and Use of the Information: The
 prescribed monthly report is necessary

for MARAD to fulfill its responsibilities
 under Public Resolution 17, to ensure
 compliance of ocean shipping
 requirements operating under Eximbank
 financing, and to ensure equitable
 distribution of shipments between U.S.-
 flag and foreign ships. MARAD will use
 this information to report annually to
 Congress the total shipping activities
 during the calendar year.

Description of Respondents: Shippers
 subject to Eximbank financing.

Annual Responses: 336.

Annual Burden: 168 hours.

Comments: Comments should refer to
 the docket number that appears at the
 top of this document. Written comments
 may be submitted to the Docket Clerk,
 U.S. DOT Dockets, Room W12-140,
 1200 New Jersey Avenue SE.,
 Washington, DC 20590. Comments also
 may be submitted by electronic means
 via the Internet at www.regulations.gov.
 Specifically address whether this
 information collection is necessary for
 proper performance of the functions of
 the agency and will have practical
 utility, accuracy of the burden
 estimates, ways to minimize this
 burden, and ways to enhance the
 quality, utility, and clarity of the
 information to be collected. All
 comments received will be available for
 examination at the above address
 between 10 a.m. and 5 p.m. EDT (or
 EST), Monday through Friday, except
 Federal Holidays. An electronic version
 of this document is available on the
 World Wide Web at <http://www.regulations.gov>.

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) or you
 may visit <http://www.regulations.gov>.

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: June 1, 2012.

Julie Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012-13995 Filed 6-7-12; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2012-0100]

Pipeline Safety: Public Meeting on Integrity Management of Gas Distribution Pipelines

AGENCY: Office of Pipeline Safety,
 Pipeline and Hazardous Materials Safety
 Administration, DOT.

ACTION: Notice; public meeting.

SUMMARY: The Pipeline and Hazardous
 Materials Safety Administration
 (PHMSA) and the National Association
 of Pipeline Safety Representatives
 (NAPSR) are jointly sponsoring a public
 meeting on Implementing Integrity
 Management of Gas Distribution
 Pipelines. The meeting will be held on
 June 27, 2012, in Fort Worth, Texas. At
 the meeting, PHMSA/NAPSR will
 discuss observations from initial
 inspections of operators' implementation
 of integrity management requirements for
 gas distribution pipelines and current
 regulatory topics affecting distribution
 pipeline operators. The meeting will
 also include panel and breakout session
 discussions involving gas distribution
 pipeline industry representatives on
 topics relating to their experiences
 implementing the distribution integrity
 management regulation.

DATES: The public meeting will be held
 on Wednesday, June 27, 2012, from
 8 a.m. to 5 p.m. CDT. Name badge
 pickup and onsite registration will be
 available starting at 7:30 a.m. Refer to
 the meeting Web site for a more detailed
 agenda and times at [http://www.primis.phmsa.dot.gov/meetings/
 Home.mtg](http://www.primis.phmsa.dot.gov/meetings/Home.mtg). Please note that the public
 meeting will be webcast and
 presentations will be available on the
 meeting Web site within 30 days
 following the public meeting.

ADDRESSES: The meeting is open to all.
 There is no cost to attend. The meeting
 will be held at the OMNI Hotel, 1300
 Houston Street, Fort Worth, TX 76102-
 6556. Hotel reservations under the "U.S.
 DOT DIMP" room block for the nights
 of June 26-27, 2012, can be made at
 1-800-843-6664. A daily rate of
 \$139.00 is available. Information about
 the meeting room will be posted at the
 hotel on the day of the public meeting.

FOR FURTHER INFORMATION CONTACT:
 Chris McLaren, Office of Pipeline Safety
 at 281-216-4455 or email at
chris.mclaren@dot.gov, regarding the
 subject matter of this notice.

SUPPLEMENTARY INFORMATION: A final rule establishing requirements for assuring the continued integrity of gas distribution pipelines (DIMP) was published on December 4, 2009, (74 FR 63906). The rule required that operators of gas distribution pipelines develop and implement integrity management plans for their pipeline systems by August 2, 2011. PHMSA and states have conducted a number of inspections of gas distribution pipeline operator integrity management programs. Many more inspections will follow. This public meeting is intended to allow PHMSA, NAPS, and industry representatives to share observations resulting from these initial inspections.

The public meeting is designed to enhance pipeline safety through improved integrity management of natural gas distribution pipeline systems and will consist of presentations and panel discussions provided by a variety of stakeholders. Panel participants will represent industry, PHMSA, and NAPS. Panels will present information on PHMSA and NAPS's expectations of implemented distribution integrity management programs (DIMP) and observations from DIMP Inspections conducted by PHMSA and NAPS. PHMSA and NAPS will promote compliance with regulations by providing an overview of the rule, including expectations of regulatory definitions (such as identification of threats, methodologies for segmentation of assets for evaluation of risk, risk ranking, measures designed to reduce risk, and measuring and monitoring performance) and discussing methodologies that industry is employing to meet the requirements of the rule. Inspection findings from DIMP inspections conducted by PHMSA and state programs and issue areas and areas of concern will be discussed.

Participants of the public meeting will benefit from (1) hearing their peers explain methods of implementation for certain provisions of the rule and associated questions experienced during program development and implementation; (2) listening to PHMSA, NAPS, and industry experience on implementing the specific elements of the rule; (3) discussing rule compliance concerns; developing a clearer understanding of the DIMP rule provisions, and (4) participating in the development of additional guidance if deemed necessary through stakeholder feedback.

Interested persons may obtain more information on DIMP by accessing the DIMP Web site through the PHMSA Pipeline Safety Community page at <http://www.phmsa.dot.gov/pipeline> by selecting "Integrity Management Program (IMP)" and then "Integrity Management—Distribution."

Preliminary Agenda

- Discuss Implementation of the DIMP Regulation and Regulatory Developments affecting Distribution Operators.
- Regulators' (NAPS and PHMSA) Perspective on Implementation of the DIMP Regulation.
- Breakout Sessions to discuss various topics regarding the implementation of distribution IM Programs and meeting the requirements of the DIMP rule.
- Presentations from representatives of the breakout sessions, NAPS, and industry.

Issued in Washington, DC, on June 5, 2012.

Jeffrey D Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2012-13991 Filed 6-7-12; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 682 (Sub-No. 3)]

2011 Tax Information for Use in the Revenue Shortfall Allocation Method

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice.

SUMMARY: The Board is publishing, and providing the public an opportunity to comment on, the 2011 weighted average state tax rates for each Class I railroad, as calculated by the Association of American Railroads (AAR), for use in the Revenue Shortfall Allocation Method (RSAM).

DATES: Comments are due by July 9, 2012. If any comment opposing AAR's calculation is filed, AAR's reply will be due by July 30, 2012. If no comments are filed by the due date, AAR's calculation of the 2011 weighted average state tax rates will be automatically adopted by the Board, effective July 10, 2012.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in traditional paper format.

Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies referring to Docket No. EP 682 (Sub-No. 3) to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT:

Jonathon Binet, (202) 245-0368.

Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION: The RSAM figure is one of three benchmarks that together are used to determine the reasonableness of a challenged rate under the Board's *Simplified Standards for Rail Rate Cases*, EP 646 (Sub-No. 1) (STB served Sept. 5, 2007),¹ as further revised in *Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method*, EP 646 (Sub-No. 2) (STB served Nov. 21, 2008). RSAM is intended to measure the average markup that the railroad would need to collect from all of its "potentially captive traffic" (traffic with a revenue-to-variable-cost ratio above 180%) to earn adequate revenues as measured by the Board under 49 U.S.C. 10704(a)(2) (i.e., earn a return on investment equal to the railroad industry cost of capital). *Simplified Standards—Taxes in RSAM*, slip op. at 1. In *Simplified Standards—Taxes in RSAM*, slip op. at 3, 5, the Board modified its RSAM formula to account for taxes, as the prior formula mistakenly compared pre-tax and after-tax revenues. In that decision, the Board stated that it would institute a separate proceeding in which Class I railroads would be required to submit the annual tax information necessary for the Board's annual RSAM calculation. *Id.* at 5-6.

In *Annual Submission of Tax Information for Use in the Revenue Shortfall Allocation Method*, EP 682 (STB served Feb. 26, 2010), the Board adopted rules to require AAR—a national trade association—to annually calculate and submit to the Board the weighted average state tax rate for each Class I railroad. See 49 CFR 1135.2(a). On May 30, 2012, AAR filed its calculation of the weighted average state tax rates for 2011, listed below for each Class I railroad:

¹ *Aff'd sub nom. CSX Transp., Inc. v. STB*, 583 F.3d 236 (DC Cir. 2009), and vacated in part on

reh'g, CSX Transp., Inc. v. STB, 584 F.3d 1076 (DC Cir. 2009).

WEIGHTED AVERAGE STATE TAX RATES

[In percent]

Railroad	2011 %	2010 %	% Change
BNSF Railway Company	5.584	5.572	0.012
CSX Transportation, Inc.	5.660	5.575	0.085
Grand Trunk Corporation	8.089	7.634	0.455
The Kansas City Southern Railway	6.139	6.070	0.069
Norfolk Southern Combined	5.942	5.819	0.123
Soo Line Corporation	7.350	7.305	0.045
Union Pacific Railroad Company	6.035	5.922	0.113

Any party wishing to comment on AAR's calculation of the 2011 weighted average state tax rates should file a comment by July 9, 2012. See 49 CFR 1135.2(c). If any comment opposing AAR's calculations is filed, AAR's reply will be due by July 30, 2012. *Id.* If any comments are filed, the Board will review AAR's submission, together with the comments, and serve a decision within 60 days of the close of the record that either accepts, rejects, or modifies AAR's railroad-specific tax information. *Id.* If no comments are filed by July 9, 2012, AAR's submitted weighted average state tax rates will be automatically adopted by the Board, effective July 10, 2012. *Id.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: June 5, 2012.

By the Board.

Rachel D. Campbell,
Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2012-13962 Filed 6-7-12; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Indexing the Annual Operating Revenues of Railroads

The Surface Transportation Board (STB) is publishing the annual inflation-adjusted index factors for 2011. These factors are used by the railroads to adjust their gross annual operating revenues for classification purposes. This indexing methodology insures that railroads are classified based on real business expansion and not from the affects of inflation. Classification is important because it determines the extent to which individual railroads must comply with STB reporting requirements.

The STB's annual inflation-adjusted factors are based on the annual average Railroad's Freight Price Index which is developed by the Bureau of Labor Statistics (BLS). The STB's deflator factor is used to deflate revenues for comparison with established revenue thresholds.

The base year for railroads is 1991. The inflation index factors are presented as follows:

STB RAILROAD INFLATION-ADJUSTED INDEX AND DEFLATOR FACTOR TABLE

Year	Index	Deflator
1991	409.50	¹ 100.00
1992	411.80	99.45
1993	415.50	98.55
1994	418.80	97.70
1995	418.17	97.85
1996	417.46	98.02
1997	419.67	97.50
1998	424.54	96.38
1999	423.01	96.72
2000	428.64	95.45
2001	436.48	93.73
2002	445.03	91.92
2003	454.33	90.03
2004	473.41	86.40
2005	522.41	78.29
2006	567.34	72.09
2007	588.30	69.52
2008	656.78	62.28
2009	619.73	66.00
2010	652.29	62.71
2011	708.80	57.71

FOR FURTHER INFORMATION CONTACT:

Paul Aguiar 202-245-0323. [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339] Effective Date: January 1, 2011.

¹ Ex Parte No. 492, *Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition for Rulemaking With Respect to 49 CFR 1201*, 8 I.C.C. 2d 625 (1992), raised the revenue classification level for Class I railroads from \$50 million (1978 dollars) to \$250 million (1991 dollars), effective for the reporting year beginning January 1, 1992. The Class II threshold was also raised from \$10 million (1978 dollars) to \$20 million (1991 dollars).

By the Board, William F. Huneke, Director, Office of Economics.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2012-13938 Filed 6-7-12; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35630]

Wisconsin Central Ltd.—Intra-Corporate Family Merger Exemption—Elgin, Joliet and Eastern Railway Company

Wisconsin Central Ltd. (WCL), Wisconsin Central Transportation Corporation (WCTC), and Elgin, Joliet and Eastern Railway Company (EJ&E) (collectively, applicants) have jointly filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for an intra-corporate family transaction. WCL, a rail carrier, is a wholly owned subsidiary of WCTC, a noncarrier, which, in turn, is a direct subsidiary of Grand Trunk Corporation (GTC). GTC, a noncarrier holding company for the U.S. rail carrier subsidiaries of Canadian National Railway Company (CNR), is a direct subsidiary of CNR. In *Canadian National Railway—Control—Wisconsin Central Transportation*, 5 S.T.B. 890 (2001) (CNR/WC), CNR and GTC acquired control of WCL and other related rail carriers.¹ EJ&E, a rail carrier, is a direct subsidiary of GTC.²

Applicants state that the rail lines of WCL and EJ&E connect at Leithton, Ill., north of Chicago, Ill., and WCL has existing overhead trackage rights over

¹ At the time of the 2001 CNR/WC transaction, the WCTC family of rail carriers also included WCL, Fox Valley & Western Ltd. (FVW), Sault Ste. Marie Bridge Company (SSMB) and Wisconsin Chicago Link Ltd. (WCCL). FVW has since been dissolved into WCL. *Wis. Cent. Transp.—Intracorporate Family Transaction Exemption*, FD 34296 (STB served Jan. 22, 2003). Applicants state that SSMB and WCCL remain in existence as rail carriers and subsidiaries of WCTC.

² *Canadian Nat'l Ry.—Control—EJ&E W. Co.*, FD 35087 (STB served Dec. 24, 2008).

EJ&E's line to reach the Kirk Yard in Gary, Ind., a major classification and interchange facility, and other interchange locations on the line. Applicants state that the Kirk Yard serves a particularly important function for traffic moving to and from WCL, because WCL does not have substantial yard facilities on its own lines in Chicago.

Applicants state that WCL will be merged into WCL's immediate parent, WCTC, with WCTC as the surviving entity. WCTC then immediately will be renamed Wisconsin Central Ltd. The newly renamed WCL (formerly WCTC) will continue to control SSMB and WCCL as WCTC has done. Pursuant to an agreement and plan of merger by applicants (consented to by GTC), EJ&E will then be merged with and into WCL, with WCL as the surviving corporation. According to applicants, the consolidated entity will continue all existing operations of WCL and EJ&E, but with a unified workforce, enhanced efficiencies, and crew management flexibility in the Chicago terminal.

Applicants state that the merger of WCL into WCTC, and the concurrent name change of WCTC to WCL, are expected to occur on September 30, 2012. Applicants state that, subject to negotiation or (if necessary) arbitration of labor implementing agreements, the consummation of the proposed merger of EJ&E with and into WCL would occur on December 31, 2012. They indicate that, in no event, would the transaction occur sooner than June 22, 2012, the effective date of the exemption.

The purpose of the intracorporate transaction is to simplify CNR's corporate structure by consolidating two separate, connecting railroads into a single entity, to reduce the administrative burden associated with tax matters, financial reporting, accounting, IT systems, and corporate filings that are required to support the separate existence of EJ&E, and to address crew management inefficiencies and train service efficiencies in and around the Chicago terminal area, where both carriers involved in the proposed merger currently operate.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or any change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory

obligation to protect the interests of its employees. As a condition to the use of this exemption, any employees adversely affected by this transaction will be protected by the conditions set forth in *New York Dock Railway—Control—Brooklyn Eastern District Terminal*, 360 I.C.C. 60 (1979).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than June 15, 2012 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35630, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606-2832.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: June 5, 2012.

By the Board.

Rachel D. Campbell,
Director, Office of Proceedings.
Derrick A. Gardner,
Clearance Clerk.

[FR Doc. 2012-13941 Filed 6-7-12; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions (CDFI) Fund, Department of the Treasury, is soliciting comments concerning reporting and record retention requirements for the Capital Magnet Fund (CMF).

DATES: Written comments should be received on or before August 7, 2012 to be assured of consideration.

ADDRESSES: Direct all comments to Capital Magnet Fund Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, by email to cdfihelp@cdfi.treas.gov or by facsimile to (202) 622-7754. This is not a toll free number.

FOR FURTHER INFORMATION CONTACT: Additional information about CMF may be obtained from the CMF page of the CDFI Fund's Web site at <http://www.cdfifund.gov>. The CMF Program Awardee Annual Report data points may also be obtained from the CMF Program page of the CDFI Fund's Web site. Requests for any additional information should be directed to John Moon, Program Specialist, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, or call (202) 622-7024. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

Title: Capital Magnet Fund Reporting.
OMB Number: 1559-NEW.

Abstract: The purpose of the Capital Magnet Fund (CMF) program is to competitively award grants to certified Community Development Financial Institutions (CDFIs) and qualified nonprofit housing organizations to attract and leverage other finance resources towards the support of affordable housing and related community development projects. The CMF was authorized in July of 2008 under Section 1339 of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289), and \$80 million was appropriated for this initiative under the Consolidated Appropriations Act of 2010 (Pub. L. 111-117). Twenty-three Awardees were competitively selected after a careful review of their program applications. These Awardees entered into Assistance Agreements with the CDFI Fund that set forth certain required terms and conditions of the award, including reporting and data collection requirements. The Assistance Agreement requires the collection of annual reports that are used to collect information for compliance monitoring and program evaluation purposes. This information is reviewed to ensure the Awardee's compliance with its performance goals and contractual obligations and the overall performance of the program. The CMF Annual Report represents a substantially revised annual collection as compared to the version posted in August 2010 and it

incorporates prior public comments and reduced reporting burdens for program Awardees.

Current Actions: New collection.

Type of Review: Regular Review.

Affected Public: Certified and certifiable CDFIs and qualified nonprofit housing organizations.

Estimated Number of Respondents: 23.

Estimated Annual Time per

Respondent: 40 hours per year.

Estimated Total Annual Burden

Hours: 920 hours per year.

Requests for Comments: Comments submitted in response to this notice as well as the prior notice of September 17, 2010, 75 FR 57107, 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 and will be published on the CDFI Fund Web site at <http://www.cdfifund.gov>. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the CDFI Fund, including whether the information shall have practical utility; (b) the accuracy of the CDFI Fund'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 technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: Pub. L. 110–289.

Dated: June 5, 2012.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–13930 Filed 6–7–12; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Electronic Transfer Account (ETA) Financial Agency Agreement

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 form FMS–111, “Electronic Transfer Account (ETA) Financial Agency Agreement.”

DATES: Written comments should be received on or before August 7, 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 Walt Henderson, Director, EFT Strategy Division, 401 14th Street SW., Washington, DC 20227, (202) 874–6624

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: Electronic Transfer Account (ETA) Financial Agency Agreement.

OMB Number: 1510–0073.

Form Number: FMS 111.

Abstract: Any financial institution that offers the ETA must do so subject to the terms and conditions of the agreement. The agreement incorporates the final features of the account and other account criteria, such as standards for opening and closing accounts.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Federally insured financial institutions.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 40.

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 31, 2012.

Sheryl R. Morrow,

Assistant Commissioner, Payment Management.

[FR Doc. 2012–13946 Filed 6–7–12; 8:45 am]

BILLING CODE 4810–35–M

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—June 14, 2012, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: Dennis Shea, Chairman of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on “the national security implications of the economic relationship between the United States and the People's Republic of China.” Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on June 14, 2012, “Evolving U.S.-China Trade and Investment Relationship.”

Background: This is the sixth public hearing the Commission will hold during its 2012 report cycle to collect input from academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. The June 14 hearing is aimed at sharpening our understanding of contemporary Chinese trade and investment challenges, and will include testimony on the implications of employing value added measurements of trade; the BIT and the U.S. investment regime; as well as case stories of U.S. companies' China trade challenges. The hearing will be co-chaired by Commissioners Hon. William A. Reinsch and Daniel M. Slane. Any interested party may file a written statement by June 14, 2012, by mailing to the contact below. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

Location, Date and Time: 2118 Rayburn House Office Building, Thursday June 14, 2012, 9 a.m.–2:45 p.m. Eastern Time. A detailed agenda

for the hearing will be posted to the Commission's Web site at www.uscc.gov as soon as available. Please check our Web site at www.uscc.gov for possible changes to the hearing schedule. Reservations are not required to attend the hearing.

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Gavin Williams, 444 North Capitol Street NW., Suite 602, Washington, DC 20001; phone: 202-624-1492, or via email at gwilliams@uscc.gov. Reservations are not required to attend the hearing.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106-398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108-7), as amended by Public Law 109-108 (November 22, 2005).

Dated: June 5, 2012.

Michael Danis,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2012-13989 Filed 6-7-12; 8:45 am]

BILLING CODE 1137-00-P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on June 25-26, 2012, at the St. Regis Hotel, 923 16th and K Streets NW., Washington, DC. The sessions will begin at 8:30 a.m. and end at 4 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected

disabilities and other VA benefits programs. Time will be allocated for receiving public comments in the afternoon. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1-2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Robert Watkins, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Regulation Staff (211D), 810 Vermont Avenue NW., Washington, DC 20420; or by email at Robert.Watkins2@va.gov. Any member of the public wishing to attend the meeting or seeking additional information should contact Mr. Watkins at (202) 461-9214.

Dated: June 4, 2012.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012-13891 Filed 6-7-12; 8:45 am]

BILLING CODE P



FEDERAL REGISTER

Vol. 77

Friday,

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June 8, 2012

Part II

Environmental Protection Agency

40 CFR Parts 85, 86, and 1039

Heavy-Duty Highway Program: Revisions for Emergency Vehicles and SCR Maintenance; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85, 86, and 1039

[EPA-HQ-OAR-2011-1032; FRL-9673-1]

RIN 2060-AR54

Heavy-Duty Highway Program: Revisions for Emergency Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to its heavy-duty diesel regulations that will enable emergency vehicles, such as dedicated ambulances and fire trucks, to perform mission-critical life-saving work without risking that abnormal conditions of the emission control system could lead to decreased engine power, speed or torque. The revisions will allow manufacturers to request and EPA to approve modifications to emission control systems on emergency vehicles so they do not interfere with the vehicles' missions. This action is not expected to result in any significant changes in regulatory burdens or costs.

DATES: This rule is effective on August 7, 2012 without further notice, unless EPA receives adverse comment. If we receive relevant adverse comment on distinct elements of this rule by July 27, 2012, we will publish a timely withdrawal in the **Federal Register** indicating which provisions we are withdrawing. The provisions that are not withdrawn will become effective on August 7, 2012, notwithstanding adverse comment on any other provision.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2011-1032, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *Email*: a-and-r-docket@epa.gov.
- *Fax*: (202) 566-9744
- *Mail*: Environmental Protection Agency, Air Docket, Mail-code 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery*: EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, Attention Docket No. EPA-HQ-

OAR-2010-0162. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2011-1032. For additional instructions on submitting written comments, see the **SUPPLEMENTARY INFORMATION** section on "Public Participation" in the parallel Notice of Proposed Rulemaking in today's **Federal Register**.

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 EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Lauren Steele, Environmental Protection Agency, Office of Transportation and Air Quality, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, Michigan 48105; telephone number: 734-214-4788; fax number: 734-214-4816; email address: steele.lauren@epa.gov.

SUPPLEMENTARY INFORMATION:

Why is EPA using a direct final rule?

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. This is also to expedite the regulatory process to allow engine and vehicle modifications to occur as soon as possible. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to adopt these revisions for emergency vehicles if adverse comments are received on this direct final rule. We will not institute a second

comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment on a distinct provision of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions we are withdrawing. The provisions that are not withdrawn will become effective on the date set out above, notwithstanding adverse comment on any other provision. We would address all public comments in a subsequent final rule based on the proposed rule.

EPA is publishing this direct final rule to expedite the deployment of solutions that will best ensure the readiness of the nation's emergency vehicles. We request that commenters identify in your comments any portions of the action with which you agree and support as written, in addition to any comments regarding suggestions for improvement or provisions with which you disagree. In the case of a comment that is otherwise unclear whether it is adverse, EPA would interpret relevant comments calling for more flexibility or less restrictions for emergency vehicles as supportive of the direct final action. In this way, the EPA will be able to adopt those elements of this action that are fully supported and most needed today, while considering and addressing any adverse comments received on the proposed rule, in the course of developing the final rule.

Does this action apply to me?

This action may affect you if you produce or import new heavy-duty or nonroad diesel engines that are intended for use in vehicles that serve the emergency response industry, including all types of dedicated and purpose-built fire trucks and ambulances. The following table gives some examples of entities that may be affected by this action. Because these are only examples, you should carefully examine the existing and revised regulations in 40 CFR parts 85, 86 and 1039. If you have questions regarding how or whether these rules apply to you, you may call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS code ^a	Examples of potentially affected entities
Industry	336111 336112 333618 336120	Motor Vehicle Manufacturers, Engine and Truck Manufacturers.

Category	NAICS code ^a	Examples of potentially affected entities
Industry	541514 811112 811198	Commercial Importers of Vehicles and Vehicle Components.
Industry	811310	Engine Repair, Remanufacture, and Maintenance.

Note:

^a North American Industry Classification System (NAICS).

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 - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer Advancement Act
 - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
 - K. Congressional Review Act

I. Overview

EPA is adopting amendments to its heavy-duty diesel engine programs that will specifically allow engine manufacturers to request to deploy specific emission controls or settings for new and in-use engines that are sold for use only in emergency vehicles. EPA is adopting these revisions to enable fire trucks and ambulances with heavy-duty diesel engines to perform mission-critical life- and property-saving work without risk of losing power, speed or torque due to abnormal conditions of the emission control systems.

EPA's current diesel engine requirements have spurred application of emission controls systems such as diesel particulate filters (commonly called soot filters or DPF's) and other after-treatment systems on most new diesel vehicles, including emergency vehicles. Some control system designs and implementation strategies are more effective in other segments of the fleet than in emergency vehicles, especially given some emergency vehicles' extreme duty cycles. By this action, EPA intends to help our nation's emergency vehicles perform their missions; to better ensure public safety and welfare and the protection of lives and property.

II. Statutory Authority and Regulatory Background**A. Statutory Authority**

Section 202(a)(1) of the Clean Air Act (CAA or the Act) directs EPA to establish standards regulating the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines that, in the Administrator's judgment, causes or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards apply for the useful life of the vehicles or engines. Section 202(a)(3) requires that EPA set standards applicable to emissions of hydrocarbons, carbon monoxide, NO_x and particulate matter (PM) from heavy-duty trucks that reflect the greatest degree of emission reduction achievable through the application of technology which we determine will be available for the model year to which the standards apply. We are to give appropriate

consideration to cost, energy, and safety factors associated with the application of such technology. We may revise such technology-based standards, taking costs into account, on the basis of information concerning the effects of air pollution from heavy-duty vehicles or engines and other sources of mobile source related pollutants on the public health and welfare.

Section 202(a)(4)(A) of the Act requires the Administrator to consider risks to public health, welfare or safety in determining whether an emission control device, system or element of design shall be used in a new motor vehicle or new motor vehicle engine. Under section 202(a)(4)(B), the Administrator shall consider available methods for reducing risk to public health, welfare or safety associated with use of such device, system or element of design, as well as the availability of other devices, systems or elements of design which may be used to conform to requirements prescribed by (this subchapter) without causing or contributing to such unreasonable risk.

Section 206(a) of the Act requires EPA to test, or require to be tested in such manner as it deems appropriate, motor vehicles or motor vehicle engines submitted by a manufacturer to determine whether such vehicle or engine conforms to the regulations promulgated under section 202. Section 206(d) provides that EPA shall by regulation establish methods and procedures for making tests under section 206.

Section 213 of the Act gives EPA the authority to establish emissions standards for nonroad engines and vehicles (42 U.S.C. 7547). Sections 213(a)(3) and (a)(4) authorize the Administrator to set standards and require EPA to give appropriate consideration to cost, lead time, noise, energy, and safety factors associated with the application of technology. Section 213(a)(4) authorizes the Administrator to establish standards to control emissions of pollutants (other than those covered by section 213(a)(3)) which "may reasonably be anticipated to endanger public health and welfare." Section 213(d) requires the standards under section 213 to be subject to sections 206–209 of the Act and to be

enforced in the same manner as standards prescribed under section 202 of the Act.

B. Background: 2007 and 2010 NO_x and PM Standards

(1) On-Highway Standards

On January 18, 2001, EPA published a rule promulgating more stringent standards for NO_x and PM for heavy-duty highway engines (“the heavy-duty highway rule”).¹ The 0.20 gram per brake-horsepower-hour (g/bhp-hr) NO_x standard in the heavy-duty highway rule first applied in MY 2007. However, because of phase-in flexibility provisions adopted in that rule and use of emission credits generated by manufacturers for early compliance, manufacturers were able to continue to produce engines with NO_x emissions greater than 0.20 g/bhp-hr. The phase-in provisions ended after MY 2009 so that the 0.20 g/bhp-hr NO_x standard was fully phased-in for model year 2010. Because of these changes that occurred in MY 2010, the 0.20 g/bhp-hr NO_x emission standard is often referred to as the 2010 NO_x emission standard, even though it applied to engines as early as MY 2007.

The heavy-duty highway rule adopted in 2001 also included a PM emissions standard for new heavy-duty diesel engines of 0.01 g/bhp-hr, effective for engines beginning with MY 2007. Due to the flexible nature of the phase-in schedule described above, manufacturers have had the opportunity to produce engines that met the PM standard while emitting higher levels of NO_x. During the phase-in years, manufacturers of diesel engines generally produced engines that were tuned so the combustion process inherently emitted lower engine-out NO_x while relying on PM after-treatment to meet the PM standard. The principles of combustion chemistry dictate that conditions yielding lower engine-out NO_x emissions generally result in higher engine-out PM emissions. This is what we call the NO_x-PM trade-off. For many new low-NO_x diesel engines today, engine-out PM emissions could be at or above the levels seen with the MY 2004 standards (0.1 g/bhp-hr). To meet today’s stringent PM standards, manufacturers rely on diesel particulate filter after-treatment to clean the exhaust.

¹ Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (66 FR 5001).

(2) Nonroad Standards

EPA adopted similar technology-forcing standards for nonroad diesel engines on June 29, 2004.² These are known as the Tier 4 standards. This program includes requirements that will generally involve the use of NO_x after-treatment for engines above 75 hp and PM after-treatment (likely soot filters) for engines above 25 hp. These standards phase in during the 2011 to 2015 time frame.

III. Emergency Vehicle Provisions

A. Background on Regulation of Emergency Vehicles

Typically, the engines powering our nation’s emergency vehicles belong to the same certified engine families as engines that are installed in similarly sized vehicles sold for other public and private uses.³ Historically, engine and vehicle manufacturers have sought EPA certification for broad engine families and vehicle test groups that are defined by similar emissions and performance characteristics. Engine families typically only consider the type of vehicle in which the engine is intended to be installed to the extent that it fits into a broad vehicle weight class and, to a lesser extent, the vehicle’s intended duty cycle (i.e. urban or highway).

Because of the above-described manufacturing practices and the narrow CAA authority for any exemptions, EPA has historically regulated engines for emergency vehicles, including ambulances as well as police vehicles and fire-fighting apparatus, in the same manner as other engines.

In the public comments received on the proposed heavy-duty highway rule, EPA received some comments about DPF technologies and regeneration cycles on heavy-duty trucks, including one comment that expressed concerns that the systems may not be failsafe.⁴ However, none of the comments specifically raised technical feasibility with respect to emergency vehicles, and EPA’s response was based on the best information available at the time. After

² Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel (69 FR 38958).

³ In this rule, emergency vehicle is defined as a fire truck or an ambulance for on-highway applications, and for nonroad applications, we are defining emergency equipment as specialized vehicles to perform aircraft rescue and firefighting functions at airports, or wildland fire apparatus. See Section III.C and revisions at 40 CFR 86.1803–01 and 40 CFR 1039.801.

⁴ Heavy-Duty Highway Final Rule, December 21, 2000, Response to Comments, Section 3.2.1, “Technical Feasibility of Engine/Vehicle Standards//Diesel Engine Exhaust Standards,” page 3–58 to 3–60, available at <http://www.epa.gov/otaq/highway-diesel/regs/2007-heavy-duty-highway.htm>.

publishing the final rule requiring heavy-duty highway engines to meet performance standards that compelled technologies such as DPF’s, EPA received a letter from the National Association of State Fire Marshals, requesting some provision for public safety in implementing this new rule, considering that fire departments across the nation have trouble covering basic costs and may not have funds for more expensive trucks.⁵ This letter did not raise any technical feasibility issues, and EPA did not see a need to take action.

More recently EPA has received letters from fire apparatus manufacturers and ambulance companies requesting relief from power or speed inducements related to low levels of DEF for SCR systems on emergency vehicles.⁶ Power and speed reduction inducements were new on vehicles equipped with SCR. These were not specifically mandated by EPA but designed by manufacturers to occur if DEF levels became low, to induce operators of the vehicles to perform the required emission-related maintenance in use. More discussion on this, including why the emergency response community requested relief and what action EPA took, is found below in Section III.B(3).

Recently, beginning in October 2011, EPA received a series of comment letters from fire chiefs and other interested stakeholders, requesting regulatory action to relieve emergency vehicles from the burden of complying with the 2007 PM standards.⁷ EPA promptly opened a dialogue with the fire chiefs and engine manufacturers to understand the issues. Power and speed reductions were occurring on some vehicles with soot filters but without SCR systems, in part related to engine protection measures designed by manufacturers. Essentially, these soot filters are supposed to be self-cleaning by periodically burning off accumulated soot during normal vehicle use. The cleaning process is called regeneration, and when this doesn’t work as designed, the filter gradually gets more clogged, which can lead to engine problems. EPA has determined that while other

⁵ Letter dated February 1, 2001 to C. Whitman, EPA Administrator from G. Miller, President, National Association of State Fire Marshals.

⁶ See, for example, letter dated October 22, 2009, from Roger Lackore of the Fire Apparatus Manufacturers’ Association and Randy Hanson of the Ambulance Manufacturers Division, to Keisha Jennings of EPA.

⁷ See, for example, letter dated October 4, 2011 from Congressman Filner to EPA Administrator Jackson, and letter dated October 14, 2011, from Director Cimmini of the Southeast Association of Fire Chiefs to EPA Administrator Jackson.

pathways are available for resolving some issues related to soot filters on emergency vehicles, there remains a public safety issue related to design of engines and emission control systems on emergency vehicles that should be addressed through this rulemaking. More discussion of this, including why relief was requested and what other actions can be taken in addition to EPA regulation, is found below in Sections III.B and III.C.

There have been some examples of EPA providing limited exemptions for other types of emergency-use engines and vessels. Further descriptions of current and proposed limited exemptions are provided in the Notice of Proposed Rulemaking published elsewhere in today's **Federal Register**. These limited exemption provisions are only applicable to newly certified engines. They are not applicable to any existing in-use engines that are already deployed in emergency equipment.

B. Why is EPA taking this action?

EPA is amending its regulations to facilitate engine manufacturers' design and implementation of reliable and robust emission control systems with regeneration strategies and other features that do not interfere with the mission of emergency vehicles. Through the comments and letters we have received, as well as our own outreach and data-gathering efforts, we have learned that some emission control systems on fire trucks and ambulances today, in particular, certain applications using diesel particulate filters, are requiring an unexpected amount of operator interventions, and there are currently a nontrivial number of emergency vehicles that are electronically programmed to cut power or speed—even while responding to an emergency—when certain operational parameters are exceeded in relation to the emission control system. As we understand it, the experiences of

operators are mixed, with some not reporting any problems and some reporting problems that raise public safety and welfare concerns.

EPA's standards are performance-based, and reflect the greatest degree of emission reduction achievable, according to CAA sections 202(a)(3) and 213(a)(3). Our on-highway and nonroad PM standards do not specify the type of diesel particulate filter for manufacturers to use, nor do they even mandate the use of such a filter. Our analysis of the feasibility of the 2007 on-highway PM standard is presented in Chapter III of the final Regulatory Impact Analysis (RIA) for that rule.⁸ Our analysis of the feasibility of the Tier 4 nonroad compression ignition engine standards that will be phasing in through 2015 is presented in Chapter 4 of that rule's final RIA.⁹ For most nonroad engines, these standards are similar in stringency to the 2007 on-highway heavy-duty engine and vehicle standards. As described below in Section III.H, these two rules are providing billions of dollars of annual health benefits by virtually eliminating harmful PM emissions from the regulated engines. Even so, EPA is required by sections 202(a)(4)(B) and 213(c) of the Act to, among other things, consider methods for reducing risk to public safety and welfare associated with the use of emission control devices or systems.

Based on the information available to us, we have concluded that there is an indirect risk to public safety and welfare associated with some examples of emission control systems when they are deployed on emergency vehicles that experience extreme duty cycles. This indirect risk is related to the readiness of emergency vehicles and the risk that they may not be able to respond during emergencies with the full power, torque, or speed that the engine is designed to provide. While this risk is not inherent to the requirement to reduce emissions

or to the use of diesel particulate filters on emergency vehicles, EPA believes it is appropriate to ensure that emergency vehicles can perform their emergency missions without the chance of such consequences.

EPA's current rules already provide the opportunity for manufacturers to address many issues through applications for certification of new engines and new vehicles. There is also currently a mechanism for manufacturers to deploy field modifications to the in-use fleet, including those that are substantially similar to approved upgrades for new vehicles, as well as those that apply only to vehicles that are no longer in production. As manufacturers become aware of the need for upgrades or enhancements, this process occurs within the new and in-use fleet with various degrees of application. While that process is occurring today, EPA views this issue as serious enough that we would be remiss if we did not act to ensure that our regulations clearly offer the needed flexibilities for emergency vehicles.

(1) How does a DPF work?

To explain more fully the issues that we are addressing with this action, and hence why we are taking this action, we are providing here some background information on diesel particulate filters and the process of DPF regeneration. DPF's are exhaust after-treatment devices that significantly reduce emissions from diesel-fueled vehicles and equipment. DPF's physically trap PM and remove it from the exhaust stream. Figure III-1 depicts a schematic of a wall-flow monolith style filter, with the black arrows indicating exhaust gas laden with particles, and the gray arrows indicating filtered exhaust gas. This style of filter is the most common in today's heavy-duty diesel engines, and has very high rates of filtration, in excess of 95 percent.¹⁰

⁸ Final Regulatory Impact Analysis for the "2007 Heavy-Duty Highway Rule," EPA420-R-00-026, December 2000. Chapter III, Emissions Standards Feasibility, is available at <http://www.epa.gov/otaq/highway-diesel/regs/ria-iii.pdf>.

⁹ Final Regulatory Impact Analysis for "Control of Emissions from Nonroad Diesel Engines," EPA420-R-04-007, May 2004. Chapter 4, Technologies and Test Procedures for Low-Emission Engines, is available <http://www.epa.gov/nonroad-diesel/2004fr/420r04007e.pdf>.

¹⁰ See Final RIA Chapter III, Note 8, above.

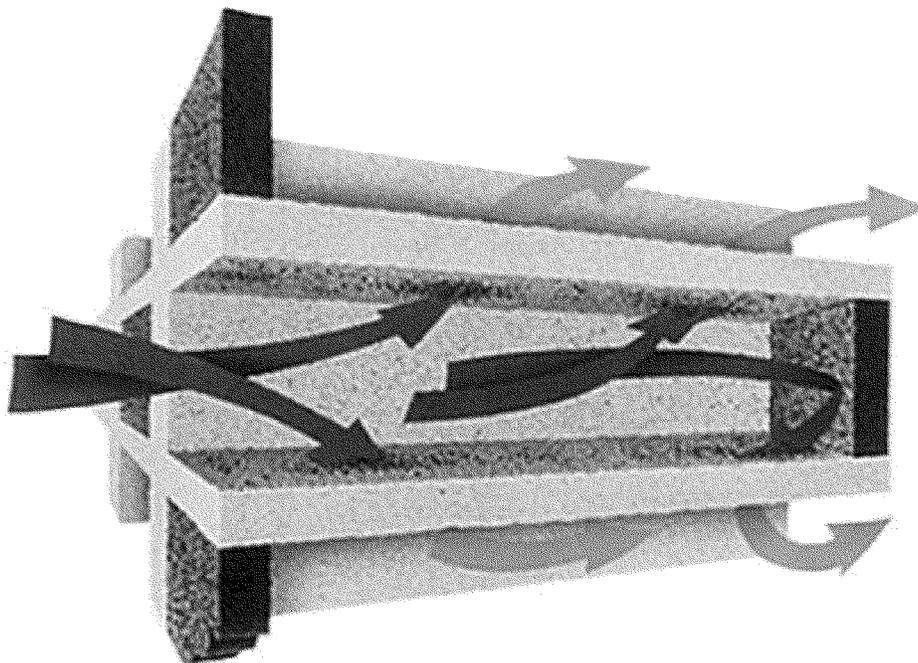


Figure III-1 Illustration of air flow pattern in a wall-flow monolith style PM filter

(Source: Corning)

To be successful, these devices generally must be able to accomplish two things: Collect PM and clean away accumulated PM. There are two main types of PM that can accumulate: combustible and non-combustible, and two very different types of cleaning methods: regeneration and ash cleaning. Regeneration occurs relatively frequently, and is designed to complete the combustion (oxidation) of the trapped combustible PM components, releasing them to the exhaust as gas-phase compounds (mostly H₂O and CO₂). In contrast to the PM that can be oxidized and carried out the tailpipe as gases, the non-combustible PM such as metallic ash cannot be destroyed through regeneration and will always remain inside a DPF. To clean ash from a DPF, the filter unit is removed from the vehicle and professionally cleaned with a special machine. Fortunately, there is very little ash formation from modern diesels so ash cleaning and ash disposal occurs very infrequently, generally with at least 150,000 mile service intervals, and the mass of accumulated ash is generally small (a few teaspoons).^{11 12} This distinction is

made here because the ash cleaning process is not a source of concern that has given rise to this EPA action. The infrequent cleaning of noncombustible materials from DPF's is not part of the scope of this action.

Regeneration, however, is a type of routine DPF cleaning that must occur regularly, and for which EPA does not specify a minimum interval in its regulations, in contrast to the ash cleaning process. At its very essence, regeneration involves burning off the accumulated soot. Since this burning can involve extra heat and/or oxygen or oxygen-containing compounds, this must be done carefully and safely to avoid uncontrolled burns. The discussion below in Section III.B.(1)(b) describes the three types of routine DPF regeneration: Passive regeneration, automatic active regeneration, and manual (parked) active regeneration. Additional discussion is provided in the accompanying Notice of Proposed Rulemaking published elsewhere in today's **Federal Register** and in a memorandum to the docket.¹³ Below,

we discuss the reason why regeneration is needed at all.

(a) Failure of a DPF

When the style of filter installed on a diesel vehicle is the wall-flow type that is predominant in the market today, it physically traps so much of the PM that the particles accumulate on the inside of the filter and if not burned off, this PM can over time block the passages through the filtering media, making it more restrictive to exhaust flow. This is commonly referred to as "trap plugging." Some other styles of filter, such as flow-through DPF's, are less prone to plugging, but do not generally reduce the PM emission rate sufficiently to meet today's stringent PM standard. Any time something gets in the way of free flowing air through an engine, it creates what we call "exhaust backpressure." Even a clean, new DPF generates a small amount of exhaust backpressure due to the porous walls through which all of the exhaust flows.

Engines can tolerate a certain range of exhaust backpressure. When an increase in this backpressure, or resistance, is detected, engines can compensate to a point. An increase in exhaust backpressure from a DPF trapping more and more PM represents increased work demanded from the engine to force the exhaust gas through the increasingly

¹¹ EPA's regulations at 40 CFR 86.004-25(b)(4) for heavy-duty diesel engine maintenance specify a minimum interval for DPF ash cleanout from 100,000 to 150,000 mi. Many manufacturers design DPF systems with longer maintenance intervals.

¹² See <http://www.arb.ca.gov/diesel/tru/documents/ashguide.pdf>.

¹³ See memo dated May 4, 2012, "Diesel Particulate Filter Regeneration," Docket ID EPA-HQ-OAR-2011-1032.

restrictive DPF. However, unless the DPF is frequently cleansed of the trapped PM, this increased work demand can lead to reductions in engine performance and increases in fuel consumption. This loss in performance may be noticed by the vehicle operator in terms of poor acceleration and generally poor drivability of the vehicle.

If a DPF is not regenerated and it becomes plugged, there is a risk of two types of failure. The degree of this risk and which consequence may be experienced will depend on the engine and emission control system design. One consequence is that the lack of air flowing through an engine will cause an engine to shut down because it can no longer compensate for the extra work being demanded of it. The other is a risk of catastrophic DPF failure when excessive amounts of trapped PM begin to oxidize at high temperatures (i.e., DPF regeneration temperatures above 1,000 °C) leading to a “runaway” combustion of the PM within the DPF. This can cause temperatures in the filter media to increase beyond its physical tolerance, possibly creating high thermal stresses where the DPF materials could crack or melt. This is an unsafe condition, presenting physical danger to occupants as well as to objects and persons near the vehicle. Further, catastrophic failure can allow significant amounts of the diesel PM to pass through the DPF without being captured. That is, the DPF is destroyed and PM emission control is lost. For all these reasons, most manufacturers generally design their emission control systems to prevent uncontrolled shutdown or runaway DPF regeneration by programming the engine’s electronic control module (ECM) to limit maximum engine speed, torque and/or power when excessive backpressures are detected. This mode of engine operation at reduced performance may allow a vehicle to “limp home” to receive service. In extreme cases the ECM may command the engine to shut down to prevent a catastrophic failure.

(b) Types of Regeneration

There are three types of routine DPF regeneration. Passive regeneration refers to methods that rely strictly on the temperatures and constituents normally available in the vehicle’s exhaust to oxidize PM from a DPF in a given vehicle application. Passive regeneration is an automatic process that occurs without the intervention of an engine’s on-board diagnostic and control systems, and often without any operator notice or knowledge. Passive regeneration is often a continuous

process, because of which, it is sometimes referred to as continuous regeneration. In a vehicle whose normal operation does not generate temperatures needed for passive DPF regeneration, the system needs a little help to clean itself. This process is called active regeneration, and supplemental heat inputs to the exhaust are provided to initiate soot oxidation. There are two types of active regeneration: Those that may occur automatically either while the vehicle is in motion, while idling, or while powering an auxiliary device such as a pump or ladder (power take-off (PTO) mode)), and those that must be driver-initiated and occur only while the vehicle is stationary and out-of-service.

Vehicles with automatic active regeneration systems require operators to be alert to dashboard lamps and indicators. Written instructions are provided to operators to explain what each lamp means (such as high temperatures or need for regeneration) and what action is called for (such as driving at highway speeds or initiating a manual active regeneration). Because EPA emissions standards are performance based; and therefore, do not dictate any required emission control system technologies or configurations, each manufacturer has the discretion to program the timing and sequence of lamps as needed to inform drivers of the condition of the emission control system. As noted above, it is not uncommon in today’s heavy-duty fleet for an engine’s ECM to limit its maximum speed, torque or power when a plugging DPF is detected. These engine and emission control system protection measures can alert drivers to the need to change driving conditions to facilitate automatic active regeneration or to make plans to allow for a manual active regeneration.

A manual active regeneration allows the engine’s ECM to increase engine speed and exhaust temperature to a greater extent than what is typically allowed during an automatic active regeneration. Because the ECM takes full control of an engine during a manual active regeneration, the vehicle must remain parked and not used for other purposes, such as pumping water in PTO mode. Some manual active regenerations may require towing the vehicle to a special service center, and may occur while the DPF is on the vehicle, or offline with the DPF removed from the vehicle. In such cases, if a spare DPF is not available, the vehicle could be out of service overnight. If a driver disregards such warnings, the risk of uncontrolled engine shutdown or a catastrophic DPF

failure may increase. EPA encourages the design of robust systems calling for minimal driver interventions, while providing drivers with clear and early indicators before any interventions are needed. EPA also encourages accurate and thorough operator training to ensure that the correct remedial action is taken at the earliest available time.

Actively regenerating DPF systems typically require sufficient air flow, temperature and soot accumulation before an automatic active regeneration will be requested by the engine’s ECM. As mentioned above, this may occur either while the vehicle is in motion or parked, if pre-set engine operating conditions are met (such as speed and temperature). When the engine’s ECM signals the initiation of an automatic active regeneration and the extra heat is generated, an ideal DPF system accomplishes this as a transparent process, with no effects perceivable by the driver.

A variety of manufacturer approaches can be taken to produce the supplemental heat needed for active regeneration. Diesel engines of MY 2007 or newer often incorporate one or more of the following approaches:

- On-board electrical heaters upstream of the filter.
- Air-intake throttling in one or more of the engine cylinders. When necessary, this device would limit the amount of air entering the engine, raising the exhaust temperature and facilitating regeneration.
- Exhaust brake activation. When necessary, this device would limit the amount of exhaust exiting the engine, raising the exhaust temperature and facilitating regeneration.
- Engine speed increases. This approach is sometimes used in combination with the other approaches to deliver more heat to the filter to facilitate regeneration.
- Post top-dead-center (TDC) fuel injection. Injecting small amounts of fuel in the cylinders of a diesel engine after pistons have reached TDC introduces a small amount of unburned fuel in the engine’s exhaust gases. This unburned fuel can then be oxidized over an oxidation catalyst upstream of the filter or oxidized over a catalyzed particulate filter to combust accumulated particulate matter.
- Post injection of diesel fuel in the exhaust upstream of an oxidation catalyst and/or catalyzed particulate filter. This method serves to generate heat used to combust accumulated particulates by oxidizing fuel across a catalyst present on the filter or on an oxidation catalyst upstream of the filter.

• On-board fuel burners upstream of the filter.¹⁴

These are presented here merely as examples, and are by no means a complete list of the strategies available to manufacturers when designing engines that use automatic active DPF regeneration, though not all may be applicable to all engines. A common approach that gets a lot of consumer attention is the use of fuel burners or fuel injection strategies. This approach is often called “dosing.” Vehicle owners may notice an increase in fuel consumption when driving a vehicle that relies heavily on fuel dosing for its automatic active regenerations. In this case, when an engine’s ECM gives the signal, the doser injects a metered amount of diesel fuel into the exhaust flow (or cylinders), which reacts with the DPF catalyst to raise the temperature to a point that enables regeneration. EPA does not have information about which manufacturers employ this technique or the number or types of vehicles with engines that use fuel dosing as part of the active regeneration strategy. Estimates of the additional fuel use by a vehicle whose DPF regeneration system employs fuel dosing are described in the Notice of Proposed Rulemaking published elsewhere in today’s **Federal Register**. This is also mentioned here because one of the possible outcomes of this EPA action is that some manufacturers may alter their strategies for automatic active regenerations on emergency vehicles, which may have a modest effect on supplemental fuel use due to dosing.

(2) Why are emergency vehicles having problems with DPF regeneration?

At the time of promulgation of the heavy-duty highway rule, EPA and the engine manufacturers expected the 2007-compliant engine emission control systems would be integrated with advanced engine controls to ensure DPF regeneration under all vehicle operating conditions and environments. While this is widely true today, the experience of the rule implementation thus far indicates there are still some exceptions.

Although EPA is aware of a relatively small number of emergency vehicles that are experiencing problems with DPF regeneration, of those that are having problems, most of the problems can be related to the vehicle’s duty cycle, the ambient conditions, and/or the engine’s combustion characteristics. A vehicle’s duty cycle means how it is

driven, including its speeds, loads, and distances, as well as time out of service and time spent idling. A vehicle’s duty cycle can vary by the demographic of the service area, including whether the vehicle responds to emergencies in a rural or urban community, and whether it drives over flat or hilly terrain. Because DPF regeneration requires heat and oxygen (basic ingredients for combustion), the success of DPF regeneration strategies can also be influenced by ambient conditions such as extreme cold winter temperatures and whether the vehicle operates near sea level or at a high elevation. The engine combustion and exhaust characteristics can influence the success of a DPF regeneration strategy since parameters such as engine-out NO_x and PM emission levels can influence how easily the soot can be oxidized, and how much soot needs to be oxidized and how often.

Both the engine’s duty cycle and the overall control strategy of the engine’s emission control system play a large role in the success of integrating a DPF with an engine to control PM emissions. In this section we provide additional discussion of how engine combustion characteristics and vehicle duty cycle can lead to DPF regeneration problems on emergency vehicles. In Section III.D, below, we discuss our regulatory action to address these issues. While our approach specifically targets engine combustion characteristics and emission control system design, we encourage emergency vehicle owners to inquire with their dealers and manufacturers regarding suitable vehicle and engine options that are appropriate for their duty cycle as well as their demographic and geographic location.

(a) Engine Combustion Characteristics

Engine combustion characteristics can be designed to enable continuous passive regeneration or to rely heavily on automatic active regeneration. As mentioned above, regeneration is a combustion process, burning off the accumulated PM or soot. The PM is created because the initial combustion process in the engine was imperfect. To completely convert all fuel to CO₂ and water, the combustion process needs more heat and oxygen. Both of these things create NO_x because nitrogen (N₂) is naturally present in the air and readily oxidizes at high temperatures. Thus there is a NO_x-PM trade-off of most diesel combustion processes (homogeneous charge compression ignition being an exception) where lower combustion temperatures help control NO_x but create more PM, and higher temperatures that destroy PM (or

prevent it from being created) can generate more NO_x.

In an engine with a DPF system, combustion settings, or calibrations that enable continuous passive regeneration, tend to be those with higher engine-out NO_x and lower engine-out PM, partly because of the higher temperatures that create the NO_x, partly because of the NO_x itself that can act as an oxidizer (to burn off soot), and partly because of the lighter soot loading rate. In contrast, engine calibrations that may lead to a heavy reliance on automatic active regeneration tend to be those with lower engine-out NO_x and higher engine-out PM, partly because of the lower temperatures, partly because of a lack of helpful NO_x, and partly because of a heavier soot loading rate. Note that “engine-out” means emissions upstream of any after-treatment cleaning devices such as DPF or SCR. An example of a DPF system that may rely almost exclusively on active regeneration to maintain a clean PM filter, from an engine calibration perspective, would be an engine using advanced exhaust gas recirculation, because it would have very low engine-out NO_x and relatively high engine-out PM. An example of a DPF system that may rarely experience automatic active regeneration (and frequently passively regenerate), from an engine calibration perspective, would be an engine using SCR to control NO_x, because it could have comparatively high engine-out NO_x and relatively low engine-out PM. The SCR after-treatment would then reduce the high engine-out NO_x to provide very low tailpipe NO_x.

Thus it is important to note that this NO_x-PM trade-off is a critical design parameter when developing an engine that will be successfully integrated with a DPF-equipped emission control system. To date, all of the concerns expressed to EPA regarding emergency vehicles with DPF regeneration issues have been for vehicles that do not employ SCR technology, and thus may have higher engine-out PM. The differences in engine combustion characteristics of the MY 2007 vehicles compared to those of the majority of MY 2010+ vehicles support the concept that the emergency vehicle fleet may experience fewer DPF regeneration troubles as it migrates to engines that use after-treatment to meet EPA’s 2010 NO_x standards. Such a trend may indicate that some engine manufacturers may see a greater need to address in-use emergency vehicles than new vehicles.

(b) Duty Cycles

As noted above, the duty cycle of a vehicle is one of the factors that

¹⁴ MECA Diesel Particulate Filter Maintenance: Current Practices and Experience (June 2005) http://www.meca.org/galleries/default-file/Filter_Maintenance_White_Paper_605_final.pdf.

influences how often the DPF regenerates passively or actively. It is important to note that all DPF systems with active regeneration components also have the capability to passively oxidize soot accumulated on the filter, though some of the above-described factors may inhibit successful passive regeneration. Operation at highway speeds and high engine loads (high load means demanding more work from the engine, such as accelerating, driving uphill or carrying heavy cargo) typically leads to successful passive regeneration of a DPF. An example from a duty-cycle perspective of a vehicle that frequently experiences automatic passive regeneration would be a long-haul tractor-trailer. There is also often a threshold of speed or load that is required for automatic active regeneration strategies as well, though not as great as for passive regeneration—often at least 5 miles/hour or parked with a PTO engaged. In some vehicles, passive regeneration occurs so rarely that a DPF system relies almost exclusively on active regenerations to maintain a clean PM filter. An example of this from a duty-cycle perspective would be a vehicle that operates at idle, low speed and low load over most of its duty cycle. Many emergency vehicles fall into this category.

A detailed discussion of the duty cycles of emergency vehicles is provided in the Notice of Proposed Rulemaking published elsewhere in Today's **Federal Register**. The data provided in that discussion indicate that engines on emergency vehicles across the country are commonly operated over duty cycles that offer very limited opportunities to regenerate DPF's. It is also important to note that emergency vehicles do not typically get deployed on planned duty schedules with predictable blocks of garage time for servicing or maintenance. While some other types of vocational vehicles may have duty cycles with many characteristics similar to those shown above, emergency vehicles are unique in their need to be ready to deploy at any moment for the purpose of protecting public safety and welfare by saving human lives that may be in immediate danger.

When trucks with an engine-driven PTO are working in a stationary PTO mode, some engines achieve the conditions to enable an automatic active regeneration during this time. While this is normally designed to be a transparent process, in practice some effects of this type of regeneration have been noticed by operators. EPA has received information from fire chiefs indicating that there have been

instances where engine ECM's took control from the operator during water pumping operations. When an automatic active regeneration is initiated during a water pumping operation, for example, an ECM may be programmed to alter throttle position or engine speed to achieve the conditions needed to complete an automatic active regeneration. Depending on the design of the water pumping system's pressure regulation, this may in turn affect the water pressure in the fire hoses. EPA has not heard of this occurring on a widespread basis, and has reason to believe that affected engine and truck manufacturers have identified and corrected this issue on some vehicles. EPA's current regulations already allow manufacturers to develop and request EPA approval for certification of engines with emission control strategies where the process of undergoing automatic active regeneration would not interfere with safely pumping fire suppressant.

While not addressed directly in this action, there are technologies that could be implemented to decrease the amount of time emergency vehicles spend with their main engines operating at light loads and at idle. These technologies include electronically programmed automatic engine start/stop systems and hybrids. Automatic start/stop systems automatically stop and start an engine depending upon whether or not it is needed to supply power to the vehicle. This technology is already being implemented on other heavy-duty vehicles to decrease unnecessary engine idling. Hybrid drivetrains also decrease engine idling with an integrated alternate power source such as a battery. We are currently seeing an increase in the use of hybrid technologies in heavy-duty diesel vocational vehicles. Garbage trucks, utility company trucks, and other work trucks are using hybrid technology to power on-board hydraulic systems and cab heating and cooling systems. In conventional vehicles these systems are powered by a main engine typically operating at light load or at idle. Because automatic start/stop and hybrid technologies improve fuel economy and decrease greenhouse gas emissions, we believe that they will be used in more and more vehicles in the future. We believe there is potential for these technologies to be integrated into future designs of emergency vehicles to decrease their operation at light loads and at idle. Such technologies would not only improve fuel economy and decrease greenhouse gas emissions from emergency vehicles, they would also help to prevent their diesel particulate filters from becoming plugged due to

excessive operation at light loads and at idle. While we are not taking any specific action at this time related to decreasing the amount of time emergency vehicles operate at light load or at idle, in the accompanying NPRM, we request comment on the potential for application of alternate power sources and idle reduction technologies on emergency vehicles.

(3) What are the concerns for emergency vehicles using SCR?

Selective Catalytic Reduction (SCR) is an exhaust after-treatment system used to control NO_x emissions from heavy-duty engines by converting NO_x into nitrogen (N₂) and water (H₂O). The technology depends on the use of a catalytic converter and a chemical reducing agent, which generally is in an aqueous urea solution, and is often referred to as diesel exhaust fluid (DEF). Some trade names for this chemical reductant include AdBlue, BlueDef, NO_xBlue, and TerraCair.

Most engine manufacturers chose to comply with the 2010 NO_x emission standard by adding SCR to their engine models. In general, the approach with an SCR system has been a sound and cost effective pathway to comply with EPA's 2010 emissions standards, and it is the primary path being used today.

DEF is injected into the exhaust upstream of the SCR catalyst where it forms ammonia and carbon dioxide. The ammonia then reacts with NO and NO₂, so that one molecule of urea can reduce two molecules of NO or one molecule of NO₂. A robust SCR system can achieve about 90 percent reduction in cycle-weighted NO_x emissions. Improvements have been made over the last several years to improve the NO_x conversion rate and reduce the impact of lower exhaust temperatures on the conversion efficiency.

Because an SCR system is only effective when DEF is injected into the exhaust, we consider refilling a vehicle's DEF tank to be a critical emission-related engine maintenance requirement. We are proposing to take action to establish this in our regulations, as described in Section V of the Notice of Proposed Rulemaking published elsewhere in today's **Federal Register**. Therefore, manufacturers have implemented a number of strategies to induce a vehicle operator to refill a vehicle's DEF tank when needed. These operator inducements generally include first illuminating one or more dashboard lights to warn the operator that the DEF tank needs to be refilled soon. However, if such initial inducements are persistently ignored by the vehicle operator, eventually additional

inducements are typically activated that decrease the maximum speed or power of the vehicle. These additional inducements are intended to create conditions making operational conditions of the vehicle increasingly unacceptable if the initial dashboard lamp illumination inducements are persistently ignored. Similar inducements may occur in cases where DEF quality does not meet system specifications, or if the SCR system is not functioning correctly for another reason.

While decreasing vehicle performance can be an effective inducement strategy, we believe it may not be appropriate in all situations for emergency vehicles because of their special need to be ready at any moment for the purpose of protecting public safety and welfare by saving human lives that may be in immediate danger. We recognized this during the initial implementation of our 2010 NO_x standards, and we worked with the Fire Apparatus Manufacturers' Association (FAMA), the Ambulance Manufacturers Division of the National Truck Equipment Manufacturers Association, and the International Association of Fire Chiefs to support the publication of a May 18, 2010 memo that instructed emergency vehicle manufacturers and engine manufacturers to implement less severe inducement strategies for emergency vehicles.¹⁵ In this rule we are taking additional steps so that emergency vehicle manufacturers and engine manufacturers have the option to further reduce the severity or eliminate altogether any performance related inducements that are or could be implemented on emergency vehicles and their engines during emergency situations. We believe that this additional flexibility will help to prevent any abnormal condition of a vehicle's emission control system from adversely affecting the speed, torque, or power of an emergency vehicle during emergency situations.

C. What would occur if EPA took no action?

(1) The Industry Would Continue To Get Smarter

Improving the components of diesel particulate filters is the current subject of research and development activities within the automotive and air pollution control industries. Aspects that are being improved include filter ash storage capacity, filter pressure drop, substrate durability, catalyst activity, as

well as other physical and chemical properties that can optimize the device for heavy-duty vehicle applications.

Engine manufacturers have taken a systems approach, optimizing the engine with its after-treatment system to realize the best overall performance possible. Manufacturers can manage the functioning of the emission control system by adjusting parameters such as the thermal profile of the after-treatment system, the exhaust gas chemical composition, the rate of consumption of DEF, the rate of particle deposition, and the conditions under which DPF regenerations (soot cleaning) may occur.

In a broad and general sense, the trend is that DPF's are slowly becoming even more robust without EPA intervention. Future DPF's will need fewer total regenerations during the useful life of the engine and control system, more passive and fewer active regenerations will occur, and manual regenerations will become rarer.

In addition, vehicle operators and fleet managers will continue to become more experienced with this new generation of sophisticated electronically-controlled vehicles. Manufacturers across the country are providing training on actions fleet managers can take to decrease problems with DPF regenerations. These actions include:

- Use low-ash engine oils.
- Avoid extended idling.
- Maintain insulation on the exhaust pipe.
- Maintain the crankcase filter.
- Periodically operate a vehicle at higher speeds and loads.

The Technology & Maintenance Council (TMC) of the American Trucking Associations conducted a survey in late 2011 to compare user experiences between EPA 2010, EPA 2007, and EPA 2004 vintage trucks.¹⁶ According to TMC, 72 percent of the survey respondents indicated that driver understanding of the 2007-vintage after-treatment system was worse than driver understanding of the 2004-vintage after-treatment system, and 33 percent of respondents indicated that driver understanding of the 2010-vintage after-treatment system was worse than driver understanding of the 2007-vintage after-treatment system. The responses regarding driver understanding of fault codes and dash lamps indicated that drivers have 69 percent poorer

understanding of 2007 vs. 2004 fault codes and dash lamps, and 50 percent poorer understanding of 2010 vs. 2007 fault codes and dash lamps. We expect that this education component will gradually improve over time without EPA intervention.

(2) The Fleet Would Continue to Migrate to the 2010 Standards

Vehicles with 2010-compliant heavy-duty diesel engines tend to place different demands on their DPF systems than pre-2010 vehicles. With the addition of NO_x after-treatment such as SCR, engines may be tuned to emit lower engine-out PM (recall the NO_x-PM trade-off described above). When an SCR system is integrated, it provides the opportunity to run an engine at lower soot levels and elevated levels of NO₂, which is a chemical species that efficiently oxidizes the soot in the absence of elevated temperatures. It is EPA's expectation that vehicles of MY 2010 and beyond, particularly those using SCR, will generally experience fewer troubles with DPF's than the earlier model year vehicles, due to the nature of the on-board technology as well as the many years of experience gained by manufacturers since 2007. The 2011 TMC survey included an assessment of relative satisfaction levels between EPA 2010, EPA 2007, and EPA 2004 vintage trucks. The survey results indicate that after-treatment durability is better with EPA 2010 trucks compared to EPA 2007 trucks, with less time out of service.¹⁷ As an illustration, according to a Volvo product brochure, the company's EPA 2010-compliant trucks eliminate the need for active DPF regeneration, reducing driver involvement with the emission control system, using a design that allows for the DPF system to reliably oxidize accumulated soot using continuous passive regeneration.¹⁸

(3) Some Trucks Would Continue to Experience Problems

Even though such trends would indicate that instances of emergency vehicles experiencing difficulty managing regeneration of DPF's would decrease, in the absence of this EPA action, some vehicles would be likely to continue to experience some problems.

EPA has learned that some engine manufacturers have disabled these engine protection measures on some emergency vehicles. In these cases the

¹⁶ American Trucking Associations, Technology & Maintenance Council, S3 Engine Study Group. Survey conducted Fall 2011, public slides dated February 2012 available at http://www.truckline.com/Federation/Councils/TMC/Documents/2012%20Annual%20Meeting%20and%20Exhibition%20Documents/TMC12A_TECH2.pdf.

¹⁷ See ATA/TMC, Note 16.

¹⁸ See Volvo 2010 product brochure, "Volvo's SCR No Regen Engine," available at http://www.volvotrucks.com/SiteCollectionDocuments/VTNA_Tree/ILF/Products/2010/09-VTM075_NoRegen_SS_041609.pdf.

¹⁵ FAMA 2010, Emergency Vehicle SCR and DEF Inducement Guidelines; 2010 Engine Emissions Control Requirements.

manufacturer has reasoned that an operator should be allowed to remain in control of an emergency vehicle even facing risk of catastrophic failure, with the consequences of that failure being less severe than the consequences of the vehicle prematurely losing power, torque and/or speed while performing emergency services.

Without a clear action from EPA to provide the regulatory flexibility needed for swift deployment of robust remedies throughout the emergency vehicle fleet, implementation of best practices could be inconsistent, insufficient, or even impossible due to regulatory constraints. Some vehicles would continue to experience frequent plugging of DPF's, frequent forced filter regenerations, and reduced engine power, speed or torque that diminish the ability of first responders to save lives and property. There would also remain a heightened risk that an emergency vehicle could be taken out of service when it is most needed.

D. Regulatory Action

As described above in Section III.C, many DPF-equipped vehicles include engine controls and driver alerts that lead to decreases in maximum speed, torque, or power when DPF backpressure exceeds normal levels, as protective measures for either the engine or the DPF, or as inducements for the operator to immediately conduct DPF regeneration. Similarly, vehicles equipped with selective catalytic reduction (SCR) systems for NO_x reduction currently have engine controls and driver alerts that lead to eventual loss of speed, torque, or power when the SCR controls detect abnormal conditions (such as a malfunction, low DEF levels, etc.), as inducements to take immediate corrective action to allow the SCR to function normally. In most vehicles, these alerts and inducements may be easily avoided with normal driving and routine maintenance, and if activated, these inducements would not have any significant effect on public safety and welfare. In emergency vehicles, however, should any of these limits on maximum speed, torque, or power occur while a vehicle is responding to an emergency, it could be a matter of life or death. To address these issues that could otherwise limit the maximum speed, torque or power of an emergency vehicle's engine when it is needed most, EPA is proposing to amend 40 CFR part 86 to revise the definition of defeat device; add new definitions of emergency vehicle, ambulance and fire truck; and add new labeling requirements for new on-highway engines with approved

Auxiliary Emission Control Devices for emergency vehicles. EPA is also amending its regulations at 40 CFR part 1039 to revise the definition of defeat device, add a new definition of emergency equipment, and add a new labeling requirement for nonroad engines with approved Auxiliary Emission Control Devices for emergency equipment.

In our current regulations, engine manufacturers may request as part of an application for new engine or vehicle certification, and EPA may approve, Auxiliary Emission Control Devices, if they are not determined to be "defeat devices." Auxiliary Emission Control Devices, or AECD's, are any design element of an engine's emission control system that senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.¹⁹ Some AECD's can temporarily decrease the effectiveness of an emission control system. This type of AECD is only permitted in very limited situations, for example, when such excursions are deemed to be necessary in order to protect the vehicle, engine, and/or emission control system during limited modes of operation.

A defeat device is a type of AECD that reduces the effectiveness of vehicle emission controls in situations when such reduction in effectiveness is not approved or permitted by EPA. Defeat devices are not permitted by the Clean Air Act or EPA.

Approvals of AECD's are made by EPA on a case-by-case basis. In applications for engine certification, manufacturers must include a detailed description of each AECD to be installed in or on any vehicle (or engine) covered by the application, as well as a detailed justification of each AECD that results in a reduction in effectiveness of the emission control system. According to 40 CFR 86.094-21(b)(1)(i)(B), EPA may disapprove a request for an AECD based on consideration of currently available technology. Use of an unauthorized or disapproved AECD can be considered a violation of section 203 of the Act.²⁰

In this action, EPA is proposing to revise the definition of *defeat device* at 40 CFR 86.004-2, 86.1803-01, and 40 CFR 1039.115 to exclude AECD's that apply only for engines on emergency vehicles, where the need for an AECD is justified in terms of preventing the vehicle or equipment from losing speed, torque, or power due to abnormal

conditions of the emission control system, or in terms of preventing such abnormal conditions from occurring during operation related to emergency response.

In this action, EPA is proposing to define an *emergency vehicle* as a vehicle that is an ambulance or a fire truck. EPA is proposing to adopt a definition of *ambulance* consistent with the current U.S. General Services Administration Star of Life specification.²¹ EPA is proposing to define *fire truck* as a vehicle designed to be used under emergency conditions to transport personnel and equipment and to support the suppression of fires and mitigation of other hazardous situations, consistent with the scope of standards for automotive fire apparatus issued by the National Fire Protection Association.²² We are defining *emergency equipment* as specialized vehicles to perform aircraft rescue and firefighting functions at airports, or wildland fire apparatus. With these definitions, it is EPA's intent to include vehicles that are purpose-built and exclusively dedicated to firefighting, emergency/rescue medical transport, and/or performing other rescue or emergency personnel or equipment transport functions related to saving lives and reducing injuries coincident with fires and other hazardous situations. EPA requests comment on whether we should refine or expand our definition of emergency vehicle within the scope of this action to include those equipped with heavy-duty diesel engines that serve other civilian rescue, law enforcement or emergency response functions. We are especially interested in information regarding instances of such vehicles experiencing or risking loss of power, speed or torque due to abnormal conditions of the emission control system, and how that may inhibit mission-critical life- and property-saving work.

EPA is also adopting an associated engine labeling requirement so that engines with approved emergency vehicle AECD's will be clearly identified and distinguished from other similar engines.

As mentioned above in Section III.B, some engine manufacturers currently specify that when an engine is sold for installation in an emergency vehicle,

²¹ U.S. General Services Administration, Federal Specification for the Star-of-Life Ambulance, August 1, 2007, <http://www.deltaveh.com/f.pdf>.

²² See National Fire Protection Association Web page. Accessed April 2012 at <http://www.nfpa.org/catalog/product.asp?title=Code-1901-2009-Automotive-Fire-Apparatus&category%5Fname=&pid=190109&target%5Fpid=190109&src%5Fpid=&link%5Ftype=search&icid=>.

¹⁹ See 40 CFR 86.082-2.

²⁰ See 40 CFR 86.094-21 and 094-22.

some of the default power, torque or speed inducements be de-activated or set to alternate, less severe settings. In such applications, when the DPF system requests regeneration, the warning lights remain illuminated while the vehicle remains in complete control of the driver. In these cases the manufacturer has likely reasoned that the consequences of catastrophic failure would be less severe than the consequences of the vehicle prematurely losing power, torque and/or speed while performing emergency services. EPA has granted related AECD's in the past.

However, without the optional flexibilities provided by EPA in this action, manufacturers could be prevented from implementing truly failsafe solutions for all affected vehicles. For example, while current custom solutions may allow an emergency vehicle to continue pumping water or transporting a person to safety, its DPF would continue to accumulate particles and the risk of catastrophic failure would increase.

In this action, EPA is adopting amendments so that manufacturers can apply for (and EPA can approve) AECD's that may be justified in terms of preventing the occurrence of abnormal conditions of the emission control systems for emergency vehicles or in terms of preventing the engines from losing speed, torque, or power due to such abnormal conditions. In this context, EPA would consider abnormal conditions to be parameters outside normal ranges for proper operation, such as excessive exhaust backpressure from high soot loading on a DPF or insufficient DEF for use with an SCR system.

EPA is encouraging manufacturers to apply for AECD's that are tailored for engines on emergency vehicles, considering the duty cycle information presented in the accompanying NPRM, along with any other information needed to design failsafe emission control systems for new emergency vehicles. EPA is also encouraging manufacturers to design field modifications to address these issues on in-use emergency vehicles, including those whose engines are no longer in production. Further discussion of field modifications is provided below in Section III.E(2).

To achieve these goals, EPA understands that increased flexibility will be needed because EPA's strict NO_x and PM standards present many design constraints. Below we describe some solutions that EPA believes it could approve as part of an emergency vehicle AECD or field modification, as adopted.

EPA is encouraging engine manufacturers to apply for emergency vehicle AECD's and/or field modifications for in-use emergency vehicles for which service disruptions related to abnormal conditions of emission control systems may occur or have occurred. EPA suggests that such AECD's or field modifications could include, but are not limited to, one or more of the following strategies:

(1) Liberalized Regeneration Requests

It is current practice that most modern diesel engine ECM's are set to initiate an automatic active regeneration only above a designated DPF soot load, and those vehicles equipped with manual regeneration switches are set to not allow the option of initiating manual active regeneration until an even greater soot load is detected. The reason why manufacturers do this is related to certification of engine families and vehicle test groups. If manufacturers can limit the frequency of regenerations by design, then they can be assured that average emissions will remain below the certified average emission level. Excess regenerations could lead to higher average emissions, since some exhaust emissions increase during regeneration. Particularly for engines not equipped with SCR systems, NO_x emissions can increase by an order of magnitude during regeneration, and these temporary increases in emission are accounted for in EPA's certification process. See the accompanying NPRM for more information about the emissions impacts of DPF regenerations. In addition, excess regenerations could shorten the useful life of the DPF system since high temperatures place stress on filter substrates.

EPA believes that emergency vehicle AECD's that enable more frequent automatic active and manual active DPF regenerations, associated with a wider range of soot loads could improve the reliability of DPF systems without significantly compromising emissions reductions or durability. As explained below Section III.E(4), EPA does not expect this provision to affect other aspects of certification. For emergency vehicles with approved AECD's that involve changes in the frequency of regeneration, the resulting increase in NO_x emissions will not be counted against certification levels for applicable engine families or vehicle test groups. Furthermore, emissions certification testing may be conducted with any approved AECD's for emergency vehicle or equipment deactivated. According to EPA's current engine certification data, engines from MYs 2008 and 2011 have an average maximum automatic active

regeneration frequency near 20 percent, with the typical frequency between three and seven percent. Those with frequencies near zero rely almost exclusively on passive regeneration.²³

(2) Engine Recalibration

As mentioned above, in-cylinder combustion chemistry dictates a NO_x-PM trade-off where engines calibrated to reduce in-cylinder NO_x tend to have higher PM levels. These factors lead to higher rates of particle accumulation and lower rates of particle oxidation on filters. EPA believes that AECD's that incorporate engine calibration modifications could enable operation in a "low soot mode" with a reduced rate of particle deposition that would lead to more frequent and effective passive regenerations. Such calibration modifications could also extend the operating time between all types of regenerations, improve active regeneration effectiveness, and boost reliability of the DPF systems. On engines with downstream (i.e., SCR) NO_x controls, SCR control could be modulated such that engine recalibration would not significantly affect NO_x emissions. On engines without downstream NO_x controls, EPA believes that some degree of increased NO_x emissions during the conditions justified by the AECD would be approvable for emergency vehicles. As explained below in Section III.E(4), EPA does not expect this provision to affect other aspects of certification. When manufacturers calculate the average NO_x emissions during a test cycle, they incorporate data regarding both the frequency of regeneration and the increase in NO_x emissions during regeneration. For emergency vehicles with approved AECD's that involve recalibration to alter regeneration frequency or average NO_x emissions, the resulting increase in NO_x emissions will not be counted against certification levels for applicable engine families or vehicle test groups. Furthermore, emissions certification testing may be conducted with any approved AECD's for emergency vehicle or equipment deactivated. A discussion of the estimated emissions impacts of recalibration is provided in the Notice of Proposed Rulemaking published elsewhere in today's **Federal Register**.

(3) Backpressure Relief

It is EPA's objective that all of our clean diesel emissions standards be implemented with reliable technologies

²³ Frequency in percent refers to the fraction of engine test cycles during which an automatic active regeneration occurs.

that require a minimum amount of driver intervention and do not compromise the utility of vehicles. EPA understands that manufacturers are motivated to seek design solutions that are cost effective and easily deployable. However, by focusing solely on preventive measures such as those described above, manufacturers may not achieve a completely failsafe DPF strategy on all emergency vehicles. EPA anticipates that some vehicles may benefit from an additional failsafe measure that relieves engine exhaust backpressure as a last resort to prevent loss of engine speed, torque or power. There are products on the market today that could be configured to temporarily relieve excessive engine exhaust backpressure when detected, then return the system to normal at the instant that backpressure returns to a safe level. Such a device may be justified as a failsafe measure, and may be included as part of an overall strategy that also includes preventive measures, if justified and properly limited, where excess PM emissions would be expected to be emitted only during a small fraction of vehicle operation. That is, the vast majority of DPF operating cycles would be expected to have continuous PM emission control, while any temporary backpressure relief that reduced PM control or allowed bypass of controls would be expected relatively infrequently.

E. What engines and vehicles are affected?

Today's action applies to new and in-use fire trucks and ambulances, new and in-use airport fire apparatus and wildland fire apparatus, and heavy-duty diesel engines on these emergency vehicles and equipment.

(1) Newly Certified Engines

Of those new diesel engines covered by EPA's current heavy-duty diesel standards, only those installed in vehicles or equipment meeting the definition of emergency vehicle or emergency equipment will be eligible to obtain an approved AECD of the type discussed above in Section III.D. Where a vehicle is chassis-certified and either sold as an incomplete vehicle to a truck body manufacturer or built and sold as a complete vehicle, only those sold and built as emergency vehicles will be eligible to obtain an approved AECD of the type discussed above.

(2) Certified Engines and Vehicles In-Use

To address in-use engines and vehicles, EPA plans to allow engine and vehicle manufacturers to submit

requests for EPA approval of Emergency Vehicle Field Modifications (EVFMs) for on-highway emergency vehicles and Emergency Equipment Field Modifications (EEFMs) for nonroad emergency equipment. EVFMs and EEFMs will be modifications to existing hardware and software to be installed on in-use vehicles or equipment to prevent loss of speed, torque, or power due to abnormal conditions of emission control systems, or to prevent such abnormal conditions from occurring, during vehicle or equipment operation related to emergency response. EPA will use an approval process similar to the process that is currently utilized to submit modifications to current applications for certification, also known as "running changes." The information submitted by a manufacturer to EPA as part of this request and approval process will be similar to the information submitted for emergency vehicle or equipment AECD's.

It is important to emphasize that this action will allow only those approved modifications to be deployed by manufacturers and their authorized dealers. Modifications made by end users are not generally approvable; rather the tampering prohibitions would generally apply to such modifications.

EPA has identified three types of field modifications that will be permitted for emergency vehicles and emergency equipment under the final regulations, based on the extent to which the modification is being incorporated into new production vehicles and equipment. The three types are:

□ Type A: Any field modification that is a change to a certified vehicle (i.e., a vehicle, engine or equipment covered by a certificate of conformity) that is identical in all respects to a running change that is approved for incorporation in new vehicles by the manufacturer. Where the running change was approved by EPA for implementation only in conjunction with certain other running changes, the field modification may be considered to be a Type A field modification only if implemented under the same constraints.

□ Type B: Any field modification that is not identical in all respects to, but provides for essentially the same purpose as, a running change that is being incorporated in new vehicles by the manufacturer or that would have been incorporated if the vehicle were still in production. A Type B field modification is used when it is not practical to incorporate the exact running change in vehicles that have

left the assembly line, or when the vehicles are no longer in production.

□ Type C: Any field modification that is made selectively only to vehicles which have left the assembly line and which would not have been incorporated on the assembly line. For example, this would apply when making a field modification to a vehicle that is no longer in production where there are no similar vehicles in production.

The amount of justification needed for the field modification differs depending on which type of modification is being requested.

(3) Labeling Requirements

Because the engines and vehicles eligible for the AECD's described in this proposal belong to broadly certified engine families and test groups, when they are sold for installation in an emergency vehicle and equipped with one or more approved emergency vehicle AECD's, they must be labeled as such, to distinguish them from other certified engines. EPA is proposing adding a labeling requirement to 40 CFR part 86 subpart A, such that engines with one or more approved AECD's for emergency vehicle applications must be labeled with the statement: "THIS ENGINE IS FOR INSTALLATION IN EMERGENCY VEHICLES ONLY." EPA is also proposing adding a labeling requirement to 40 CFR part 86 subpart S, such that vehicles with one or more approved AECD's for emergency vehicles, include the following statement on the emission control information label: "THIS VEHICLE HAS A LIMITED EXEMPTION AS AN EMERGENCY VEHICLE." EPA is also adding a labeling requirement to 40 CFR part 1039, such that nonroad engines with one or more approved AECD's for emergency equipment include a label with the following statement: "THIS ENGINE IS FOR INSTALLATION IN EMERGENCY EQUIPMENT ONLY."

EPA requests comment on whether these labeling requirements are satisfactory to ensure that engines and vehicles operating with approved emergency AECD's are permanently distinguished from similar certified engines. EPA also requests comment on whether a similar label should be required for an in-use emergency vehicle or equipment where a field modification is deployed that prevents the engine from losing speed, torque, or power due to any occurrences of abnormal conditions of the emission control system, or prevents such abnormal conditions from occurring.

(4) Other Regulatory Provisions

Today's rule will not alter the tampering prohibition in 40 CFR 1068.101(b)(1). This provision describes a general prohibition against anyone from removing or rendering inoperative an engine's emission controls before or after entering into service, where an exception is provided in 1068.101(b)(1)(ii) for engine modifications needed to respond to a temporary emergency, provided that the engine is restored to proper functioning as soon as possible after the emergency has passed. EPA encourages manufacturers to design their emergency vehicle AECED's to be engaged only to the extent necessary to prevent the engine from losing speed, torque, or power due to abnormal conditions of the emission control system, or to prevent such abnormal conditions from occurring during operation related to emergency response. EPA recognizes that there may be cases where an AECED may need to be engaged at times other than while actively responding to an emergency, in order to assure that loss of speed, torque or power does not occur during operation related to emergency response. EPA also recognizes that some AECED's may involve electronic approaches where the engine's functions would be modulated based on exhaust backpressure or other parameters that are not correlated with any emergency situation. EPA may even, in extreme cases, such as at high altitude or with certain older MY engines allow engagement of AECED's at all times, if they are justified as necessary to prevent engine from losing speed, torque, or power during operation related to emergency response.

We are also encouraging manufacturers to design their emission control systems to discourage tampering. According to EPA's tampering prohibition, a vehicle operator who abuses or alters an approved AECED may be guilty of tampering. For example, if an AECED includes enabling an operator to initiate more frequent manual active regenerations, engine manufacturers may choose to prevent the abuse of this function by means such as a daily or weekly cap on the number of manual active regenerations, or a minimum soot loading for the function to engage. As another example, if an emergency vehicle alerts a driver to an abnormal condition of its emission control system by illuminating dash lamps, alarms or other warnings that do not limit vehicle performance, it is the operator's

responsibility to take prompt action to remedy the problem.²⁴ If an operator disregards such warnings beyond the time needed to respond to the emergency, this may be considered tampering. It is important to note that if an emergency vehicle is not equipped to ever allow an operator to initiate a manual active regeneration, this may in practice encourage tampering by the end user.

Manufacturers of highway and nonroad engines will be required to describe any emergency vehicle AECED in an application for certification. In this action, we are not proposing any revisions to the information needed to review and approve AECED's. It is common practice for manufacturers, in describing AECED's, to identify engine parameters such as those that would operate differently to preserve adequate engine performance during an emergency, including information about how the engine would respond under different in-use operating conditions under the various sets of conditions that would otherwise cause the engine to operate at less than full performance levels. Other than the requirement for a manufacturer to describe the emergency vehicle AECED in its application for certification, we do not expect this provision to be relevant for other aspects of certification. For example, emissions certification testing may be conducted with any approved AECED's for emergency vehicle or equipment deactivated. Additionally, manufacturers do not need to consider emergency vehicle AECED's when developing infrequent regeneration adjustment factors (IRAFs) or when developing deterioration factors (DFs). Thus, manufacturers can include emergency and non-emergency engines and vehicles in the same engine families and test groups. Manufacturers may also apply for emergency vehicle AECED's for new, existing, and/or formerly approved emissions certificates.

F. Economic Impacts

EPA expects the economic effects of this rule to be small, and to potentially have benefits that are a natural result of easing constraints.

(1) Costs to Manufacturers

Due to the optional and voluntary nature of this action, there are no direct regulatory compliance costs to engine

²⁴ Although this action will not affect certification of engine families or test groups, EPA's regulations do offer options to manufacturers who wish to ensure that emission-related maintenance will occur in use, including visible signals that are not reset until maintenance occurs. 40 CFR 86.004-25(b)(6)(ii).

manufacturers. To the extent manufacturers elect to develop and deploy upgrades to engines for emergency vehicles, they may voluntarily incur some degree of costs associated with the following:

- Design and testing to determine effectiveness of potential AECEDs
- Education & outreach to intermediate vehicle manufacturers and end users
- Deployment of AECEDs onto new and in-use emergency vehicles
- Labeling costs

EPA expects any fixed costs will be small, and any variable costs will apply only to the engines sold for installation in emergency vehicles or emergency equipment, which comprise less than one percent of the heavy-duty on-road fleet, and an even smaller fraction of the nonroad fleet. As per standard practice, manufacturers would be free to set a fair market price for any approved AECED they offer, to offset the costs incurred in its development.

(2) Operational Costs

Depending on the type of AECED or field modification that a manufacturer voluntarily elects to deploy, some operational costs could increase and some could decrease.

When an emergency vehicle is experiencing frequent plugging of its DPF, this increases maintenance costs for owners and warranty costs for manufacturers. These costs are expected to decrease with this action. Furthermore, EPA believes that the potential for reduced warranty costs may help to offset the cost to produce and deploy any optional AECED's. Similarly, EPA believes the potential for reduced maintenance and operational costs may offset the cost to owners for obtaining requested AECED's.

Where DPF systems employ fuel dosing to enable active automatic regenerations, it is uncertain whether liberalizing the parameters for initiating regenerations would affect fuel consumption, and whether fuel consumption would increase with an increased number of regenerations during a given operating period. To the extent regenerations are enabled with other means besides fuel, or demand for regenerations is reduced through recalibration, then any potential increase in fuel use from dosing would be mitigated. Further discussion of operational costs including costs of fuel dosing is provided in the Notice of Proposed Rulemaking published elsewhere in Today's **Federal Register**.

(3) Societal Costs

Because this rule eases constraints on the development of robust DPF systems, the economic impacts can only improve with this action. It is presumed that the benefits to society of enabling first responders to act quickly when needed outweigh the costs to society of the temporary increase in emissions from this small segment of vehicles.

G. Environmental Impacts

We expect any environmental impacts from this action will be small. By promulgating these amendments, it is expected that the emissions from this segment of the heavy-duty fleet will not change significantly.

EPA estimates that on-road emergency vehicles comprise less than one percent of the national heavy-duty fleet.

According to the International Council on Clean Transportation (ICCT), less than one percent of all new heavy-duty truck registrations in 2003 to 2007 were for emergency vehicles (includes class 8 fire trucks plus other class 3–8 emergency vehicles).²⁵ On average, the ICCT's data suggest that approximately 5,700 new emergency vehicles are sold in the U.S. each year; about 0.8 percent of the 3.4 million new heavy-duty trucks registered between 2003 and 2007. The available information indicates that the emergency vehicles included in the scope of this rulemaking have lower annual vehicle miles traveled than average non-emergency vehicles. Therefore, we conclude that they contribute less than 1% of the annual air emissions from the heavy-duty diesel truck fleet.

Due to the optional and voluntary nature of this action, it is difficult to estimate its overall emissions impact accurately. The amendments offer many options to manufacturers, and the emissions impacts will depend on which options and strategies are employed, and for how many vehicles. Further discussions of potential NO_x and PM emissions impacts and fuel consumption from dosing are provided in the Notice of Proposed Rulemaking published elsewhere in Today's **Federal Register**.

H. Health Effects

EPA's clean diesel standards are already providing substantial benefits to public health and welfare and the environment through significant reductions in emissions of NO_x, PM, nonmethane hydrocarbons (NMHC), carbon monoxide, sulfur oxides (SO_x),

and air toxics. We project that by 2030, the on-highway program alone will reduce annual emissions of NO_x, NMHC, and PM by 2.6 million, 115,000 and 109,000 tons, respectively. These emission reductions will prevent 8,300 premature deaths, over 9,500 hospitalizations, and 1.5 million work days lost. All told, the monetized benefits of the on-highway rule plus the nonroad diesel Tier 4 rule total over \$150 billion. A sizeable part of the benefits in the early years of these programs has come from large reductions in the amount of direct and secondary PM emitted by the existing fleet of heavy-duty engines and vehicles, by requiring the use of the higher quality diesel fuel in these vehicles. While this final action may slightly increase some emissions, as explained in the previous section, we do not expect that these small increases will significantly diminish the health benefits of our stringent clean diesel standards.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The regulatory relief for emergency vehicles is voluntary and optional, and the revisions for engine and vehicle maintenance merely codify existing guidelines. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 et seq. and has assigned OMB Control Numbers 2060–0104 and 2060–0287. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial

number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business primarily engaged in shipbuilding and repairing as defined by NAICS code 336611 with 1,000 or fewer employees (based on Small Business Administration size standards); (2) a small business that is primarily engaged in freight or passenger transportation on the Great Lakes as defined by NAICS codes 483113 and 483114 with 500 or fewer employees (based on Small Business Administration size standards); (3) a small business primarily engaged in commercial and industrial machinery and equipment repair and maintenance as defined by NAICS code 811310 with annual receipts less than \$7 million (based on Small Business Administration size standards); (4) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (5) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rule provides regulatory relief related to emergency vehicles. As such, we anticipate no costs and therefore no regulatory burden associated with this rule. We have concluded that this rule will not increase regulatory burden for affected small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform

²⁵ ICCT, May 2009, "Heavy-Duty Vehicle Market Analysis: Vehicle Characteristics & Fuel Use, Manufacturer Market Shares."

Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. This direct final rule offers manufacturers the flexibility to choose whether to use optional AECG's based on their strategies for complying with the applicable emissions standards. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This direct final rule applies to manufacturers of heavy-duty diesel engines and not to state or local governments. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This direct final rule will be implemented at the Federal level and may result in indirect costs on affected engine manufacturers depending on the extent to which they take advantage of the flexibilities offered. Tribal governments will be affected only to the extent they purchase and use vehicles with regulated engines. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: "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.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This direct final rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks, and because it is not economically significant under Executive Order 12866.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs,

policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this direct final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This action is not expected to have any adverse environmental impacts.

K. Congressional Review Act

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 rule 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). This rule will be effective on August 7, 2012.

List of Subjects

40 CFR Part 85

Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Administrative practice and procedure, Confidential business information, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 1039

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: May 23, 2012.

Lisa P. Jackson,
Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency amends title 40, chapter I of the Code of Federal Regulations as follows:

PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

■ 1. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart R—[Amended]

■ 2. Add § 85.1716 to subpart R to read as follows:

§ 85.1716 Approval of an emergency vehicle field modification (EVFM).

This section describes how you may implement design changes for an emergency vehicle that has already been placed into service to ensure that the vehicle will perform properly in emergency situations. This applies for any light-duty vehicle, light-duty truck, or heavy-duty vehicle meeting the definition of *emergency vehicle* in 40 CFR 86.004–2 or 86.1803. In this section, “you” refers to the certifying manufacturer and “we” refers to the EPA Administrator and any authorized representatives.

(a) You must notify us in writing of your intent to install or distribute an emergency vehicle field modification (EVFM). In some cases you may install or distribute an EVFM only with our advance approval, as specified in this section.

(b) Include in your notification a full description of the EVFM and any documentation to support your determination that the EVFM is necessary to prevent the vehicle from losing speed, torque, or power due to abnormal conditions of its emission control system, or to prevent such abnormal conditions from occurring during operation related to emergency response. Examples of such abnormal conditions may include excessive exhaust backpressure from an overloaded particulate trap, or running out of diesel exhaust fluid for engines that rely on urea-based selective catalytic reduction. Your determination must be based on an engineering evaluation or testing or both.

(c) You may need our advance approval for your EVFM, as follows:

(1) Where the proposed EVFM is identical to an AECD we approved under this part for an engine family currently in production, no approval of the proposed EVFM is necessary.

(2) Where the proposed EVFM is for an engine family currently in production but the applicable demonstration is based on an AECD we approved under this part for an engine family no longer in production, you must describe to us how your proposed EVFM differs from the approved AECD. Unless we say otherwise, your proposed EVFM is deemed approved 30 days after you notify us.

(3) If we have not approved an EVFM comparable to the one you are

proposing, you must get our approval before installing or distributing it. In this case, we may request additional information to support your determination under paragraph (b) of this section, as follows:

(i) If we request additional information and you do not provide it within 30 days after we ask, we may deem that you have retracted your request for our approval; however, we may extend this deadline for submitting the additional information.

(ii) We will deny your request if we determine that the EVFM is not necessary to prevent the vehicle from losing speed, torque, or power due to abnormal conditions of the emission control system, or to prevent such abnormal conditions from occurring, during operation related to emergency response.

(iii) Unless we say otherwise, your proposed EVFM is deemed approved 30 days after we acknowledge that you have provided us with all the additional information we have specified.

(4) If your proposed EVFM is deemed to be approved under paragraph (c)(2) or (3) of this section and we find later that your EVFM in fact does not meet the requirements of this section, we may require you to no longer install or distribute it.

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 3. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 4. Section 86.004–2 is amended as follows:

■ a. By adding a definition for “Ambulance” in alphabetical order.

■ b. By revising the definition for “Defeat device”.

■ c. By adding definitions for “Diesel exhaust fluid”, “Emergency vehicle”, and “Fire truck” in alphabetical order.

The additions and revision read as follows:

§ 86.004–2 Definitions.

* * * * *

Ambulance has the meaning given in § 86.1803.

Defeat device means an auxiliary emission control device (AECD) that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless:

(1) Such conditions are substantially included in the applicable Federal

emission test procedure for heavy-duty vehicles and heavy-duty engines described in subpart N of this part;

(2) The need for the AECD is justified in terms of protecting the vehicle against damage or accident;

(3) The AECD does not go beyond the requirements of engine starting; or

(4) The AECD applies only for engines that will be installed in *emergency vehicles*, and the need is justified in terms of preventing the engine from losing speed, torque, or power due to abnormal conditions of the emission control system, or in terms of preventing such abnormal conditions from occurring, during operation related to emergency response. Examples of such abnormal conditions may include excessive exhaust backpressure from an overloaded particulate trap, and running out of diesel exhaust fluid for engines that rely on urea-based selective catalytic reduction.

Diesel exhaust fluid (DEF) has the meaning given in § 86.1803.

Emergency vehicle means a vehicle that is an ambulance or a fire truck.

Fire truck has the meaning given in § 86.1803.

* * * * *

■ 5. Section 86.004–28 is amended by revising paragraph (i) introductory text to read as follows:

§ 86.004–28 Compliance with emission standards.

* * * * *

(i) Emission results from heavy-duty engines equipped with exhaust aftertreatment may need to be adjusted to account for regeneration events. This provision only applies for engines equipped with emission controls that are regenerated on an infrequent basis. For the purpose of this paragraph (i), the term “regeneration” means an event during which emission levels change while the aftertreatment performance is being restored by design. Examples of regenerations are increasing exhaust gas temperature to remove sulfur from an adsorber or increasing exhaust gas temperature to oxidize PM in a trap. For the purpose of this paragraph (i), the term “infrequent” means having an expected frequency of less than once per transient test cycle. Calculation and use of adjustment factors are described in paragraphs (i)(1) through (5) of this section. If your engine family includes engines with one or more AECDS for emergency vehicle applications approved under paragraph (4) of the definition of defeat device, do not consider additional regenerations resulting from those AECDS when

calculating emission factors or frequencies under this paragraph (i).

■ 6. Section 86.095–35 is amended by revising paragraph (a)(3)(iii)(O) to read as follows:

§ 86.095–35 Labeling.

- (a) * * *
(3) * * *
(iii) * * *

(O) For engines with one or more approved AECs for emergency vehicle applications under paragraph (4) of the definition of “defeat device” in § 86.004–2, the statement: “THIS ENGINE IS FOR INSTALLATION IN EMERGENCY VEHICLES ONLY.”

Subpart B—[Amended]

■ 7. Section 86.131–00 is amended by adding paragraph (g) to read as follows:

§ 86.131–00 Vehicle preparation.

(g) You may disable any AECs that have been approved solely for emergency vehicle applications under paragraph (4) of the definition of defeat device. The emission standards do not apply when any of these AECs are active.

Subpart N—[Amended]

■ 8. Section 86.1305–2010 is amended by adding paragraph (i) to read as follows:

§ 86.1305–2010 Introduction; structure of subpart.

(i) You may disable any AECs that have been approved solely for emergency vehicle applications under paragraph (4) of the definition of “defeat device” in § 86.004–2. The emission standards do not apply when any of these AECs are active.

■ 9. Section 86.1370–2007 is amended by adding paragraph (h) to read as follows:

§ 86.1370–2007 Not-To-Exceed test procedures.

(h) Emergency vehicle AECs. If your engine family includes engines with one or more approved AECs for emergency vehicle applications under paragraph (4) of the definition of “defeat device” in § 86.1803, the NTE emission limits do not apply when any of these AECs are active.

Subpart S—[Amended]

■ 10. Section 86.1803–01 is amended as follows:

- a. By adding a definition for “Ambulance” in alphabetical order.
b. By revising the definition for “Defeat device”.
c. By adding definitions for “Diesel exhaust fluid”, “Emergency vehicle”, and “Fire truck” in alphabetical order.

§ 86.1803–01 Definitions.

Ambulance means a vehicle used for emergency medical care that provides all of the following:

- (1) A driver’s compartment.
(2) A patient compartment to accommodate an emergency medical services provider and one patient located on the primary cot so positioned that the primary patient can be given intensive life-support during transit.
(3) Equipment and supplies for emergency care at the scene as well as during transport.
(4) Safety, comfort, and avoidance of aggravation of the patient’s injury or irritation.
(5) Two-way radio communication.
(6) Audible and visual traffic warning devices.

Defeat device means an auxiliary emission control device (AEC) that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless:

- (1) Such conditions are substantially included in the Federal emission test procedure;
(2) The need for the AEC is justified in terms of protecting the vehicle against damage or accident;
(3) The AEC does not go beyond the requirements of engine starting; or
(4) The AEC applies only for emergency vehicles and the need is justified in terms of preventing the vehicle from losing speed, torque, or power due to abnormal conditions of the emission control system, or in terms of preventing such abnormal conditions from occurring, during operation related to emergency response. Examples of such abnormal conditions may include excessive exhaust backpressure from an overloaded particulate trap, and running out of diesel exhaust fluid for engines that rely on urea-based selective catalytic reduction.

Diesel exhaust fluid (DEF) means a liquid compound used in conjunction with selective catalytic reduction to reduce NOx emissions. Diesel exhaust fluid is generally understood to conform to the specifications of ISO 22241.

Emergency vehicle means a vehicle that is an ambulance or a fire truck.

Fire truck means a vehicle designed to be used under emergency conditions to transport personnel and equipment and to support the suppression of fires and mitigation of other hazardous situations.

■ 11. Section 86.1807–01 is amended by adding paragraphs (h) and (i) to read as follows:

§ 86.1807–01 Vehicle labeling.

(h) Vehicles powered by model year 2007 through 2013 diesel-fueled engines must include permanent readily visible labels on the dashboard (or instrument panel) and near all fuel inlets that state “Use Ultra Low Sulfur Diesel Fuel Only” or “Ultra Low Sulfur Diesel Fuel Only”.

(i) For vehicles with one or more approved AECs for emergency vehicles under paragraph (4) of the definition of “defeat device” in § 86.1803, include the following statement on the emission control information label: “THIS VEHICLE HAS A LIMITED EXEMPTION AS AN EMERGENCY VEHICLE.”

§ 86.1807–07 [Removed]

■ 12. Subpart S is amended by removing § 86.1807–07.

■ 13. Section 86.1840–01 is amended by revising paragraph (c) to read as follows:

§ 86.1840–01 Special test procedures.

(c) Manufacturers of vehicles equipped with periodically regenerating aftertreatment devices must propose a procedure for testing and certifying such vehicles, including SFTP testing, for the review and approval of the Administrator. The manufacturer must submit its proposal before it begins any service accumulation or emission testing. The manufacturer must provide with its submittal sufficient documentation and data for the Administrator to fully evaluate the operation of the aftertreatment devices and the proposed certification and testing procedure.

PART 1039—CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD COMPRESSION-IGNITION ENGINES

■ 14. The authority citation for part 1039 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart B—[Amended]

■ 15. Section 1039.115 is amended by adding paragraphs (g)(4) and (5) to read as follows:

§ 1039.115 What other requirements apply?

* * * * *

(g) * * *

(4) The auxiliary emission control device applies only for engines that will be installed in emergency equipment and the need is justified in terms of preventing the equipment from losing speed or power due to abnormal conditions of the emission control system, or in terms of preventing such abnormal conditions from occurring, during operation related to emergency response. Examples of such abnormal conditions may include excessive exhaust backpressure from an overloaded particulate trap, and running out of diesel exhaust fluid for engines that rely on urea-based selective catalytic reduction. The emission standards do not apply when any AECs approved under this paragraph (g)(4) are active.

(5) The auxiliary emission control device operates only in emergency situations as defined in § 1039.665 and meets all of the requirements of that section, and you meet all of the requirements of that section.

■ 16. Section 1039.135 is amended by adding paragraph (c)(15) to read as follows:

§ 1039.135 How must I label and identify the engines I produce?

* * * * *

(c) * * *

(15) For engines with one or more approved auxiliary emission control devices for emergency equipment applications under § 1039.115(g)(4), the statement: “THIS ENGINE IS FOR INSTALLATION IN EMERGENCY EQUIPMENT ONLY.”

* * * * *

Subpart F—[Amended]

■ 17. Section 1039.501 is amended by adding paragraph (g) to read as follows:

§ 1039.501 How do I run a valid emission test?

* * * * *

(g) You may disable any AECs that have been approved solely for emergency equipment applications under § 1039.115(g)(4).

■ 18. Section 1039.525 is amended by revising the introductory text to read as follows:

§ 1039.525 How do I adjust emission levels to account for infrequent regenerating aftertreatment devices?

This section describes how to adjust emission results from engines using aftertreatment technology with infrequent regeneration events. For this section, “regeneration” means an intended event during which emission levels change while the system restores aftertreatment performance. For example, exhaust gas temperatures may increase temporarily to remove sulfur from adsorbers or to oxidize accumulated particulate matter in a trap. For this section, “infrequent” refers to regeneration events that are expected to occur on average less than once over the applicable transient duty cycle or ramped-modal cycle, or on average less than once per typical mode in a discrete-mode test. If your engine family includes engines with one or more AECs for emergency equipment applications approved under § 1039.115(g)(4), do not consider additional regenerations resulting from those AECs when calculating emission factors or frequencies under this section.

* * * * *

Subpart G—[Amended]

■ 19. Add § 1039.670 to subpart G to read as follows:

§ 1039.670 Approval of an emergency equipment field modification (EEFM).

This section describes how you may implement design changes for emergency equipment that has already been placed into service to ensure that the equipment will perform properly in emergency situations.

(a) You must notify us in writing of your intent to install or distribute an emergency equipment field modification (EEFM). In some cases you may install or distribute an EEFM only with our advance approval, as specified in this section.

(b) Include in your notification a full description of the EEFM and any documentation to support your determination that the EEFM is necessary to prevent the equipment from losing speed, torque, or power due to abnormal conditions of its emission control system, or to prevent such abnormal conditions from occurring during operation related to emergency response. Examples of such abnormal conditions may include excessive exhaust backpressure from an overloaded particulate trap, or running out of diesel exhaust fluid (DEF) for engines that rely on urea-based selective catalytic reduction. Your determination

must be based on an engineering evaluation or testing or both.

(c) You may need our advance approval for your EEFM, as follows:

(1) Where the proposed EEFM is identical to an AEC we approved under this part for an engine family currently in production, no approval of the proposed EEFM is necessary.

(2) Where the proposed EEFM is for an engine family currently in production but the applicable demonstration is based on an AEC we approved under this part for an engine family no longer in production, you must describe to us how your proposed EEFM differs from the approved AEC. Unless we say otherwise, your proposed EEFM is deemed approved 30 days after you notify us.

(3) If we have not approved an EEFM comparable to the one you are proposing, you must get our approval before installing or distributing it. In this case, we may request additional information to support your determination under paragraph (b) of this section, as follows:

(i) If we request additional information and you do not provide it within 30 days after we ask, we may deem that you have retracted your request for our approval; however, we may extend this deadline for submitting the additional information.

(ii) We will deny your request if we determine that the EEFM is not necessary to prevent the equipment from losing speed, torque, or power due to abnormal conditions of the emission control system, or to prevent such abnormal conditions from occurring, during operation related to emergency response.

(iii) Unless we say otherwise, your proposed EEFM is deemed approved 30 days after we acknowledge that you have provided us with all the additional information we have specified.

(4) If your proposed EEFM is deemed to be approved under paragraph (c)(2) or (3) of this section and we find later that your EEFM in fact does not meet the requirements of this section, we may require you to no longer install or distribute it.

Subpart I—[Amended]

■ 20. Section 1039.801 is amended by adding definitions for “Diesel exhaust fluid” and “Emergency equipment” in alphabetical order to read as follows:

§ 1039.801 What definitions apply to this part?

* * * * *

Diesel exhaust fluid (DEF) means a liquid compound used in conjunction

with selective catalytic reduction to reduce NO_x emissions. *Diesel exhaust fluid* is generally understood to conform to the specifications of ISO 22241.

* * * * *

Emergency equipment means either of the following types of equipment:

(1) Specialized vehicles used to perform aircraft rescue and fire-fighting functions at airports, with particular emphasis on saving lives and reducing injuries coincident with aircraft fires following impact or aircraft ground fires.

(2) Wildland fire apparatus, which includes any apparatus equipped with a slip-on fire-fighting module, designed primarily to support wildland fire suppression operations.

* * * * *

■ 21. Section 1039.805 is amended by adding abbreviations for “DEF”, “EEFM”, “ISO”, and “SCR” in alphabetical order to read as follows:

§ 1039.805 What symbols, acronyms, and abbreviations does this part use?

* * * * *

DEF Diesel exhaust fluid.

EEFM Emergency equipment field modification.

* * * * *

ISO International Organization for Standardization (see www.iso.org).

* * * * *

SCR Selective catalytic reduction.

* * * * *

[FR Doc. 2012-13088 Filed 6-7-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85, 86, and 1039

[EPA-HQ-OAR-2011-1032; FRL-9673-2]

RIN 2060-AR46

Heavy-Duty Highway Program: Revisions for Emergency Vehicles and SCR Maintenance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal consists of three parts. First, EPA is proposing revisions to its heavy-duty diesel regulations that would enable emergency vehicles, such as dedicated ambulances and fire trucks, to perform their mission-critical life-saving work without risking that abnormal conditions of the emission control system could lead to decreased engine power, speed or torque. The revisions would allow manufacturers to request and EPA to approve modifications to emission control systems on emergency vehicles so they do not interfere with the vehicles' missions. Second, EPA is proposing to revise the emission-related maintenance intervals for all motor vehicles and nonroad compression-ignition engines to specify minimum maintenance intervals for replenishment of consumable chemical reductant in connection with the use of selective catalytic reduction technologies. Third, EPA is proposing to offer short-term relief for nonroad engines from performance inducements related to the emission control system, for general purpose nonroad vehicles while operating in temporary emergency service. These actions are not expected to result in any significant changes in regulatory burdens or costs.

DATES: Comments on all aspects of this proposal must be received on or before July 27, 2012. See the **SUPPLEMENTARY**

INFORMATION section on "Public Participation" for more information about written comments.

Public Hearings: EPA will hold a public hearing on Wednesday, June 27, 2012 in Ann Arbor, Michigan. The hearing will start at 10 a.m. local time and will continue until everyone has had a chance to speak. For more information about the public hearing, see "How Do I Participate in the Public Hearing?" under the **SUPPLEMENTARY INFORMATION** section on "Public Participation" below at Section VIII.B.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2011-1032, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.

- *Email: a-and-r-docket@epa.gov.*

- *Fax: (202) 566-9744.*

- *Mail:* Environmental Protection Agency, Air Docket, Mail-code 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

- *Hand Delivery:* EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, Attention Docket No. EPA-HQ-OAR-2011-1032. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2011-1032. For additional instructions on submitting written comments, see the **SUPPLEMENTARY INFORMATION** section on "Public Participation" below at Section VIII.A.

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., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly

available only in hard copy in the docket. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Lauren Steele, Environmental Protection Agency, Office of Transportation and Air Quality, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, Michigan 48105; telephone number: 734-214-4788; fax number: 734-214-4816; email address: *steele.lauren (@epa.gov)*.

SUPPLEMENTARY INFORMATION:

Does this action apply to me?

This proposed action would affect you if you produce or import new heavy-duty or nonroad diesel engines that are intended for use in vehicles that serve the emergency response industry, including all types of dedicated and purpose-built fire trucks and ambulances. You may also be affected by this action if you manufacture diesel engines that make use of a consumable chemical reductant to comply with emissions standards for nitrogen oxides. You may also be affected by this action if you produce or import diesel engines for nonroad applications. The following table gives some examples of entities that may be affected by this proposed action. Because these are only examples, you should carefully examine the proposed and existing regulations in 40 CFR parts 85, 86 and 1039. If you have questions regarding how or whether these rules apply to you, you may call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS Codes ^a	Examples of potentially regulated entities
Industry	336111 336112 333618 336120	Engine and Truck Manufacturers
Industry	541514 811112 811198	Commercial Importers of Vehicles and Vehicle Components
Industry	811310	Engine Repair, Remanufacture, and Maintenance

Note:
^a North American Industry Classification System (NAICS).

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I. Overview**A. Emergency Vehicle Provisions**

EPA is proposing amendments to its heavy-duty diesel engine programs that would specifically allow engine manufacturers to request to deploy specific emission controls or settings for new and in-use engines that are sold for use only in emergency vehicles. EPA is proposing these revisions to enable fire trucks and ambulances with heavy-duty diesel engines to perform mission-critical life- and property-saving work without risk of losing power, speed or torque due to abnormal conditions of the emission control systems.

EPA's current diesel engine requirements have spurred application of emission controls systems such as diesel particulate filters (commonly called soot filters or DPF's) and other after-treatment systems on most new diesel vehicles, including emergency vehicles. Some control system designs and implementation strategies are more effective in other segments of the fleet than in emergency vehicles, especially given some emergency vehicles' extreme duty cycles. By this action, EPA intends to help our nation's emergency vehicles perform their missions; to better ensure public safety and welfare and the protection of lives and property.

B. Diesel Exhaust Fluid Provisions

EPA is proposing to amend its regulations for diesel engines to add provisions specifying emission-related maintenance and scheduled maintenance intervals for replenishment of consumable chemical reductant in connection with engines and vehicles

that use selective catalytic reduction (SCR) technologies. This would apply to the use of SCR with model year (MY) 2011 and later light-duty vehicles and nonroad compression ignition (NRCI) engines, and MY 2012 and later heavy-duty vehicles and engines.

Most manufacturers of diesel engines and vehicles subject to our current standards regulating oxides of nitrogen (NO_x) have chosen to use a NO_x reduction technology known as selective catalytic reduction (SCR) in order to meet these requirements. SCR systems use a chemical reductant that usually contains urea and is known as diesel exhaust fluid (DEF). The DEF is injected into the exhaust gas and requires periodic replenishment by refilling the DEF tank.

Given that SCR use is now common in the transportation sector and replenishment of DEF is necessary for SCR to be effective, it is appropriate to add DEF replenishment to the list of scheduled emission-related maintenance published in the Code of Federal Regulations (CFR), rather than rely on a case-by-case approval as is specified in the current regulations. This action would improve the clarity and transparency of EPA's requirements for SCR systems.

C. Nonroad Equipment Used Temporarily in Emergency Service

EPA is proposing short-term relief from emission control system performance inducements for any nonroad compression ignition engine powered vehicles operating in temporary emergency service. This relief would address concerns about unusual circumstances where performance inducements could hinder equipment performance in emergency conditions, which are defined as conditions in which the functioning (or malfunctioning) of emission controls poses a significant risk to human life. We are proposing provisions for a short-term emergency bypass of the normal emission controls, including inducement strategies, which could result in a loss of power of an engine; thus, allowing the equipment to temporarily perform emergency-related work. By this action, EPA would help our nation's nonroad equipment perform temporary emergency service; to better ensure public safety and welfare and the protection of lives.

II. Statutory Authority and Regulatory Background**A. Statutory Authority**

Section 202(a)(1) of the Clean Air Act (CAA or the Act) directs EPA to

establish standards regulating the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines that, in the Administrator's judgment, causes or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards apply for the useful life of the vehicles or engines. Section 202(a)(3) requires that EPA set standards applicable to emissions of hydrocarbons, carbon monoxide, NO_x and particulate matter (PM) from heavy-duty trucks that reflect the greatest degree of emission reduction achievable through the application of technology which we determine will be available for the model year to which the standards apply. We are to give appropriate consideration to cost, energy, and safety factors associated with the application of such technology. We may revise such technology-based standards, taking costs into account, on the basis of information concerning the effects of air pollution from heavy-duty vehicles or engines and other sources of mobile source related pollutants on the public health and welfare.

Section 202(a)(4)(A) of the Act requires the Administrator to consider risks to public health, welfare or safety in determining whether an emission control device, system or element of design shall be used in a new motor vehicle or new motor vehicle engine. Under section 202(a)(4)(B), the Administrator shall consider available methods for reducing risk to public health, welfare or safety associated with use of such device, system or element of design, as well as the availability of other devices, systems or elements of design which may be used to conform to requirements prescribed by (this subchapter) without causing or contributing to such unreasonable risk.

Section 206(a) of the Act requires EPA to test, or require to be tested in such manner as it deems appropriate, motor vehicles or motor vehicle engines submitted by a manufacturer to determine whether such vehicle or engine conforms to the regulations promulgated under section 202. Section 206(d) provides that EPA shall by regulation establish methods and procedures for making tests under section 206.

Section 213 of the Act gives EPA the authority to establish emissions standards for nonroad engines and vehicles (42 U.S.C. 7547). Sections 213(a)(3) and (a)(4) authorize the Administrator to set standards and require EPA to give appropriate consideration to cost, lead time, noise, energy, and safety factors associated

with the application of technology. Section 213(a)(4) authorizes the Administrator to establish standards to control emissions of pollutants (other than those covered by section 213(a)(3)) which "may reasonably be anticipated to endanger public health and welfare." Section 213(d) requires the standards under section 213 to be subject to sections 206–209 of the Act and to be enforced in the same manner as standards prescribed under section 202 of the Act.

B. Background: 2007 and 2010 NO_x and PM Standards

(1) On-Highway Standards

On January 18, 2001, EPA published a rule promulgating more stringent standards for NO_x and PM for heavy-duty highway engines ("the heavy-duty highway rule").¹ The 0.20 gram per brake-horsepower-hour (g/bhp-hr) NO_x standard in the heavy-duty highway rule first applied in MY 2007. However, because of phase-in flexibility provisions adopted in that rule and use of emission credits generated by manufacturers for early compliance, manufacturers were able to continue to produce engines with NO_x emissions greater than 0.20 g/bhp-hr. The phase-in provisions ended after MY 2009 so that the 0.20 g/bhp-hr NO_x standard was fully phased-in for model year 2010. Because of these changes that occurred in MY 2010, the 0.20 g/bhp-hr NO_x emission standard is often referred to as the 2010 NO_x emission standard, even though it applied to engines as early as MY 2007.

The heavy-duty highway rule adopted in 2001 also included a PM emissions standard for new heavy-duty diesel engines of 0.01 g/bhp-hr, effective for engines beginning with MY 2007. Due to the flexible nature of the phase-in schedule described above, manufacturers have had the opportunity to produce engines that met the PM standard while emitting higher levels of NO_x. During the phase-in years, manufacturers of diesel engines generally produced engines that were tuned so the combustion process inherently emitted lower engine-out NO_x while relying on PM after-treatment to meet the PM standard. The principles of combustion chemistry dictate that conditions yielding lower engine-out NO_x emissions generally result in higher engine-out PM emissions. This is what we call the NO_x-PM trade-off. For many new low-

NO_x diesel engines today, engine-out PM emissions could be at or above the levels seen with the MY 2004 standards (0.1 g/bhp-hr). To meet today's stringent PM standards, manufacturers rely on diesel particulate filter after-treatment to clean the exhaust.

(2) Nonroad Standards

EPA adopted similar technology-forcing standards for nonroad diesel engines on June 29, 2004.² These are known as the Tier 4 standards. This program includes requirements that will generally involve the use of NO_x after-treatment for engines above 75 hp and PM after-treatment (likely soot filters) for engines above 25 hp. These standards phase in during the 2011 to 2015 time frame.

III. Direct Final Rule

In addition to this notice of proposed rulemaking, EPA is also publishing a Direct Final Rule (DFR) addressing the emergency vehicle provisions described in Section IV of this document. We are doing this to expedite the regulatory process to allow engine and vehicle modifications to occur as soon as possible. However, if we receive relevant adverse comment on distinct elements of the emergency vehicle provisions in this proposal by July 27, 2012, we will publish a timely withdrawal in the **Federal Register** indicating which provisions we are withdrawing. Any provisions of the DFR that are not withdrawn will become effective on August 7, 2012, notwithstanding adverse comment on any other provision. We will address all public comments in the final rule based on this proposed rule.

As noted above, EPA is publishing the DFR to expedite the deployment of solutions that will best ensure the readiness of the nation's emergency vehicles. We request that commenters identify in your comments any portions of the emergency vehicle proposed action described in Section IV below with which you agree and support as proposed, in addition to any comments regarding suggestions for improvement or provisions with which you disagree. In the case of a comment that is otherwise unclear whether it is adverse, EPA would interpret relevant comments calling for more flexibility or less restrictions for emergency vehicles as supportive of the direct final rule. In this way, the EPA will be able to adopt those elements of the DFR that are fully supported and most needed today, while considering and addressing any

¹ Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (66 FR 5001).

² Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel (69 FR 38958).

adverse comments received on the proposed rule, in the course of developing the final rule.

Note that Docket Number EPA-HQ-OAR-2011-1032 is being used for both the DFR and this Notice of Proposed Rulemaking (NPRM).

IV. Emergency Vehicle Provisions

A. Background on Regulation of Emergency Vehicles

Typically, the engines powering our nation's emergency vehicles belong to the same certified engine families as engines that are installed in similarly sized vehicles sold for other public and private uses.³ Historically, engine and vehicle manufacturers have sought EPA certification for broad engine families and vehicle test groups that are defined by similar emissions and performance characteristics. Engine families typically only consider the type of vehicle in which the engine is intended to be installed to the extent that it fits into a broad vehicle weight class and, to a lesser extent, the vehicle's intended duty cycle (i.e. urban or highway).

Because of the above-described manufacturing practices and the narrow CAA authority for any exemptions, EPA has historically regulated engines for emergency vehicles, including ambulances as well as police vehicles and fire-fighting apparatus, in the same manner as other engines.

In the public comments received on the proposed heavy-duty highway rule, EPA received some comments about DPF technologies and regeneration cycles on heavy-duty trucks, including one comment that expressed concerns that the systems may not be failsafe.⁴ However, none of the comments specifically raised technical feasibility with respect to emergency vehicles, and EPA's response was based on the best information available at the time. After publishing the final rule requiring heavy-duty highway engines to meet performance standards that compelled technologies such as DPF's, EPA received a letter from the National Association of State Fire Marshals, requesting some provision for public safety in implementing this new rule,

³ In this proposal, emergency vehicle is defined as a fire truck or an ambulance for on-highway applications, and for nonroad applications, we are defining emergency equipment as specialized vehicles to perform aircraft rescue and firefighting functions at airports, or, or wildland fire apparatus. See Section IV.C and proposed revisions at 40 CFR 86.1803-01 and 40 CFR 1039.801.

⁴ Heavy-Duty Highway Final Rule, December 21, 2000 Response to Comments, Section 3.2.1, "Technical Feasibility of Engine/Vehicle Standards//Diesel Engine Exhaust Standards," page 3-58 to 3-60, available at <http://www.epa.gov/otaq/highway-diesel/regs/2007-heavy-duty-highway.htm>.

considering that fire departments across the nation have trouble covering basic costs and may not have funds for more expensive trucks.⁵ This letter did not raise any technical feasibility issues, and EPA did not see a need to take action.

More recently EPA has received letters from fire apparatus manufacturers and ambulance companies requesting relief from power or speed inducements related to low levels of DEF for SCR systems on emergency vehicles.⁶ Power and speed reduction inducements were new on vehicles equipped with SCR. These were not specifically mandated by EPA but designed by manufacturers to occur if DEF levels became low, to induce operators of the vehicles to perform the required emission-related maintenance in use. More discussion on this, including why the emergency response community requested relief and what action EPA took, is found below in Section IV.C(3).

Recently, beginning in October 2011, EPA received a series of comment letters from fire chiefs and other interested stakeholders, requesting regulatory action to relieve emergency vehicles from the burden of complying with the 2007 PM standards.⁷ EPA promptly opened a dialogue with the fire chiefs and engine manufacturers to understand the issues. Power and speed reductions were occurring on some vehicles with soot filters but without SCR systems, in part related to engine protection measures designed by manufacturers. Essentially, these soot filters are supposed to be self-cleaning by periodically burning off accumulated soot during normal vehicle use. The cleaning process is called regeneration, and when this doesn't work as designed, the filter gradually gets more clogged, which can lead to engine problems. EPA has determined that while other pathways are available for resolving some issues related to soot filters on emergency vehicles, there remains a public safety issue related to design of engines and emission control systems on emergency vehicles that should be addressed through this rulemaking. More discussion of this, including why

⁵ Letter dated February 1, 2001 to C. Whitman, EPA Administrator from G. Miller, President, National Association of State Fire Marshals.

⁶ See, for example, letter dated October 22, 2009, from Roger Lackore of the Fire Apparatus Manufacturers' Association and Randy Hanson of the Ambulance Manufacturers Division, to Keisha Jennings of EPA.

⁷ See, for example, letter dated October 4, 2011 from Congressman Filner to EPA Administrator Jackson, and letter dated October 14, 2011, from Director Cimini of the Southeast Association of Fire Chiefs to EPA Administrator Jackson.

relief was requested and what other actions can be taken in addition to EPA regulation, is found below in Sections IV.C and IV.D.

B. Current Provisions for Other Emergency Vehicles and Engines

On December 1, 2011, in a proposed rule issued jointly with the National Highway Traffic Safety Administration (NHTSA), EPA proposed to exclude light-duty emergency and police vehicles from all phases of greenhouse gas (GHG) emissions standards, in part due to concerns related to technical feasibility, and in part to harmonize with NHTSA's program. Consistent with authority under the Energy Policy and Conservation Act, NHTSA's corporate average fuel economy program already provides manufacturers with the option to exclude emergency vehicles.⁸ The agencies are considering and responding to comments on this proposal, and plan to finalize this rule in summer 2012.

In addition to the above proposed exemption for on-highway engines from GHG standards, EPA has provided limited regulatory relief for other types of emergency-use engines. First, EPA's May 6, 2008 final rule adopting Tier 3 and Tier 4 standards for marine diesel engines allows for emergency and rescue vessels to meet an earlier, less stringent tier of standards under 40 CFR parts 89, 94 and 1042.⁹ We adopted these provisions to avoid compromising engine performance during emergency operation, and to ensure that more stringent emission standards did not cause a situation where there were no certified engines available for emergency vessels. Such engines are not subject to the Tier 4 standards, which generally involve selective catalytic reduction and diesel particulate filters. The regulations also allow for meeting less stringent standard if there are no suitable engines that are certified to the current standards.

EPA also adopted limited exemption provisions for emergency rescue equipment for small spark-ignition nonroad engines in 1999.¹⁰ Under this provision, equipment manufacturers needed to demonstrate that no engine models certified to current emission standards were available to power the emergency rescue equipment. We

⁸ See 49 U.S.C. 32902(e).

⁹ Final Rule: Control of Emissions of Air Pollution from Locomotives and Marine Compression-Ignition Engines Less Than 30 Liters per Cylinder, 73 FR 25098, May 6, 2008, and republished to correct typographical errors on June 30, 2008, 73 FR 37096.

¹⁰ Final Rule: Phase 2 Emission Standards for New Nonroad Spark-Ignition Nonhandheld Engines at or Below 19 Kilowatts, 64 FR 15208, March 30, 1999.

recently moved this provision to 40 CFR part 1054 and included a variety of elements to clarify and improve oversight of the exemption in a later final rule.¹¹ These elements include a requirement that the engines meet the most stringent standards feasible (but less than the current standards for certification) and annual reporting to EPA on the availability of compliant engines that meet the needs of other emergency equipment using such engines.

In these rules, EPA recognized that equipment and vessels designed and purpose-built exclusively for use in emergency equipment have demanding performance specifications and in some cases extreme duty cycles. The marine diesel provisions also recognize that engines certified to the latest emissions standards requiring emissions after-treatment may create some interference with engine performance or effectiveness that may be needed in emergency circumstances, when installed in some emergency equipment or vessels.

While these provisions do offer limited relief from the latest round of emissions standards for these engines, there is a general requirement to use engines meeting the most stringent emission standards as practical. There are also additional administrative responsibilities related to engine labeling, periodic reporting to EPA, and recordkeeping. These provisions in some cases also expire if compliant engines become available that can practically be used to provide power for the equipment in question. Furthermore, these limited exemption provisions are only applicable to newly certified engines. The regulations do not apply these provisions to in-use engines that are certified and deployed in emergency equipment.

C. Why is EPA taking this action?

EPA is proposing to amend its regulations to facilitate engine manufacturers' design and implementation of reliable and robust emission control systems with regeneration strategies and other features that do not interfere with the mission of emergency vehicles. Through the comments and letters we have

received, as well as our own outreach and data-gathering efforts, we have learned that some emission control systems on fire trucks and ambulances today, in particular, certain applications using diesel particulate filters, are requiring an unexpected amount of operator interventions, and there are currently a nontrivial number of emergency vehicles that are electronically programmed to cut power or speed—even while responding to an emergency—when certain operational parameters are exceeded in relation to the emission control system. As we understand it, the experiences of operators are mixed, with some not reporting any problems and some reporting problems that raise public safety and welfare concerns.

EPA's standards are performance-based, and reflect the greatest degree of emission reduction achievable, according to CAA sections 202(a)(3) and 213(a)(3). Our on-highway and nonroad PM standards do not specify the type of diesel particulate filter for manufacturers to use, nor do they even mandate the use of such a filter. Our analysis of the feasibility of the 2007 on-highway PM standard is presented in Chapter III of the final Regulatory Impact Analysis (RIA) for that rule.¹² Our analysis of the feasibility of the Tier 4 nonroad compression ignition engine standards that will be phasing in through 2015 is presented in Chapter 4 of that rule's final RIA.¹³ For most nonroad engines, these standards are similar in stringency to the 2007 on-highway heavy-duty engine and vehicle standards. As described below in Section VII, these two rules are providing billions of dollars of annual health benefits by virtually eliminating harmful PM emissions from the regulated engines. Even so, EPA is required by sections 202(a)(4)(B) and 213(c) of the Act to, among other things, consider methods for reducing risk to public safety and welfare associated with the use of emission control devices or systems.

Based on the information available to us, we have concluded that there is an indirect risk to public safety and welfare associated with some examples of emission control systems when they are deployed on emergency vehicles that

experience extreme duty cycles. This indirect risk is related to the readiness of emergency vehicles and the risk that they may not be able to respond during emergencies with the full power, torque, or speed that the engine is designed to provide. While this risk is not inherent to the requirement to reduce emissions or to the use of diesel particulate filters on emergency vehicles, EPA believes it is appropriate to ensure that emergency vehicles can perform their emergency missions without the chance of such consequences.

EPA's current rules already provide the opportunity for manufacturers to address many issues through applications for certification of new engines and new vehicles. There is also currently a mechanism for manufacturers to deploy field modifications to the in-use fleet, including those that are substantially similar to approved upgrades for new vehicles, as well as those that apply only to vehicles that are no longer in production. As manufacturers become aware of the need for upgrades or enhancements, this process occurs within the new and in-use fleet with various degrees of application. While that process is occurring today, EPA views this issue as serious enough that we would be remiss if we did not act to ensure that our regulations clearly offer the needed flexibilities for emergency vehicles.

(1) How does a DPF work?

To explain more fully the issues that we are addressing with this action, and hence why we are taking this action, we are providing here some background information on diesel particulate filters and the process of DPF regeneration. DPF's are exhaust after-treatment devices that significantly reduce emissions from diesel-fueled vehicles and equipment. DPF's physically trap PM and remove it from the exhaust stream. Figure IV-1 depicts a schematic of a wall-flow monolith style filter, with the black arrows indicating exhaust gas laden with particles, and the gray arrows indicating filtered exhaust gas. This style of filter is the most common in today's heavy-duty diesel engines, and has very high rates of filtration, in excess of 95 percent.¹⁴

¹¹ Final Rule: Control of Emissions from Nonroad Spark-Ignition Engines and Equipment, 73 FR 59034, October 8, 2008.

¹² Final Regulatory Impact Analysis for the "2007 Heavy-Duty Highway Rule," EPA420-R-00-026,

December 2000. Chapter III, Emissions Standards Feasibility, is available at <http://www.epa.gov/otaq/highway-diesel/regs/ria-iii.pdf>.

¹³ Final Regulatory Impact Analysis for "Control of Emissions from Nonroad Diesel Engines,"

EPA420-R-04-007, May 2004. Chapter 4, Technologies and Test Procedures for Low-Emission Engines, is available <http://www.epa.gov/nonroad-diesel/2004fr/420r04007e.pdf>.

¹⁴ See Final RIA Chapter III, Note 12, above.

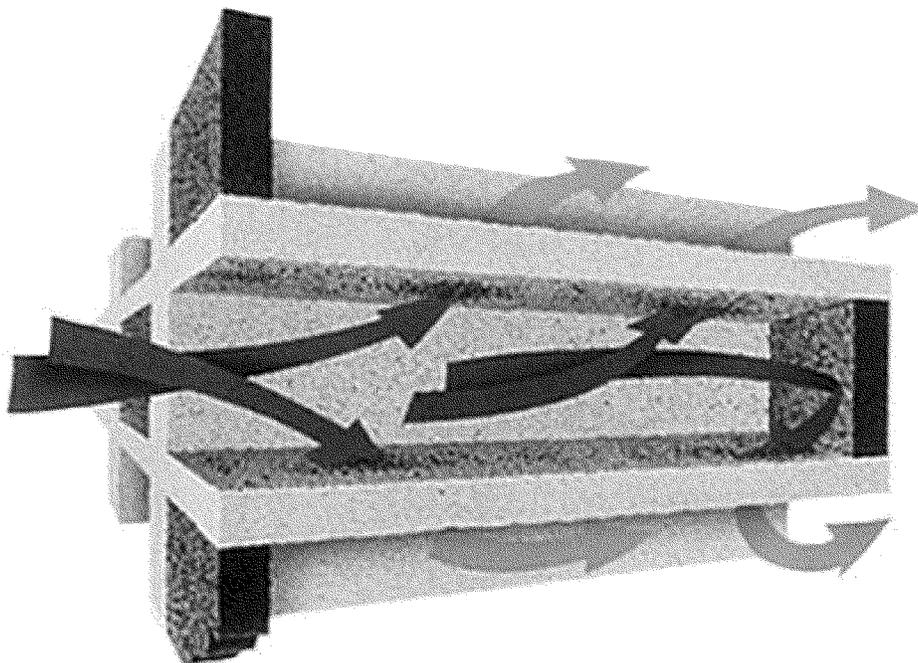


Figure IV-1 Illustration of air flow pattern in a wall-flow monolith style PM filter

(Source: Corning)

To be successful, these devices generally must be able to accomplish two things: Collect PM and clean away accumulated PM. There are two main types of PM that can accumulate: Combustible and non-combustible, and two very different types of cleaning methods: Regeneration and ash cleaning. Regeneration occurs relatively frequently, and is designed to complete the combustion (oxidation) of the trapped combustible PM components, releasing them to the exhaust as gas-phase compounds (mostly H₂O and CO₂). In contrast to the PM that can be oxidized and carried out the tailpipe as gases, the non-combustible PM such as metallic ash cannot be destroyed through regeneration and will always remain inside a DPF. To clean ash from a DPF, the filter unit is removed from the vehicle and professionally cleaned with a special machine. Fortunately, there is very little ash formation from modern diesels so ash cleaning and ash disposal occurs very infrequently, generally with at least 150,000 mile service intervals, and the mass of accumulated ash is generally small (a few teaspoons).¹⁵ ¹⁶ This distinction is

made here because the ash cleaning process is not a source of concern that has given rise to this EPA action. The infrequent cleaning of noncombustible materials from DPF's is not part of the scope of this action.

Regeneration, however, is a type of routine DPF cleaning that must occur regularly, and for which EPA does not specify a minimum interval in its regulations, in contrast to the ash cleaning process. At its very essence, regeneration involves burning off the accumulated soot. Since this burning can involve extra heat and/or oxygen or oxygen-containing compounds, this must be done carefully and safely to avoid uncontrolled burns. The discussion below in Section IV.C.(1)(b) describes the three types of routine DPF regeneration: Passive regeneration, automatic active regeneration, and manual (parked) active regeneration. A more detailed discussion is provided in a memorandum to the docket.¹⁷ Before discussing the ways that manufacturers achieve regeneration, though, first we discuss the reason why it is needed at all.

(a) Failure of a DPF

When the style of filter installed on a diesel vehicle is the wall-flow type that is predominant in the market today, it physically traps so much of the PM that the particles accumulate on the inside of the filter and if not burned off, this PM can over time block the passages through the filtering media, making it more restrictive to exhaust flow. This is commonly referred to as "trap plugging." Some other styles of filter, such as flow-through DPF's, are less prone to plugging, but do not generally reduce the PM emission rate sufficiently to meet today's stringent PM standard. Any time something gets in the way of free flowing air through an engine, it creates what we call "exhaust backpressure." Even a clean, new DPF generates a small amount of exhaust backpressure due to the porous walls through which all of the exhaust flows.

Engines can tolerate a certain range of exhaust backpressure. When an increase in this backpressure, or resistance, is detected, engines can compensate to a point. An increase in exhaust backpressure from a DPF trapping more and more PM represents increased work demanded from the engine to force the exhaust gas through the increasingly restrictive DPF. However, unless the DPF is frequently cleansed of the trapped PM, this increased work

¹⁵ EPA's regulations at 40 CFR 86.004-25(b)(4) for heavy-duty diesel engine maintenance specify a minimum interval for DPF ash cleanout from 100,000 to 150,000 mi. Many manufacturers design DPF systems with longer maintenance intervals.

¹⁶ See <http://www.arb.ca.gov/diesel/tru/documents/ashguide.pdf>.

¹⁷ See memo dated May 4, 2012, "Diesel Particulate Filter Regeneration," Docket ID EPA-HQ-OAR-2011-1032.

demand can lead to reductions in engine performance and increases in fuel consumption. This loss in performance may be noticed by the vehicle operator in terms of poor acceleration and generally poor drivability of the vehicle.

If a DPF is not regenerated and it becomes plugged, there is a risk of two types of failure. The degree of this risk and which consequence may be experienced will depend on the engine and emission control system design. One consequence is that the lack of air flowing through an engine will cause an engine to shut down because it can no longer compensate for the extra work being demanded of it. The other is a risk of catastrophic DPF failure when excessive amounts of trapped PM begin to oxidize at high temperatures (i.e., DPF regeneration temperatures above 1,000 °C) leading to a “runaway” combustion of the PM within the DPF. This can cause temperatures in the filter media to increase beyond its physical tolerance, possibly creating high thermal stresses where the DPF materials could crack or melt. This is an unsafe condition, presenting physical danger to occupants as well as to objects and persons near the vehicle. Further, catastrophic failure can allow significant amounts of the diesel PM to pass through the DPF without being captured. That is, the DPF is destroyed and PM emission control is lost. For all these reasons, most manufacturers generally design their emission control systems to prevent uncontrolled shutdown or runaway DPF regeneration by programming the engine’s electronic control module (ECM) to limit maximum engine speed, torque and/or power when excessive backpressures are detected. This mode of engine operation at reduced performance may allow a vehicle to “limp home” to receive service. In extreme cases the ECM may command the engine to shut down to prevent a catastrophic failure.

(b) Types of Regeneration

There are three types of routine DPF regeneration. Passive regeneration refers to methods that rely strictly on the temperatures and constituents normally available in the vehicle’s exhaust to oxidize PM from a DPF in a given vehicle application. Passive regeneration is an automatic process that occurs without the intervention of an engine’s on-board diagnostic and control systems, and often without any operator notice or knowledge. Passive regeneration is often a continuous process, because of which, it is sometimes referred to as continuous regeneration. In a vehicle whose normal

operation does not generate temperatures needed for passive DPF regeneration, the system needs a little help to clean itself. This process is called active regeneration, and supplemental heat inputs to the exhaust are provided to initiate soot oxidation. There are two types of active regeneration: Those that may occur automatically either while the vehicle is in motion, while idling, or while powering an auxiliary device such as a pump or ladder (power take-off (PTO) mode), and those that must be driver-initiated and occur only while the vehicle is stationary and out-of-service.

Vehicles with automatic active regeneration systems require operators to be alert to dashboard lamps and indicators. Written instructions are provided to operators to explain what each lamp means (such as high temperatures or need for regeneration) and what action is called for (such as driving at highway speeds or initiating a manual active regeneration). Because EPA emissions standards are performance based; and therefore, do not dictate any required emission control system technologies or configurations, each manufacturer has the discretion to program the timing and sequence of lamps as needed to inform drivers of the condition of the emission control system. As noted above, it is not uncommon in today’s heavy-duty fleet for an engine’s ECM to limit its maximum speed, torque or power when a plugging DPF is detected. These engine and emission control system protection measures can alert drivers to the need to change driving conditions to facilitate automatic active regeneration or to make plans to allow for a manual active regeneration.

A manual active regeneration allows the engine’s ECM to increase engine speed and exhaust temperature to a greater extent than what is typically allowed during an automatic active regeneration. Because the ECM takes full control of an engine during a manual active regeneration, the vehicle must remain parked and not used for other purposes, such as pumping water in PTO mode. Some manual active regenerations may require towing the vehicle to a special service center, and may occur while the DPF is on the vehicle, or offline with the DPF removed from the vehicle. In such cases, if a spare DPF is not available, the vehicle could be out of service overnight. If a driver disregards such warnings, the risk of uncontrolled engine shutdown or a catastrophic DPF failure may increase. EPA encourages the design of robust systems calling for minimal driver interventions, while

providing drivers with clear and early indicators before any interventions are needed. EPA also encourages accurate and thorough operator training to ensure that the correct remedial action is taken at the earliest available time.

Actively regenerating DPF systems typically require sufficient air flow, temperature and soot accumulation before an automatic active regeneration will be requested by the engine’s ECM. As mentioned above, this may occur either while the vehicle is in motion or parked, if pre-set engine operating conditions are met (such as speed and temperature). When the engine’s ECM signals the initiation of an automatic active regeneration and the extra heat is generated, an ideal DPF system accomplishes this as a transparent process, with no effects perceivable by the driver.

A variety of manufacturer approaches can be taken to produce the supplemental heat needed for active regeneration. Diesel engines of MY 2007 or newer often incorporate one or more of the following approaches:

- On-board electrical heaters upstream of the filter.
- Air-intake throttling in one or more of the engine cylinders. When necessary, this device would limit the amount of air entering the engine, raising the exhaust temperature and facilitating regeneration.
- Exhaust brake activation. When necessary, this device would limit the amount of exhaust exiting the engine, raising the exhaust temperature and facilitating regeneration.
- Engine speed increases. This approach is sometimes used in combination with the other approaches to deliver more heat to the filter to facilitate regeneration.
- Post top-dead-center (TDC) fuel injection. Injecting small amounts of fuel in the cylinders of a diesel engine after pistons have reached TDC introduces a small amount of unburned fuel in the engine’s exhaust gases. This unburned fuel can then be oxidized over an oxidation catalyst upstream of the filter or oxidized over a catalyzed particulate filter to combust accumulated particulate matter.
- Post injection of diesel fuel in the exhaust upstream of an oxidation catalyst and/or catalyzed particulate filter. This method serves to generate heat used to combust accumulated particulates by oxidizing fuel across a catalyst present on the filter or on an oxidation catalyst upstream of the filter

• On-board fuel burners upstream of the filter.¹⁸

These are presented here merely as examples, and are by no means a complete list of the strategies available to manufacturers when designing engines that use automatic active DPF regeneration, though not all may be applicable to all engines. A common approach that gets a lot of consumer attention is the use of fuel burners or fuel injection strategies. This approach is often called “dosing.” Vehicle owners may notice an increase in fuel consumption when driving a vehicle that relies heavily on fuel dosing for its automatic active regenerations. In this case, when an engine’s ECM gives the signal, the doser injects a metered amount of diesel fuel into the exhaust flow (or cylinders), which reacts with the DPF catalyst to raise the temperature to a point that enables regeneration. EPA does not have information about which manufacturers employ this technique or the number or types of vehicles with engines that use fuel dosing as part of the active regeneration strategy. Estimates of the additional fuel use by a vehicle whose DPF regeneration system employs fuel dosing are described below in Section VII.B. This is also mentioned here because one of the possible outcomes of this EPA action is that some manufacturers may alter their strategies for automatic active regenerations on emergency vehicles, which may have a modest effect on supplemental fuel use due to dosing. Further discussion of this is provided below in Section VII.

(2) Why are emergency vehicles having problems with DPF regeneration?

At the time of promulgation of the heavy-duty highway rule, EPA and the engine manufacturers expected the 2007-compliant engine emission control systems would be integrated with advanced engine controls to ensure DPF regeneration under all vehicle operating conditions and environments. While this is widely true today, the experience of the rule implementation thus far indicates there are still some exceptions.

Although EPA is aware of a relatively small number of emergency vehicles that are experiencing problems with DPF regeneration, of those that are having problems, most of the problems can be related to the vehicle’s duty cycle, the ambient conditions, and/or the engine’s combustion characteristics. A vehicle’s duty cycle means how it is

driven, including its speeds, loads, and distances, as well as time out of service and time spent idling. A vehicle’s duty cycle can vary by the demographic of the service area, including whether the vehicle responds to emergencies in a rural or urban community, and whether it drives over flat or hilly terrain. Because DPF regeneration requires heat and oxygen (basic ingredients for combustion), the success of DPF regeneration strategies can also be influenced by ambient conditions such as extreme cold winter temperatures and whether the vehicle operates near sea level or at a high elevation. The engine combustion and exhaust characteristics can influence the success of a DPF regeneration strategy since parameters such as engine-out NO_x and PM emission levels can influence how easily the soot can be oxidized, and how much soot needs to be oxidized and how often.

Both the engine’s duty cycle and the overall control strategy of the engine’s emission control system play a large role in the success of integrating a DPF with an engine to control PM emissions. In this section we provide additional discussion of how engine combustion characteristics and vehicle duty cycle can lead to DPF regeneration problems on emergency vehicles. In Section IV.E, below, we discuss our proposed regulatory action to address these issues. While our proposed approach specifically targets engine combustion characteristics and emission control system design, we encourage emergency vehicle owners to inquire with their dealers and manufacturers regarding suitable vehicle and engine options that are appropriate for their duty cycle as well as their demographic and geographic location.

(a) Engine Combustion Characteristics

Engine combustion characteristics can be designed to enable continuous passive regeneration or to rely heavily on automatic active regeneration. As mentioned above, regeneration is a combustion process, burning off the accumulated PM or soot. The PM is created because the initial combustion process in the engine was imperfect. To completely convert all fuel to CO₂ and water, the combustion process needs more heat and oxygen. Both of these things create NO_x because nitrogen (N₂) is naturally present in the air and readily oxidizes at high temperatures. Thus there is a NO_x-PM trade-off of most diesel combustion processes (homogeneous charge compression ignition being an exception) where lower combustion temperatures help control NO_x but create more PM, and

higher temperatures that destroy PM (or prevent it from being created) can generate more NO_x.

In an engine with a DPF system, combustion settings, or calibrations that enable continuous passive regeneration, tend to be those with higher engine-out NO_x and lower engine-out PM, partly because of the higher temperatures that create the NO_x, partly because of the NO_x itself that can act as an oxidizer (to burn off soot), and partly because of the lighter soot loading rate. In contrast, engine calibrations that may lead to a heavy reliance on automatic active regeneration tend to be those with lower engine-out NO_x and higher engine-out PM, partly because of the lower temperatures, partly because of a lack of helpful NO_x, and partly because of a heavier soot loading rate. Note that “engine-out” means emissions upstream of any after-treatment cleaning devices such as DPF or SCR. An example of a DPF system that may rely almost exclusively on active regeneration to maintain a clean PM filter, from an engine calibration perspective, would be an engine using advanced exhaust gas recirculation, because it would have very low engine-out NO_x and relatively high engine-out PM. An example of a DPF system that may rarely experience automatic active regeneration (and frequently passively regenerate), from an engine calibration perspective, would be an engine using SCR to control NO_x, because it could have comparatively high engine-out NO_x and relatively low engine-out PM. The SCR after-treatment would then reduce the high engine-out NO_x to provide very low tailpipe NO_x.

Thus it is important to note that this NO_x-PM trade-off is a critical design parameter when developing an engine that will be successfully integrated with a DPF-equipped emission control system. To date, all of the concerns expressed to EPA regarding emergency vehicles with DPF regeneration issues have been for vehicles that do not employ SCR technology, and thus may have higher engine-out PM. The differences in engine combustion characteristics of the MY 2007 vehicles compared to those of the majority of MY 2010+ vehicles support the concept that the emergency vehicle fleet may experience fewer DPF regeneration troubles as it migrates to engines that use after-treatment to meet EPA’s 2010 NO_x standards. Such a trend may indicate that some engine manufacturers may see a greater need to address in-use emergency vehicles than new vehicles.

¹⁸ MECA Diesel Particulate Filter Maintenance: Current Practices and Experience (June 2005) http://www.meca.org/galleries/default-file/Filter_Maintenance_White_Paper_605_final.pdf.

(b) Duty Cycles

As noted above, the duty cycle of a vehicle is one of the factors that influences how often the DPF regenerates passively or actively. It is important to note that all DPF systems with active regeneration components also have the capability to passively oxidize soot accumulated on the filter, though some of the above-described factors may inhibit successful passive regeneration. Operation at highway speeds and high engine loads (high load means demanding more work from the engine, such as accelerating, driving uphill or carrying heavy cargo) typically leads to successful passive regeneration of a DPF. An example from a duty-cycle perspective of a vehicle that frequently experiences automatic passive regeneration would be a long-haul tractor-trailer. There is also often a threshold of speed or load that is required for automatic active regeneration strategies as well, though not as great as for passive regeneration—often at least 5 miles/hour or parked with a PTO engaged. In some vehicles, passive regeneration occurs so rarely that a DPF system relies almost exclusively on active regenerations to maintain a clean PM filter. An example of this from a duty-cycle perspective would be a vehicle that operates at idle,

low speed and low load over most of its duty cycle. Many emergency vehicles fall into this category.

It is possible to collect duty cycle data from trucks by extracting information that is broadcast by the engine's ECM. ECM's broadcast information such as engine speed, load, temperature, DPF backpressure, and many other parameters relevant to engine operation. In 2004 the Fire Apparatus Manufacturers Association conducted a data-collection project, downloading logged data from emergency vehicles in use across the United States, to document duty cycles and engine conditions typically experienced in the emergency fleet, including pumpers, aerials, and rescue vehicles in urban, suburban and rural communities.¹⁹ The 2004 FAMA data set includes 26 service months of data from 51 pumper trucks, 31 service months of data from 21 aerial trucks, and 14 service months of data from 4 rescue vehicles. Overall, the data reveal that emergency vehicles in urban centers log more hours than vehicles in suburban or rural areas, with the urban and suburban vehicles logging over five and four times the average rural engine hours, respectively, on an annual basis. This demographic data could be helpful to fleet managers who wish to understand why they have or have not experienced certain troubles with their

vehicles. The data also indicate that vehicles with PTO capability (pumpers and aerials) operate in PTO mode on average about 10 percent of their operating time. Further, the data indicate the vast majority of emergency fleet operation is at loads below 10 percent of maximum capacity and engine speeds below 1,000 rpm. Data of this type could be helpful to engine manufacturers who may wish to assure that their emission control system designs will be successful for a given application. For the vehicles from which operating data were collected, FAMA determined an average engine load using the total horsepower, percent load, and percent time at load. Table IV-1 presents a summary of the engine load data compiled in FAMA's study.

Table IV-2 presents operating data by both vehicle type and demographic, and Table IV-3 presents an overview of the data by vehicle type.

TABLE IV-1—FAMA ENGINE LOAD DATA

Apparatus type	Capacity range in study	Population average percent running load
Pumper	315–500 hp ..	18
Aerial	170–500 hp ..	30
Rescue	350–500 hp ..	20

TABLE IV-2—FAMA DUTY CYCLE DATA BY DEMOGRAPHIC

Service area	Operating condition	Pumper	Aerial	Rescue	Service area average
Rural	Engine Hours (Avg Annual)	301	204	301	295
	PTO Hours (Avg Annual)	70	63	.....	.....
	Low Speed (% Time < 1,000 RPM)	63	73	51	^a 62
	Medium Speed (% Time 1,000 < RPM < 1,800)	27	19	42	^a 29
	High Speed (% Time > 1,800 RPM)	11	9	7	^a 9
	Low Load (% Time < 10%)	61	83	59	^a 68
	Medium Load (% Time 10% < Load < 90%)	36	11	39	^a 29
Suburban	High Load (% Time > 90%)	3	6	2	^a 4
	Engine Hours (Avg Annual)	1364	1133	367	1272
	PTO Hours (Avg Annual)	168	^b 123	.....	.....
	Low Speed (% Time < 1,000 RPM)	71	68	77	^a 72
	Medium Speed (% Time 1,000 < RPM < 1,800)	23	27	17	^a 22
	High Speed (% Time > 1,800 RPM)	6	5	7	^a 6
	Low Load (% Time < 10%)	54	37	78	^a 56
Urban	Medium Load (% Time 10% < Load < 90%)	44	58	22	^a 41
	High Load (% Time > 90%)	3	5	0	^a 3
	Engine Hours (Avg Annual)	1107	2379	1686	1681
	PTO Hours (Avg Annual)	93	^b 213	.....	.....
	Low Speed (% Time < 1,000 RPM)	62	73	57	^a 64
	Medium Speed (% Time 1,000 < RPM < 1,800)	32	22	32	^a 29
	High Speed (% Time > 1,800 RPM)	5	5	11	^a 7
	Low Load (% Time < 10%)	73	53	44	^a 57
	Medium Load (% Time 10% < Load < 90%)	24	42	51	^a 39
	High Load (% Time > 90%)	3	5	5	^a 4

Notes:

^a Straight average by EPA from summary results. Other values in this table are weighted averages compiled by FAMA using individual vehicle data.

^b Includes both pumping and aerial operating hours.

¹⁹ Fire Apparatus Manufacturer's Association, Fire Apparatus Duty Cycle White Paper, August

2004, available at <http://www.deepriverct.us/firehousestudy/reports/Apparatus-Duty-Cycle.pdf>.

TABLE IV-3—FAMA DUTY CYCLE DATA BY VEHICLE TYPE

Operating condition	Pumper class average	Aerial class average	Rescue class average	Fleet average
Engine Hours (Avg Annual)	^a 924	^a 1239	^a 785	1244
PTO Hours (Avg Annual)	^b 117		.....	.....
Low Speed (% Time < 1,000 RPM)	66	71	61	67
Medium Speed (% Time 1,000 < RPM < 1,800)	27	23	30	26
High Speed (% Time > 1,800 RPM)	7	5	9	7
Low Load (% Time < 10%)	62	50	56	58
Medium Load (% Time 10% < Load < 90%)	35	45	41	38
High Load (% Time > 90%)	3	5	3	3

Notes:

^a Straight average by EPA from summary results. Other values in this table are weighted averages compiled by FAMA using individual vehicle data.

^b Includes only pumping hours. Aerial operating hours averaged 69 hours per year.

We can see from this study that engines on emergency vehicles across the country are commonly operated over duty cycles that offer very limited opportunities to regenerate DPF's. It is also important to note that emergency vehicles do not typically get deployed on planned duty schedules with predictable blocks of garage time for servicing or maintenance. While some other types of vocational vehicles may have duty cycles with many characteristics similar to those shown above, emergency vehicles are unique in their need to be ready to deploy at any moment for the purpose of protecting public safety and welfare by saving human lives that may be in immediate danger.

When trucks with an engine-driven PTO are working in a stationary PTO mode, some engines achieve the conditions to enable an automatic active regeneration during this time. While this is normally designed to be a transparent process, in practice some effects of this type of regeneration have been noticed by operators. EPA has received information from fire chiefs indicating that there have been instances where engine ECM's took control from the operator during water pumping operations. When an automatic active regeneration is initiated during a water pumping operation, for example, an ECM may be programmed to alter throttle position or engine speed to achieve the conditions needed to complete an automatic active regeneration. Depending on the design of the water pumping system's pressure regulation, this may in turn affect the water pressure in the fire hoses. EPA has not heard of this occurring on a widespread basis, and has reason to believe that affected engine and truck manufacturers have identified and corrected this issue on some vehicles. EPA's current regulations already allow

manufacturers to develop and request EPA approval for certification of engines with emission control strategies where the process of undergoing automatic active regeneration would not interfere with safely pumping fire suppressant. EPA requests comment on whether any EPA action should be taken to explicitly address this situation beyond what we are already proposing in this action.

While not addressed directly in this proposed action, there are technologies that could be implemented to decrease the amount of time emergency vehicles spend with their main engines operating at light loads and at idle. These technologies include electronically programmed automatic engine start/stop systems and hybrids. Automatic start/stop systems automatically stop and start an engine depending upon whether or not it is needed to supply power to the vehicle. This technology is already being implemented on other heavy-duty vehicles to decrease unnecessary engine idling. Hybrid drivetrains also decrease engine idling with an integrated alternate power source such as a battery. We are currently seeing an increase in the use of hybrid technologies in heavy-duty diesel vocational vehicles. Garbage trucks, utility company trucks, and other work trucks are using hybrid technology to power on-board hydraulic systems and cab heating and cooling systems. In conventional vehicles these systems are powered by a main engine typically operating at light load or at idle. Because automatic start/stop and hybrid technologies improve fuel economy and decrease greenhouse gas emissions, we believe that they will be used in more and more vehicles in the future. We believe there is potential for these technologies to be integrated into future designs of emergency vehicles to decrease their operation at light loads and at idle. Such technologies would not only improve fuel economy and

decrease greenhouse gas emissions from emergency vehicles, they would also help to prevent their diesel particulate filters from becoming plugged due to excessive operation at light loads and at idle. While we are not proposing any specific action at this time related to decreasing the amount of time emergency vehicles operate at light load or at idle, we request comment on the potential for application of alternate power sources and idle reduction technologies on emergency vehicles.

(3) What are the concerns for emergency vehicles using SCR?

Selective Catalytic Reduction (SCR) is an exhaust after-treatment system used to control NO_x emissions from heavy-duty engines by converting NO_x into nitrogen (N₂) and water (H₂O). The technology depends on the use of a catalytic converter and a chemical reducing agent, which generally is in an aqueous urea solution, and is often referred to as diesel exhaust fluid (DEF). Some trade names for this chemical reductant include AdBlue, BlueDef, NOxBlue, and TerraCair.

Most engine manufacturers chose to comply with the 2010 NO_x emission standard by adding SCR to their engine models. In general, the approach with an SCR system has been a sound and cost effective pathway to comply with EPA's 2010 emissions standards, and it is the primary path being used today.

DEF is injected into the exhaust upstream of the SCR catalyst where it forms ammonia and carbon dioxide. The ammonia then reacts with NO and NO₂, so that one molecule of urea can reduce two molecules of NO or one molecule of NO₂. A robust SCR system can achieve about 90 percent reduction in cycle-weighted NO_x emissions. Improvements have been made over the last several years to improve the NO_x conversion rate and reduce the impact of lower

exhaust temperatures on the conversion efficiency.

Because an SCR system is only effective when DEF is injected into the exhaust, we consider refilling a vehicle's DEF tank to be a critical emission-related engine maintenance requirement. We are taking action elsewhere in this notice (See Section V) to establish this in our regulations. Therefore, manufacturers have implemented a number of strategies to induce a vehicle operator to refill a vehicle's DEF tank when needed. These operator inducements generally include first illuminating one or more dashboard lights to warn the operator that the DEF tank needs to be refilled soon. However, if such initial inducements are persistently ignored by the vehicle operator, eventually additional inducements are typically activated that decrease the maximum speed or power of the vehicle. These additional inducements are intended to create conditions making operational conditions of the vehicle increasingly unacceptable if the initial dashboard lamp illumination inducements are persistently ignored. Similar inducements may occur in cases where DEF quality does not meet system specifications, or if the SCR system is not functioning correctly for another reason.

While decreasing vehicle performance can be an effective inducement strategy, we believe it may not be appropriate in all situations for emergency vehicles because of their special need to be ready at any moment for the purpose of protecting public safety and welfare by saving human lives that may be in immediate danger. We recognized this during the initial implementation of our 2010 NO_x standards, and we worked with the Fire Apparatus Manufacturers' Association (FAMA), the Ambulance Manufacturers Division of the National Truck Equipment Manufacturers Association, and the International Association of Fire Chiefs to support the publication of a May 18, 2010 memo that instructed emergency vehicle manufacturers and engine manufacturers to implement less severe inducement strategies for emergency vehicles.²⁰ In this proposal we are taking additional steps so that emergency vehicle manufacturers and engine manufacturers have the option to further reduce the severity or eliminate altogether any performance related inducements that are or could be implemented on emergency vehicles

²⁰FAMA 2010, Emergency Vehicle SCR and DEF Inducement Guidelines; 2010 Engine Emissions Control Requirements.

and their engines during emergency situations. We believe that this additional flexibility will help to prevent any abnormal condition of a vehicle's emission control system from adversely affecting the speed, torque, or power of an emergency vehicle during emergency situations.

D. What would occur if EPA took no action?

(1) The Industry Would Continue to Get Smarter

Improving the components of diesel particulate filters is the current subject of research and development activities within the automotive and air pollution control industries. Aspects that are being improved include filter ash storage capacity, filter pressure drop, substrate durability, catalyst activity, as well as other physical and chemical properties that can optimize the device for heavy-duty vehicle applications.

Engine manufacturers have taken a systems approach, optimizing the engine with its after-treatment system to realize the best overall performance possible. Manufacturers can manage the functioning of the emission control system by adjusting parameters such as the thermal profile of the after-treatment system, the exhaust gas chemical composition, the rate of consumption of DEF, the rate of particle deposition, and the conditions under which DPF regenerations (soot cleaning) may occur.

In a broad and general sense, the trend is that DPF's are slowly becoming even more robust without EPA intervention. Future DPF's will need fewer total regenerations during the useful life of the engine and control system, more passive and fewer active regenerations will occur, and manual regenerations will become rarer.

In addition, vehicle operators and fleet managers will continue to become more experienced with this new generation of sophisticated electronically-controlled vehicles. Manufacturers across the country are providing training on actions fleet managers can take to decrease problems with DPF regenerations. These actions include:

- Use low-ash engine oils.
- Avoid extended idling.
- Maintain insulation on the exhaust pipe.
- Maintain the crankcase filter.
- Periodically operate a vehicle at higher speeds and loads.

The Technology & Maintenance Council (TMC) of the American Trucking Associations conducted a survey in late 2011 to compare user experiences between EPA 2010, EPA

2007, and EPA 2004 vintage trucks.²¹ According to TMC, 72 percent of the survey respondents indicated that driver understanding of the 2007-vintage after-treatment system was worse than driver understanding of the 2004-vintage after-treatment system, and 33 percent of respondents indicated that driver understanding of the 2010-vintage after-treatment system was worse than driver understanding of the 2007-vintage after-treatment system. The responses regarding driver understanding of fault codes and dash lamps indicated that drivers have 69 percent poorer understanding of 2007 vs. 2004 fault codes and dash lamps, and 50 percent poorer understanding of 2010 vs. 2007 fault codes and dash lamps. We expect that this education component will gradually improve over time without EPA intervention.

(2) The Fleet Would Continue to Migrate to the 2010 Standards

Vehicles with 2010-compliant heavy-duty diesel engines tend to place different demands on their DPF systems than pre-2010 vehicles. With the addition of NO_x after-treatment such as SCR, engines may be tuned to emit lower engine-out PM (recall the NO_x-PM trade-off described above). When an SCR system is integrated, it provides the opportunity to run an engine at lower soot levels and elevated levels of NO₂, which is a chemical species that efficiently oxidizes the soot in the absence of elevated temperatures. It is EPA's expectation that vehicles of MY 2010 and beyond, particularly those using SCR, will generally experience fewer troubles with DPF's than the earlier model year vehicles, due to the nature of the on-board technology as well as the many years of experience gained by manufacturers since 2007. The 2011 TMC survey included an assessment of relative satisfaction levels between EPA 2010, EPA 2007, and EPA 2004 vintage trucks. The survey results indicate that after-treatment durability is better with EPA 2010 trucks compared to EPA 2007 trucks, with less time out of service.²² As an illustration, according to a Volvo product brochure, the company's EPA 2010-compliant trucks eliminate the need for active DPF regeneration, reducing driver involvement with the emission control

²¹ American Trucking Associations, Technology & Maintenance Council, S3 Engine Study Group. Survey conducted Fall 2011, public slides dated February 2012 available at http://www.truckline.com/Federation/Councils/TMC/Documents/2012%20Annual%20Meeting%20and%20Exhibition%20Documents/TMC12A_TECH2.pdf.

²² See ATA/TMC, Note 21.

system, using a design that allows for the DPF system to reliably oxidize accumulated soot using continuous passive regeneration.²³

(3) Some Trucks Would Continue to Experience Problems

Even though such trends would indicate that instances of emergency vehicles experiencing difficulty managing regeneration of DPF's would decrease, in the absence of this EPA action, some vehicles would be likely to continue to experience some problems.

EPA has learned that some engine manufacturers have disabled these engine protection measures on some emergency vehicles. In these cases the manufacturer has reasoned that an operator should be allowed to remain in control of an emergency vehicle even facing risk of catastrophic failure, with the consequences of that failure being less severe than the consequences of the vehicle prematurely losing power, torque and/or speed while performing emergency services.

Without a clear action from EPA to provide the regulatory flexibility needed for swift deployment of robust remedies throughout the emergency vehicle fleet, implementation of best practices could be inconsistent, insufficient, or even impossible due to regulatory constraints. Some vehicles would continue to experience frequent plugging of DPF's, frequent forced filter regenerations, and reduced engine power, speed or torque that diminish the ability of first responders to save lives and property. There would also remain a heightened risk that an emergency vehicle could be taken out of service when it is most needed.

E. Proposed Regulatory Action

As described above in Section IV.C, many DPF-equipped vehicles include engine controls and driver alerts that lead to decreases in maximum speed, torque, or power when DPF backpressure exceeds normal levels, as protective measures for either the engine or the DPF, or as inducements for the operator to immediately conduct DPF regeneration. Similarly, vehicles equipped with selective catalytic reduction (SCR) systems for NO_x reduction currently have engine controls and driver alerts that lead to eventual loss of speed, torque, or power when the SCR controls detect abnormal conditions (such as a malfunction, low DEF levels, etc.), as inducements to take

immediate corrective action to allow the SCR to function normally. In most vehicles, these alerts and inducements may be easily avoided with normal driving and routine maintenance, and if activated, these inducements would not have any significant effect on public safety and welfare. In emergency vehicles, however, should any of these limits on maximum speed, torque, or power occur while a vehicle is responding to an emergency, it could be a matter of life or death. To address these issues that could otherwise limit the maximum speed, torque or power of an emergency vehicle's engine when it is needed most, EPA is proposing to amend 40 CFR part 86 to revise the definition of defeat device; add new definitions of emergency vehicle, ambulance and fire truck; and add new labeling requirements for new on-highway engines with approved Auxiliary Emission Control Devices for emergency vehicles. EPA is also amending its regulations at 40 CFR part 1039 to revise the definition of defeat device, add a new definition of emergency equipment, and add a new labeling requirement for nonroad engines with approved Auxiliary Emission Control Devices for emergency equipment.

In our current regulations, engine manufacturers may request as part of an application for new engine or vehicle certification, and EPA may approve, Auxiliary Emission Control Devices, if they are not determined to be "defeat devices." Auxiliary Emission Control Devices, or AECDD's, are any design element of an engine's emission control system that senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.²⁴ Some AECDD's can temporarily decrease the effectiveness of an emission control system. This type of AECDD is only permitted in very limited situations, for example, when such excursions are deemed to be necessary in order to protect the vehicle, engine, and/or emission control system during limited modes of operation.

A defeat device is a type of AECDD that reduces the effectiveness of vehicle emission controls in situations when such reduction in effectiveness is not approved or permitted by EPA. Defeat devices are not permitted by the Clean Air Act or EPA.

Approvals of AECDD's are made by EPA on a case-by-case basis. In applications for engine certification,

manufacturers must include a detailed description of each AECDD to be installed in or on any vehicle (or engine) covered by the application, as well as a detailed justification of each AECDD that results in a reduction in effectiveness of the emission control system. According to 40 CFR 86.094–21(b)(1)(i)(B), EPA may disapprove a request for an AECDD based on consideration of currently available technology. Use of an unauthorized or disapproved AECDD can be considered a violation of section 203 of the Act.²⁵

In this action, EPA is proposing to revise the definition of *defeat device* at 40 CFR 86.004–2, 86.1803–01, and 40 CFR 1039.115 to exclude AECDD's that apply only for engines on emergency vehicles, where the need for an AECDD is justified in terms of preventing the vehicle or equipment from losing speed, torque, or power due to abnormal conditions of the emission control system, or in terms of preventing such abnormal conditions from occurring during operation related to emergency response.

In this action, EPA is proposing to define an *emergency vehicle* as a vehicle that is an ambulance or a fire truck. EPA is proposing to adopt a definition of *ambulance* consistent with the current U.S. General Services Administration Star of Life specification.²⁶ EPA is proposing to define *fire truck* as a vehicle designed to be used under emergency conditions to transport personnel and equipment and to support the suppression of fires and mitigation of other hazardous situations, consistent with the scope of standards for automotive fire apparatus issued by the National Fire Protection Association.²⁷ We are defining *emergency equipment* as specialized vehicles to perform aircraft rescue and firefighting functions at airports, or wildland fire apparatus. With these definitions, it is EPA's intent to include vehicles that are purpose-built and exclusively dedicated to firefighting, emergency/rescue medical transport, and/or performing other rescue or emergency personnel or equipment transport functions related to saving lives and reducing injuries coincident with fires and other hazardous situations. EPA requests comment on whether we should refine or expand our

²⁵ See 40 CFR 86.094–21 and 094–22.

²⁶ U.S. General Services Administration, Federal Specification for the Star-of-Life Ambulance, August 1, 2007, <http://www.deltaveh.com/f.pdf>.

²⁷ See National Fire Protection Association web page. Accessed April 2012 at <http://www.nfpa.org/catalog/product.asp?title=Code-1901-2009-Automotive-Fire-Apparatus&category%5Fname=&pid=190109&target%5Fpid=190109&src%5Fpid=&link%5Ftype=search&icid=>.

²³ See Volvo 2010 product brochure, "Volvo's SCR No Regen Engine," available at http://www.volvotrucks.com/SiteCollectionDocuments/VTNA_Tree/ILF/Products/2010/09-VTM075_NoRegen_SS_041609.pdf.

²⁴ See 40 CFR 86.082–2.

definition of emergency vehicle within the scope of this action to include those equipped with heavy-duty diesel engines that serve other civilian rescue, law enforcement or emergency response functions. We are especially interested in information regarding instances of such vehicles experiencing or risking loss of power, speed or torque due to abnormal conditions of the emission control system, and how that may inhibit mission-critical life- and property-saving work.

EPA is also proposing an associated engine labeling requirement so that engines with approved emergency vehicle AECD's would be clearly identified and distinguished from other similar engines.

As mentioned above in Section IV.C, some engine manufacturers currently specify that when an engine is sold for installation in an emergency vehicle, some of the default power, torque or speed inducements be de-activated or set to alternate, less severe settings. In such applications, when the DPF system requests regeneration, the warning lights remain illuminated while the vehicle remains in complete control of the driver. In these cases the manufacturer has likely reasoned that the consequences of catastrophic failure would be less severe than the consequences of the vehicle prematurely losing power, torque and/or speed while performing emergency services. EPA has granted related AECD's in the past.

However, without the proposed optional flexibilities provided by EPA in this action, manufacturers could be prevented from implementing truly failsafe solutions for all affected vehicles. For example, while current custom solutions may allow an emergency vehicle to continue pumping water or transporting a person to safety, its DPF would continue to accumulate particles and the risk of catastrophic failure would increase.

In this action, EPA is proposing amendments so that manufacturers could apply for (and EPA could approve) AECD's that would be justified in terms of preventing the occurrence of abnormal conditions of the emission control systems for emergency vehicles or in terms of preventing the engines from losing speed, torque, or power due to such abnormal conditions. In this context, EPA would consider abnormal conditions to be parameters outside normal ranges for proper operation, such as excessive exhaust backpressure from high soot loading on a DPF or insufficient DEF for use with an SCR system.

EPA is encouraging manufacturers to apply for AECD's that are tailored for engines on emergency vehicles, considering the duty cycle information presented above in Section IV.C(2)(b) along with any other information needed to design failsafe emission control systems for new emergency vehicles. EPA is also encouraging manufacturers to design field modifications to address these issues on in-use emergency vehicles, including those whose engines are no longer in production. Further discussion of field modifications is provided below in Section IV.F(2).

To achieve these goals, EPA understands that increased flexibility would be needed because EPA's strict NO_x and PM standards present many design constraints. Below we describe some solutions that EPA believes it could approve as part of an emergency vehicle AECD or field modification, as proposed. Upon adoption of these amendments, EPA would encourage requests by engine manufacturers for emergency vehicle AECD's and/or field modifications for in-use emergency vehicles for which service disruptions related to abnormal conditions of emission control systems may occur or have occurred. EPA suggests that such AECD's or field modifications could include, but are not limited to, one or more of the following strategies:

(1) Liberalized Regeneration Requests

It is current practice that most modern diesel engine ECM's are set to initiate an automatic active regeneration only above a designated DPF soot load, and those vehicles equipped with manual regeneration switches are set to not allow the option of initiating manual active regeneration until an even greater soot load is detected. The reason why manufacturers do this is related to certification of engine families and vehicle test groups. If manufacturers can limit the frequency of regenerations by design, then they can be assured that average emissions will remain below the certified average emission level. Excess regenerations could lead to higher average emissions, since some exhaust emissions increase during regeneration. Particularly for engines not equipped with SCR systems, NO_x emissions can increase by an order of magnitude during regeneration, and these temporary increases in emission are accounted for in EPA's certification process. See Section VII, below, for more information about the emissions impacts of DPF regenerations. In addition, excess regenerations could shorten the useful life of the DPF system

since high temperatures place stress on filter substrates.

EPA believes that emergency vehicle AECD's that enable more frequent automatic active and manual active DPF regenerations, associated with a wider range of soot loads could improve the reliability of DPF systems without significantly compromising emissions reductions or durability. As explained below Section IV.F(4), EPA does not expect this provision to affect other aspects of certification. For emergency vehicles with approved AECD's that involve changes in the frequency of regeneration, EPA proposes that the resulting increase in NO_x emissions not be counted against certification levels for applicable engine families or vehicle test groups. Furthermore, EPA proposes that emissions certification testing be conducted with any approved AECD's for emergency vehicle or equipment deactivated. According to EPA's current engine certification data, engines from MYs 2008 and 2011 have an average maximum automatic active regeneration frequency near 20 percent, with the typical frequency between three and seven percent. Those with frequencies near zero rely almost exclusively on passive regeneration.²⁸ EPA requests comment on whether an option for more frequent automatic active and/or manual active DPF regenerations for emergency vehicles would be beneficial for reliability of those DPF systems, and whether EPA should apply any constraints on the frequency of manual active DPF regenerations when approving AECD's for emergency vehicles.

(2) Engine Recalibration

As mentioned above, in-cylinder combustion chemistry dictates a NO_x-PM trade-off where engines calibrated to reduce in-cylinder NO_x tend to have higher PM levels. These factors lead to higher rates of particle accumulation and lower rates of particle oxidation on filters. EPA believes that AECD's that incorporate engine calibration modifications could enable operation in a "low soot mode" with a reduced rate of particle deposition that would lead to more frequent and effective passive regenerations. Such calibration modifications could also extend the operating time between all types of regenerations, improve active regeneration effectiveness, and boost reliability of the DPF systems. On engines with downstream (i.e., SCR) NO_x controls, SCR control could be

²⁸ Frequency in percent refers to the fraction of engine test cycles during which an automatic active regeneration occurs.

modulated such that engine recalibration would not significantly affect NO_x emissions. On engines without downstream NO_x controls, EPA believes that some degree of increased NO_x emissions during the conditions justified by the AECD would be approvable for emergency vehicles. As explained below in Section IV.F(4), EPA does not expect this provision to affect other aspects of certification. When manufacturers calculate the average NO_x emissions during a test cycle, they incorporate data regarding both the frequency of regeneration and the increase in NO_x emissions during regeneration. For emergency vehicles with approved AECD's that involve recalibration to alter regeneration frequency or average NO_x emissions, EPA proposes that the resulting increase in NO_x emissions not be counted against certification levels for applicable engine families or vehicle test groups. Furthermore, EPA proposes that emissions certification testing be conducted with any approved AECD's for emergency vehicle or equipment deactivated. A discussion of the estimated emissions impacts of recalibration is found below in Section VII.B. EPA requests comments on whether an upper limit of average NO_x emissions—considering regeneration frequency and duration, peak NO_x emission rate, and operating conditions under which the AECD is triggered—should be established as part of the implementation of this AECD option, and what levels may be appropriate.

(3) Backpressure Relief

It is EPA's objective that all of our clean diesel emissions standards be implemented with reliable technologies that require a minimum amount of driver intervention and do not compromise the utility of vehicles. EPA understands that manufacturers are motivated to seek design solutions that are cost effective and easily deployable. However, by focusing solely on preventive measures such as those described above, manufacturers may not achieve a completely failsafe DPF strategy on all emergency vehicles. EPA anticipates that some vehicles may benefit from an additional failsafe measure that relieves engine exhaust backpressure as a last resort to prevent loss of engine speed, torque or power. There are products on the market today that could be configured to temporarily relieve excessive engine exhaust backpressure when detected, then return the system to normal at the instant that backpressure returns to a safe level. Such a device may be justified as a failsafe measure, and may

be included as part of an overall strategy that also includes preventive measures, if justified and properly limited, where excess PM emissions would be expected to be emitted only during a small fraction of vehicle operation. That is, the vast majority of DPF operating cycles would be expected to have continuous PM emission control, while any temporary backpressure relief that reduced PM control or allowed bypass of controls would be expected relatively infrequently. EPA requests comment on whether a failsafe measure to provide engine exhaust backpressure relief should be available as an approvable AECD option, and what constraints, if any, should be established for this option.

F. What engines and vehicles would be affected?

Today's proposal would apply to new and in-use fire trucks and ambulances, new and in-use airport fire apparatus and wildland fire apparatus, and heavy-duty diesel engines on these emergency vehicles and equipment.

(1) Newly Certified Engines and Vehicles

Of those new diesel engines covered by EPA's current heavy-duty diesel standards, only those installed in vehicles or equipment meeting the definition of emergency vehicle or emergency equipment would be eligible to obtain an approved AECD of the type discussed above in Section IV.E. Where a vehicle is chassis-certified and either sold as an incomplete vehicle to a truck body manufacturer or built and sold as a complete vehicle, only those sold and built as emergency vehicles would be eligible to obtain an approved AECD of the type discussed above in Section IV.E.

(2) Certified Engines and Vehicles In-Use

To address in-use engines and vehicles, EPA proposes to allow engine and vehicle manufacturers to submit requests for EPA approval of Emergency Vehicle Field Modifications (EVFMs) for on-highway emergency vehicles and Emergency Equipment Field Modifications (EEFMs) for nonroad emergency equipment. EVFMs and EEFMs would be modifications to existing hardware and software to be installed on in-use vehicles or equipment to prevent loss of speed, torque, or power due to abnormal conditions of emission control systems, or to prevent such abnormal conditions from occurring, during vehicle or equipment operation related to emergency response. EPA proposes to

use an approval process similar to the process that is currently utilized to submit modifications to current applications for certification, also known as "running changes." The information submitted by a manufacturer to EPA as part of this request and approval process would be similar to the information submitted for emergency vehicle or equipment AECD's.

It is important to emphasize that this proposal would allow only those approved modifications to be deployed by manufacturers and their authorized dealers. Modifications made by end users are not generally approvable; rather the tampering prohibitions would generally apply to such modifications.

EPA has identified three types of field modifications that would be permitted for emergency vehicles and emergency equipment under the proposed regulations, based on the extent to which the modification is being incorporated into new production vehicles and equipment. The three types are:

- *Type A:* Any field modification that is a change to a certified vehicle (i.e., a vehicle, engine or equipment covered by a certificate of conformity) that is identical in all respects to a running change that is approved for incorporation in new vehicles by the manufacturer. Where the running change was approved by EPA for implementation only in conjunction with certain other running changes, the field modification may be considered to be a Type A field modification only if implemented under the same constraints.

- *Type B:* Any field modification that is not identical in all respects to, but provides for essentially the same purpose as, a running change that is being incorporated in new vehicles by the manufacturer or that would have been incorporated if the vehicle were still in production. A Type B field modification is used when it is not practical to incorporate the exact running change in vehicles that have left the assembly line, or when the vehicles are no longer in production.

- *Type C:* Any field modification that is made selectively only to vehicles which have left the assembly line and which would not have been incorporated on the assembly line. For example, this would apply when making a field modification to a vehicle that is no longer in production where there are no similar vehicles in production.

The amount of justification needed for the field modification differs depending

on which type of modification is being requested.

(3) Labeling Requirements

Because the engines and vehicles eligible for the AECD's described in this proposal belong to broadly certified engine families and test groups, when they are sold for installation in an emergency vehicle and equipped with one or more approved emergency vehicle AECD's, they must be labeled as such, to distinguish them from other certified engines. EPA is proposing adding a labeling requirement to 40 CFR part 86 subpart A, such that engines with one or more approved AECD's for emergency vehicle applications must be labeled with the statement: "THIS ENGINE IS FOR INSTALLATION IN EMERGENCY VEHICLES ONLY." EPA is also proposing adding a labeling requirement to 40 CFR part 86 subpart S, such that vehicles with one or more approved AECD's for emergency vehicles, include the following statement on the emission control information label: "THIS VEHICLE HAS A LIMITED EXEMPTION AS AN EMERGENCY VEHICLE." EPA is also adding a labeling requirement to 40 CFR part 1039, such that nonroad engines with one or more approved AECD's for emergency equipment include a label with the following statement: "THIS ENGINE IS FOR INSTALLATION IN EMERGENCY EQUIPMENT ONLY."

EPA requests comment on whether these labeling requirements are satisfactory to ensure that engines and vehicles operating with approved emergency AECD's are permanently distinguished from similar certified engines. EPA also requests comment on whether a similar label should be required for an in-use emergency vehicle or equipment where a field modification is deployed that prevents the engine from losing speed, torque, or power due to any occurrences of abnormal conditions of the emission control system, or prevents such abnormal conditions from occurring.

(4) Other Regulatory Provisions

Today's proposal would not alter the tampering prohibition in 40 CFR 1068.101(b)(1). This provision describes a general prohibition against anyone from removing or rendering inoperative an engine's emission controls before or after entering into service, where an exception is provided in 1068.101(b)(1)(ii) for engine modifications needed to respond to a temporary emergency, provided that the engine is restored to proper functioning as soon as possible after the emergency has passed. EPA encourages

manufacturers to design their emergency vehicle AECD's to be engaged only to the extent necessary to prevent the engine from losing speed, torque, or power due to abnormal conditions of the emission control system, or to prevent such abnormal conditions from occurring during operation related to emergency response. EPA recognizes that there may be cases where an AECD may need to be engaged at times other than while actively responding to an emergency, in order to assure that loss of speed, torque or power does not occur during operation related to emergency response. EPA also recognizes that some AECD's may involve electronic approaches where the engine's functions would be modulated based on exhaust backpressure or other parameters that are not correlated with any emergency situation. EPA may even, in extreme cases, such as at high altitude or with certain older MY engines allow engagement of AECD's at all times, if they are justified as necessary to prevent engine from losing speed, torque, or power during operation related to emergency response.

We would also encourage manufacturers to design their emission control systems to discourage tampering. According to EPA's tampering prohibition, a vehicle operator who abuses or alters an approved AECD may be guilty of tampering. For example, if an AECD includes enabling an operator to initiate more frequent manual active regenerations, engine manufacturers may choose to prevent the abuse of this function by means such as a daily or weekly cap on the number of manual active regenerations, or a minimum soot loading for the function to engage. As another example, if an emergency vehicle alerts a driver to an abnormal condition of its emission control system by illuminating dash lamps, alarms or other warnings that do not limit vehicle performance, it is the operator's responsibility to take prompt action to remedy the problem.²⁹ If an operator disregards such warnings beyond the time needed to respond to the emergency, this may be considered tampering. It is important to note that if an emergency vehicle is not equipped to ever allow an operator to initiate a manual active regeneration, this may in

²⁹ Although this action would not affect certification of engine families or test groups, EPA's regulations do offer options to manufacturers who wish to ensure that emission-related maintenance will occur in use, including visible signals that are not reset until maintenance occurs. 40 CFR 86.004-25(b)(6)(ii).

practice encourage tampering by the end user.

Manufacturers of highway and nonroad engines would be required to describe any emergency vehicle AECD in an application for certification. In this action, we are not proposing any revisions to the information needed to review and approve AECD's. It is common practice for manufacturers, in describing AECD's, to identify engine parameters such as those that would operate differently to preserve adequate engine performance during an emergency, including information about how the engine would respond under different in-use operating conditions under the various sets of conditions that would otherwise cause the engine to operate at less than full performance levels. Other than the requirement for a manufacturer to describe the emergency vehicle AECD in its application for certification, we do not expect this provision to be relevant for other aspects of certification. For example, EPA proposes that emissions certification testing be conducted with any approved AECD's for emergency vehicle or equipment deactivated. Additionally, manufacturers would not need to consider emergency vehicle AECD's when developing infrequent regeneration adjustment factors (IRAFs) or when developing deterioration factors (DFs). Thus, EPA proposes that manufacturers could include emergency and non-emergency engines and vehicles in the same engine families and test groups. EPA also proposes that manufacturers may apply for emergency vehicle AECD's for new, existing, and/or formerly approved emissions certificates. EPA requests comments on this aspect of the proposal.

V. Scheduled Maintenance and Maintenance Interval for Replacement of Diesel Exhaust Fluid

EPA is proposing to include new provisions in its regulations that explicitly permit replacement of diesel exhaust fluid (DEF) as part of approved emission-related scheduled maintenance and set out the permitted maintenance intervals for replacement of DEF on diesel fueled new motor vehicles, new motor vehicle engines and new nonroad compression-ignition (NRCI) engines.

A. Background

EPA's regulations define the emission-related scheduled maintenance that may be performed for purposes of durability testing and for inclusion in maintenance instructions provided to purchasers of new motor vehicles and new motor vehicle engines.

See 40 CFR 86.094–25(b); 40 CFR 86.004–25(b); 40 CFR 86.1834–01(b). The regulations include lists of emission-related maintenance and intervals for this maintenance. See 40 CFR 86.004–25(b)(4); 40 CFR 86.1834–01(b)(4). For example, in general, the maintenance interval for the adjustment, cleaning, repair of the following items is 100,000 miles of use, and then at 100,000 mile intervals thereafter for diesel cycle light-duty vehicles, diesel cycle light-duty trucks, and light heavy-duty diesel engines and at 150,000 mile intervals for medium and heavy heavy-duty diesel engines: Fuel injectors, turbochargers, electronic engine control units, particulate trap or trap-oxidizers, exhaust gas recirculation systems, and catalytic converters. The regulations also include a procedure that allows manufacturers to request a different maintenance schedule or to request new scheduled maintenance, which includes maintenance that is a direct result of the implementation of new technology not found in production prior to the 1980 model year. See 40 CFR 86.094–25(b)(7); 40 CFR 86.1834–01(b)(7).

Similarly, EPA's regulations applicable to nonroad compression-ignition (NRCI) engines define the emission-related maintenance that may be performed for purposes of providing ultimate purchasers written instructions for properly maintaining and using the engine. Such emission-related maintenance and associated intervals apply to service accumulation on emission-data engines. See 40 CFR 1039.125. This regulation includes lists of emission-related maintenance and intervals for this maintenance. See 40 CFR 1039.125(a)(2) and 1039.125(a)(3). For example, in general, the maintenance interval for adjustment, cleaning, repair or replacement for catalytic converters on engines below 130 kilowatt (kW) may not occur more frequently than after 3,000 hours and 4,500 hours for engines at or above 130 kW. This regulation also includes a procedure that allows manufacturers to request a different maintenance schedule or to request new scheduled maintenance, which includes maintenance on emission-related components that were not in widespread use on NRCI engines prior to 2011.

EPA adopted new emission standards applicable to emissions of NO_x from light-duty vehicles and trucks on February 10, 2000 (65 FR 6698). Similarly EPA adopted new standards applicable to emissions of NO_x from heavy-duty highway engines and vehicles on January 18, 2001 (66 FR 5002). These standards have been

phased in since model year 2004 and all were fully phased-in by 2010. Most manufacturers of affected diesel engines and vehicles have chosen to use a NO_x reduction technology known as selective catalytic reduction (SCR) in order to meet these requirements. SCR systems use a nitrogen-containing reducing agent that usually contains urea and is known as diesel exhaust fluid (DEF). The DEF is injected into the exhaust gas and requires periodic replenishment by refilling the DEF tank.

In addition, EPA adopted new emission standards applicable to emissions of NO_x from NRCI engines on June 29, 2004 (69 FR 38958). These standards have begun to be implemented pursuant to a phase-in that began in the 2011 model year. EPA conducted a webinar workshop on July 26, 2011 with NRCI engine manufacturers to address the application of SCR emission technology. Some manufacturers are currently certifying their NRCI engines with the use of SCR systems and we expect that many manufacturers will use SCR systems to meet the final Tier IV NO_x reduction requirements for their diesel engines.

In a Guidance Document signed on March 27, 2007 (CISD-07-07), EPA indicated its belief that the requirements for critical emission-related maintenance would apply to replenishment of the DEF tank and that manufacturers wanting to use SCR technology would likely have to request a change to scheduled maintenance per 40 CFR 86.1834–01(b)(7) or 86.094–25(b)(7).

Following the completion of the Guidance, EPA received several requests for new maintenance intervals for SCR-equipped motor vehicles and motor vehicle engines.³⁰ EPA granted these requests for model years 2009 through 2010 for light-duty vehicles and 2009 through 2011 for heavy-duty engines, in a notice that was published in the **Federal Register** (74 FR 57671, November 9, 2009). In granting the requests, EPA stated that it

believes the maintenance of performing DEF refills on SCR systems should be considered as 'critical emission-related scheduled maintenance.' EPA believes the existing allowable schedule maintenance mileage intervals applicable to catalytic converters

³⁰ See letter dated March 31, 2009 from Giedrius Ambrozaitis, Alliance of Automobile Manufacturers, Director, Environmental Affairs to Karl Simon, EPA, Director, Compliance and Innovative Strategies Division; Letter dated May 8, 2009 from Jed Mandel, Engine Manufacturers Ass'n to Karl Simon, EPA, Director, Compliance and Innovative Strategies Division; Letters dated June 29, 2009 and October 8, 2009 from Steven C. Berry, Director Government Relations Volvo Powertrain.

are generally applicable to SCR systems which contain a catalyst, but that the DEF refills are a new type of maintenance uniquely associated with SCR systems. Therefore, the 100,000-mile interval at 40 CFR § 86.1834–01(b)(4)(ii) for catalytic converters on diesel-cycle light-duty vehicles and light-duty trucks (and any other chassis-certified vehicles) and the 100,000-mile interval (and 100,000 mile intervals thereafter) for light heavy-duty diesel engines and the 100,000-mile interval (and 150,000 mile intervals thereafter) for medium and heavy heavy-duty diesel engines at 40 CFR § 86.004–25(b)(4)(iii) are generally applicable to SCR systems. As noted, the SCR systems are a new type of technology designed to meet the newest emission standards and the DEF refill intervals represent a new type of scheduled maintenance; therefore, EPA believes that manufacturers may request from EPA the ability to perform the new scheduled maintenance of DEF refills.

EPA approved a maintenance interval for refill of DEF tanks equal to the applicable vehicle's scheduled oil change interval for light-duty vehicles and light-duty trucks. For heavy-duty engines, EPA approved a maintenance interval equal to the range (in miles or hours) of the vehicle operation that is no less than the vehicle's fuel capacity (i.e., a 1:1 ratio), for vocational vehicles such as dump trucks, concrete mixers, refuse trucks and similar typically centrally fueled applications. For all other vehicles equipped with a constantly viewable DEF level indicator (e.g. a gauge or other mechanism on the dashboard that will notify the driver of the DEF fill level and the ability to warn the driver of the need to refill the DEF tank before other inducements occur), EPA approved a DEF tank refill interval equal to no less than twice the range of vehicle's fuel capacity (i.e., a 2:1 ratio). For all other vehicles that do not have a constantly viewable DEF level indicator, EPA approved a DEF tank refill interval equal to no less than three times the range of the vehicle's fuel capacity (i.e., a 3:1 ratio).

Engine and vehicle manufacturers provided additional requests for new maintenance intervals for vehicles and engines in model years not covered by the November 9, 2009 **Federal Register** notice.³¹ On January 5, 2012 (77 FR 488), EPA approved new maintenance

³¹ See letter dated July 20, 2010 from Giedrius Ambrozaitis, Alliance of Automobile Manufacturers, Director, Environmental Affairs to Karl Simon, EPA, Director, Compliance and Innovative Strategies Division; Letter dated June 13, 2011 from Timothy A. French, Engine Manufacturers Ass'n to Justin G. Greuel, EPA, Compliance and Innovative Strategies Division; Letter dated April 28, 2011 from Steve Berry, Volvo Powertrain; Letters dated August 18, 2011 and September 27, 2011 to Karl Simon, EPA, Director, Compliance and Innovative Strategies Division from R. Latane Montague, Hogan Lovells.

intervals for the refill of DEF tanks applicable to light-duty vehicles and light-duty trucks, as well as for heavy-duty engines for 2011 and later model years. For light-duty vehicles and light-duty trucks the approved interval for DEF refill remains at the scheduled oil change interval. For heavy-duty engines the approved maintenance interval for vocational vehicles remains at 1:1 and for all other types of heavy-duty vehicles the approved maintenance interval is 2:1.

On July 26, 2011, EPA conducted a webinar workshop for NRCI engine manufacturers in order to provide EPA's thinking, at the time, about the certification of SCR-equipped NRCI engines. EPA discussed the issue of maintenance intervals for the refill of DEF and instructed manufacturers to follow the regulatory provisions in order to petition EPA for what it thought were appropriate intervals. Following the workshop, EPA received several requests for new maintenance intervals for SCR-equipped NRCI engines. EPA granted these requests for 2011 and later model years in a notice that was published in the **Federal Register** (77 FR 497, January 5, 2012). In granting the requests, EPA stated that it

believes that SCR systems are a new technology and are properly considered a critical emission-related component. EPA believes the existing allowable schedule maintenance mileage intervals applicable to catalytic converters are generally applicable to SCR systems which contain a catalyst, but that the SCR systems are a new type of technology and that DEF refills are a new type of maintenance uniquely associated with SCR systems. Therefore, the 3,000 hour (engines below 130 kW) and 4,500 hour (engines at or above 130kW) intervals are generally applicable to SCR systems. As noted, the SCR systems are a new type of technology designed to meet the newest emission standards and the DEF refill intervals represent a new type of scheduled maintenance; therefore, EPA believes that manufacturers may request from EPA the ability to perform the new scheduled maintenance of DEF refills.

EPA approved a maintenance interval for refill of DEF tanks that shall be no less than the equipment's fuel capacity (i.e., a 1:1 ratio of DEF refill to fuel refill).

B. Proposed Regulatory Action

EPA is today proposing to add DEF replenishment to the list of scheduled emission-related maintenance for diesel-fueled motor vehicles and motor vehicle engines, as well as for NRCI engines that use SCR. EPA is also proposing to incorporate appropriate maintenance intervals for this scheduled maintenance.

(1) Scheduled Emission-Related Maintenance

EPA is proposing to list DEF replenishment as scheduled emission-related maintenance in 40 CFR 86.004–25(b)(4) and 40 CFR 86.1834–01(b)(4) for diesel-fueled motor vehicles and motor vehicle engines, as well as 40 CFR 1039.125(a)(2) and 40 CFR 1039.125(a)(3) for NRCI engines that use SCR.

Over the past several model years, since the implementation of the most recent standards for NO_x, many manufacturers have chosen SCR as the technology used to meet these stringent NO_x standards. Typically, should a manufacturer desire new maintenance (that it wishes to recommend to purchasers and perform during service accumulation on emission-data engines) not found in 40 CFR 86.004–25(b)(4) and 86.1834–01(b)(4) or at 40 CFR 1039.125(a)(2) and 40 CFR 1039.125(a)(3), then it utilizes the provisions allowing manufacturers to request such maintenance. Given that SCR use is now common in the industry and replenishment of DEF is necessary for SCR to be effective, it is appropriate to add DEF replenishment to the list of scheduled emission-related maintenance published in the Code of Federal Regulations (CFR), rather than rely on the provisions of paragraph (b)(7) for motor vehicles and paragraph 1039.125(a)(5) for NRCI engines.

(2) Maintenance Intervals for On-Highway Diesel Engines

EPA is also proposing to incorporate appropriate maintenance intervals for this scheduled maintenance. In general, they are the same as were approved under the (b)(7) process. For light-duty vehicles and light-duty trucks, we are proposing an interval equal to the scheduled oil change interval for the vehicle. Light-duty vehicles and trucks do not have the carrying and storage capacity required for the quantity of DEF needed to satisfy longer maintenance intervals such as the 100,000 mile scheduled maintenance interval generally applicable to catalytic converters. As EPA explained in its previous notices regarding this issue, automobile manufacturers have stated that it takes approximately an 8 gallon DEF tank to assure the DEF will last for the length of a typical scheduled oil change interval. Assuming an oil change interval of 10,000 miles, a DEF tank size of approximately 80 gallons would be required to meet a 100,000 mile DEF refill maintenance interval. Even a 16–20 gallon DEF tank (to meet a 2 oil change interval) would interfere with

the space that is necessary for typical light-duty vehicle design and transportation needs of the consumer. Interior cabin volume and cargo space are highly valued attributes in light-duty vehicles and trucks. Manufacturers have historically strived to optimize these attributes, even to the point of switching a vehicle from rear-wheel drive to front-wheel drive to gain the extra interior cabin space taken up by where the drive shaft tunnel existed, or switching the size of the spare tire from a conventional sized tire to a small temporary tire to gain additional trunk space. Thus any significant interior, cargo or trunk space used to store a DEF tank would be unacceptable to customers. There are also packaging concerns with placing a large DEF tank in the engine compartment or in the vehicle's undercarriage. Most vehicle undercarriages are already crowded with the engine, exhaust system, including catalytic converters and mufflers, fuel tank, etc. limiting any available space for a DEF tank.

In addition to the inherently space constrained areas on the vehicle to place both fuel tanks and DEF tanks (an additional 8 gallon tank represents a very significant demand for space) the addition of the weight associated with the DEF represents significant concerns (e.g. performance and efficiency) on the operation of the vehicle. For example, assuming a density of 9 lb/gallon, an 8 gallon DEF tank represents an additional 72 lbs on a vehicle already looking to optimize performance. Adding additional DEF tank size to even accommodate a two-oil change interval is not feasible or practical given these weight constraints. A requirement for a larger DEF tank may also have an adverse effect on the ability of a manufacturer to meet greenhouse gas emission standards and fuel economy standards.

EPA notes that a DEF refill maintenance interval that is equivalent and occurring with the oil change interval is a fairly long interval (e.g. 7,500 to 12,500 miles) for light-duty vehicles and trucks and is not likely to result in overly frequent maintenance under typical vehicle driving. EPA also believes that an adequate DEF supply will be available to perform the DEF refills at the stated intervals. EPA believes it important to also consider when, where and how often vehicle owners or operators are most likely to perform the DEF refill maintenance. For light-duty vehicles and light-duty trucks, EPA believes the requested DEF refill interval's association with the oil change interval is appropriate given the likelihood of DEF availability at service

stations and the likelihood that DEF refill would occur during such service.

EPA also notes that heavy-duty engines that are certified as part of complete trucks have been treated in the same manner as light-duty trucks and thus have been subject to the DEF refill interval associated with the oil change. We are proposing to continue this treatment in the regulations. In addition, EPA is aware that several manufacturers are exploring whether the DEF refill interval should not be linked to the oil change interval since the historical oil change interval (e.g., 7,000–8,500 miles) is potentially increasing to higher mile intervals (e.g., 15,000 to 30,000 miles, even higher for synthetic oil). We invite comment on the necessity and appropriateness of “de-linking” the DEF refill interval from the oil change interval, as well as comments on proper methods to increase the likelihood that DEF refill maintenance would occur in the appropriate interval (e.g., linking to vehicle fuel capacity, inducement criteria, etc.), should it not be linked to the oil change interval.

For heavy-duty engines, we are proposing that for vocational vehicles such as dump trucks, concrete mixers, refuse trucks and similar typically centrally fueled applications, the DEF tank refill interval should equal the range (in miles or hours) of the vehicle operation that is no less than the vehicle’s fuel capacity (i.e., a 1:1 ratio). For all other vehicles, the DEF tank refill interval must provide a range of vehicle operation that is no less than twice the range of vehicle’s fuel capacity (i.e., a 2:1 ratio). EPA believes it is reasonable to base the DEF refilling event on diesel refueling intervals given that it is likely that the DEF refill maintenance would be undertaken at the time of fuel refill due to DEF infrastructure developed at diesel refueling stations. EPA believes that these DEF refilling intervals are technologically necessary. EPA knows of no SCR technology for any heavy-duty engine application that is capable of operating without a DEF refill for the high mileage levels associated with other maintenance intervals. As an example, assuming that 25,000 gallons of diesel fuel were consumed to reach a 150,000-mile interval, the amount of DEF required (assuming a 3% DEF consumption rate) would require 750 gallons of DEF weighing approximately 6,750 lbs. A line-haul truck is allowed a maximum gross vehicle weight of 85,000 lbs. of which approximately 45,000 pounds is for cargo carrying. A DEF tank of 750 gallons would reduce the cargo-carrying capacity by 15%. Another example from the line haul

industry suggests that a DEF tank size of over 900 gallons would be needed to reach the 150,000-mile interval for a common highway vehicle with a diesel fuel capacity of 200 gallons and achieving 6.5 miles per gallon fuel economy. Similarly, a medium heavy-duty engine (“chassis cabs”) example would require 375 gallons of DEF weighing 3,275 lbs to meet a 150,000-mile interval. EPA believes that such tank sizes are clearly not technologically feasible in light of the weight and space demands and constraints on heavy-duty trucks and the consumer demand to maximize cargo carrying capacity.

The Agency also believes that intervals shorter than 150,000 miles but longer than those we are proposing would require DEF tanks that are too large or too heavy to be feasibly incorporated into vehicles. Available data show that heavy-duty engines equipped with SCR-based systems will consume DEF at a rate that is approximately 2%-4% of the rate of diesel fuel consumption. Because of inherent space and weight constraints in the configuration and efficient operation of heavy-duty vehicles, there are size limits on the DEF tanks. Currently, there are truck weight limits that manufacturers must address when making or modifying truck designs. EPA expects and believes that manufacturers are taking significant and appropriate steps in order to install reasonably sized DEF tanks to achieve the DEF refills intervals noted. For example, manufacturers are taking such steps as reducing the number of battery packs on vehicles despite customer demands or designing space saving configurations, in some instances extending an already very limited frame rail distance to incorporate the DEF tanks and SCR systems, moving compressed air tanks inside the frame rails, redesigning fuel tank configurations at significant costs, and otherwise working with significant size and weight constraints to incorporate DEF tanks. There are several factors that support the good engineering judgment that underlies the recommended DEF refill intervals. The great majority of heavy-duty engines produced with SCR DEF tanks will provide a range of vehicle operation that is no less than twice the range of the vehicle’s fuel capacity; thus, the DEF tank size will provide at least double the vehicle’s operating range as provided by the fuel tank. Vehicle operators will generally refill DEF at the same time and location that they refill the tanks thus these vehicles will already be carrying twice as much DEF as the SCR system could ever consume between

refills. Also, manufacturers have been incorporating warning signals and performance-related inducements on their SCR-equipped vehicles to ensure the substantial likelihood that DEF refilling will occur,³² and there is considerable evidence that heavy-duty vehicle operators in the United States have in practice been refilling their DEF tanks prior to the tanks becoming empty in virtually all situations.³³

EPA was provided with examples of the consequences of requiring heavy-duty vehicles to accommodate a DEF refill interval of 5:1, and the information provided to the Agency strongly suggested that great compromises would be required in cost, weight and utility. Increased tank sizes and weights on the magnitude of 150 to 325 lbs. would be required and in some cases diesel fuel volumes would need to be reduced. The extra weight associated with the DEF required to meet the 2:1 refill intervals represents a significant challenge to manufacturers seeking to meet both weight and size requirements for their vehicle designs. In addition, requiring a longer DEF refill interval may result in increased greenhouse gases and decreased fuel economy. EPA believes that in light of the existing tight space constraints and the overall desire to maximize cargo-carrying capacity to minimize emissions and meet consumer operational demands, and the built-in DEF tank size buffer to insure DEF refills, that the proposed tank DEF tank sizes are technologically necessary and are also reasonable and appropriate. EPA believes that requiring tank sizes above these ratios will cause increases in space constraints and weight that would not be appropriate for these vehicles. Similarly, manufacturers note that only a small number of applications will employ the 1:1 refilling ratio and that such vehicle applications have very limited vehicle space available to house surplus DEF. Such applications (e.g., a garbage truck, concrete mixer, beverage truck, or airport refueler) will also be refueled daily at central locations. At approximately 0.134 ft³ per gallon, any extra DEF would displace significant space available to vehicle components and subsystems on both the vocational trucks at the 1:1 refill interval as well as the 2:1 vehicles.

³² As discussed in Section IV above, we are proposing options for manufacturers of emergency vehicles and engines to avoid the harsh consequences of certain performance inducements. Since 2010, some manufacturers have been implementing guidance on alternative inducement criteria for emergency vehicles.

³³ See 76 FR 32886 (June 7, 2011) and the studies cited at 32889–32891.

During the previous administrative process leading to the January 5, 2012 **Federal Register** notice approving new maintenance intervals, EPA received a comment from one manufacturer (Navistar) suggesting that a longer DEF refill interval in the range of 35,000 to 45,000 miles was appropriate. EPA responded to these comments in detail in that notice.³⁴ As discussed in that notice, Navistar claimed that other technology is available that would need a maintenance interval no shorter than this. However, EPA found no evidence that such technology is actually available at this time. More importantly, the fact that other technology may be able to have a longer maintenance interval does not mean that a longer maintenance interval is appropriate for DEF-based SCR. Navistar suggested that maintenance intervals can be increased by doubling DEF tank size. EPA does not believe that requiring such an increase is appropriate given the numerous negative consequences discussed above. EPA also explained that Navistar's suggestion of reducing engine-out emissions of NO_x would likely lead to an increase in fuel consumption, and possible increases in GHG emissions, and could either require increases in the size of the fuel tank or more reductions in the operating range of a vehicle before needing to refill, which would compromise a critical design parameter of heavy-duty vehicles. EPA does not believe the desire to increase DEF maintenance intervals justifies such consequences. After reviewing these data, EPA believes that longer refill intervals than those proposed above would require larger and heavier DEF tanks. The design and engineering work performed by manufacturers thus far indicates that the recommended DEF refill intervals noted above approximate the maximum feasible maintenance intervals associated with reasonable DEF tank sizes. In any case these refill intervals are appropriate and reasonable given the substantial negative consequences of longer DEF refill interval requirements. The recommended maintenance intervals ensure that the function and operational efficiency of such vehicles are not overly compromised. Based on this information we believe the proposed intervals are warranted.

EPA has received comments from certain manufacturers indicating that EPA should set the minimum required DEF refill interval at an interval equal to the vehicle's fuel capacity (i.e., a 1:1

ratio) for all heavy-duty engines.³⁵ The commenters claim that this shorter maintenance interval is "necessary and appropriate to reflect current and anticipated changes in vehicle designs, significant changes in inducement strategies, and the increased availability of DEF." The commenters note that certification practices of the EPA regarding inducement practices for SCR-equipped engines make it "essentially impossible for an SCR vehicle to operate without regular DEF replenishment." They state that the severity of inducements related to DEF levels (e.g. severe reduction in engine power and/or vehicle speed) is "extraordinary and must be taken into account" when EPA is determining appropriate maintenance intervals. They state that "in light of these severe inducements, it is reasonable to expect that a driver with a 1:1 tank ratio will operate under a firm discipline that the DEF tank must be refilled every time the fuel tanks are filled, as opposed to a driver with a 2:1 or greater tank ratio who may become accustomed to filling the DEF tank only when necessary, and is therefore more likely to rely on gauge levels, warnings, and inducements to trigger refills."

The commenters also state that EPA's promulgation of new standards regulating greenhouse gases increase the size and weight restraints associated with DEF tank size.

EPA has adopted new greenhouse gas standards for heavy-duty on-highway trucks, and manufacturers have moved to voluntarily increase the fuel efficiency of their vehicles in advance of the effective dates of those regulations. Within these regulations, EPA recognizes the impact of weight savings on fuel efficiency and GHG emissions. In addition, manufacturers have developed innovative new DEF dosing strategies to reduce CO₂ emissions. These new strategies may involve increasing the DEF dosing rate. Increasing the DEF dosing rate also makes it more difficult to satisfy a 2:1 tank size ratio without increasing the size of the DEF tank above the size EPA previously considered the maximum reasonable size. For this reason, if the application of the 1:1 tank ratio is not expanded, EPA will effectively be mandating larger DEF tanks, with their accompanying weight increase, in order to accommodate technology advancements developed to reduce CO₂ emissions—tanks that are larger than the tanks EPA determined to be the

maximum reasonably required in 2009. In addition, this could inadvertently cause manufacturers to restrict application of the most fuel efficient engines to vehicles that have reduced range between fuel and DEF refills, such that they will be unattractive to the line-haul fleets that consume the most fuel.

The commenters elaborated that:

To meet the next round of GHG reduction requirements, some manufacturers expect to increase DEF dosing by as much as 100% over current levels. These increased levels of dosing will require a corresponding increase in DEF tank capacity and size to meet the existing 2:1 tank ratio requirements. For example, increasing DEF dosing by 40% on average would require an increase in DEF tank size of approximately 40% (depending on how much extra capacity was included in the tanks used in previous model years). The shape, size and location of DEF tanks on a truck frame are constrained by a number of factors including: the need to place the tank below the filler-neck; the need for clearance from other components such as fuel tanks, battery boxes, air tanks, diesel particulate filters, and the drive axle and wheels; the need for gravity feed; body installation requirements; clear-back-of-cab requirements; weight distribution requirements; bridge formula and related axle placement issues; and fuel capacity/driving range demands.

The commenters state that another consequence of the greenhouse gas regulations is more attention to improved aerodynamics and weight reduction, which are harmed by the need for a 2:1 DEF tank size requirement. They claim that EPA should allow manufacturers to use all available options to increase fuel efficiency and meet greenhouse gas standards. They claim that the possible harm of allowing shorter maintenance intervals are minimal, given the severe negative inducements associated with failure to replenish the DEF tank.

EPA is not proposing to allow a 1:1 DEF maintenance interval across the heavy-duty engine class at this time. EPA notes that manufacturers have been meeting a 2:1 ratio for DEF tank size for the past two years and the commenters have not provided sufficient evidence that this ratio will be infeasible in the future. Moreover, the commenters have not shown that any change in the maintenance interval is necessary or appropriate throughout the heavy-duty engine category, rather than for particular applications, or that a refill interval as low as 1:1, rather than 1.8:1 or 1.5:1, is necessary or appropriate. The feasibility of the greenhouse gas standards was not predicated on substantial increases in DEF dosing rate, although that was a possible method of compliance, and the commenters have not shown that the increase in tank size

³⁴ See 77 FR 488, at 495–96 (January 5, 2012).

³⁵ See letters dated August 18, 2011 and September 27, 2011 to Karl Simon, EPA, Director, Compliance and Innovative Strategies Division from R. Latane Montague and Hogan Lovells.

that would be associated with increased dosing, which need not be large, would be inconsistent with space constraints. While EPA agrees that the warnings and inducements in place for failure to replenish DEF will restrict the ability of operators to run without DEF, and have made operation without DEF virtually unheard of, a DEF tank ratio of 1:1 greatly increases the likelihood that operators will need to make more frequent stops to replenish DEF, and possibly may need to stop solely to replenish DEF, which may place a greater burden on the operator in terms of the frequency of DEF refills. However, we request comment on this proposal and we do not rule out the possibility we may in the final rule allow a shorter maintenance interval at least in some situations beyond what we have proposed. In particular, we request comment on whether such an interval may be appropriate in the future or whether an approach that is limited to a portion of the heavy-duty engine category or that uses an interval between 2:1 and 1:1 may be appropriate.

EPA also notes that the regulations allow any manufacturer to petition EPA under the “paragraph (b)(7) process” for a shorter maintenance interval than that promulgated for DEF refills if the manufacturer can show that a shorter interval is technologically necessary for the particular engine or vehicle configuration being certified.

(3) Maintenance Intervals for Nonroad Compression-Ignition Engines

EPA is also proposing to incorporate appropriate maintenance intervals for the scheduled maintenance of DEF refills on SCR-equipped NRCI engines. We are proposing the same interval (i.e., 1:1 ratio) as was approved under the § 1039.125(a)(5) process.

EPA believes it appropriate to evaluate the DEF refill rates by taking into consideration the space and weight constraints typically involved with the range of nonroad compression-ignition engines using SCR systems, including safety and impacts of weight and dosing rates on greenhouse gas emissions and fuel economy. EPA also believes it appropriate to take into consideration the likelihood that the maintenance of DEF refills will be performed by the owner or operator.³⁶

EPA knows of no SCR technology for NRCI engines that is yet capable of attaining longer operation (generally beyond one tank full of diesel) without a DEF refill. As noted by the requests received for a shorter interval, there are significant space and weight constraints

associated with increasing the DEF tank size in order to accommodate a 2:1 refill ratio. EPA believes it appropriate to take into consideration the need for locating the DEF tank in close proximity to the fuel tank and the remainder of the SCR system, as well as the increased likelihood that the DEF tank will be refilled if it becomes standard operating practice to refill it at the same time as the fuel tank. EPA believes that such nonroad equipment is similar to centrally-fueled heavy-duty on-highway vehicles and that there is a sufficient basis and a reasonable expectation that DEF tank refills will occur on a timely basis. In addition, because this maintenance is considered critical emission-related maintenance, § 1039.125 requires that manufacturers ensure that it have a reasonable likelihood of being done at the recommended intervals on in-use engines. Paragraph 1039.125(a)(1) sets forth several methods by which such demonstration can be made, including data showing that if a lack of maintenance increases emissions, it also unacceptably degrades the engine’s performance. Thus, manufacturers will need to show compliance with this requirement to be certified. In the context of SCR systems and the potential of an empty DEF tank and an inoperable SCR system, EPA notes that equipment under such operating conditions are expected to shut down or idle only.³⁷

VI. Nonroad Engines in Temporary Emergency Service

As noted previously, EPA is proposing to adopt special provisions for engines used in dedicated emergency vehicles to ensure that manufacturers are able to design and implement reliable, robust emission control systems with regeneration strategies that do not interfere with the mission of emergency vehicles. However, we are not proposing to extend this option for other engines that are not intended for emergency vehicles. Nevertheless, based on information provided to us from engine manufacturers, we have some concern that nonroad engines not normally used for emergencies may be needed in unusual emergency situations that may require very limited and temporary relief so that emission controls do not hinder the engine’s performance in such emergency conditions. This section

describes a flexibility that we are proposing to address this.

Our existing nonroad engine compliance regulations in 40 CFR 1068.101(b)(1)(ii) allow operators to temporarily disable or remove emission controls to address emergency situations. However, they do not necessarily allow manufacturers to design the emission controls to be disabled or removed. This has become a potential problem for modern electronically controlled engines, where many emission controls are integrated into the engine’s control software. There is currently no way for an operator to selectively disable emission control software, while maintaining engine function. The proposed regulatory text would effectively extend the policy expressed in 40 CFR 1068.101(b)(1)(ii) to emission control software.

A. Use of Nonroad Engines in Emergency Situations

The provisions we are proposing are intended primarily to address engines used for power generation or in construction equipment. However, it is important to note that we are not proposing to limit this flexibility to such engines. For example, portable diesel-powered generators are often used to provide electrical power after natural disasters. If the generator is providing power to a medical facility, then any interruption in service could risk the lives of the patients. This is just one example of how an ordinary piece of nonroad equipment could be used in an emergency situation. Others would include bulldozers repairing a levee or a crane removing debris.

The Tier 4 standards have resulted in much of this equipment being equipped with SCR catalysts that require a reductant. The reductant is typically supplied as a urea water solution known as diesel exhaust fluid (DEF). The engines in this equipment generally include controls that limit the function of the engines if they are operated without urea. Such controls are generally call “inducements”, because they induce the operator to supply urea to the equipment. While we are confident that DEF is now widely and easily available in the United States, we are concerned that in emergency circumstances there may be a possibility of a temporary supply shortage. We believe that in such situations, temporary flexibilities may be appropriate because the possibility of risk to human life sufficiently outweighs the temporary emissions increases that may occur if SCR-equipped engines are used without DEF. As indicated below, this flexibility is very narrow and

³⁷ See 76 FR 32886 (June 7, 2011) and related inducement criteria, *see also* Note 32 above regarding inducements for emergency vehicles and engines.

³⁶ See 40 CFR 1039.125(a)(5).

contains several provisions to ensure the need for the relief. We do not believe it can or will be used in situations where there is no critical need for such relief.

B. Proposed Regulatory Action

(1) General Requirements

We are proposing a new section 1039.665 that would specify provisions that allow for AECs that are necessary to ensure proper function of engines and equipment in emergency situations. AECs approved under this section would not be defeat devices. The section would include the following provisions:

- Manufacturers would be allowed to ask for approval at any time. Still, we would encourage manufacturers to obtain preliminary approval before submitting an application for certification. And in unusual circumstances, we could allow manufacturers to apply an approved emergency AEC to engines and equipment that have already been placed into service as a “field fix”.

- The manufacturer would be required to keep records to document requests for and use of emergency AECs under this section and submit a report to EPA within 60 days of the end of each calendar year in which it authorizes use of the AEC

- We would approve an AEC only where we determine certain criteria are met, as described below.

We are proposing to address such AECs as part of certification and would only authorize the certifying manufacturer to activate them.

(2) Approval Criteria

Approval of AECs under the proposed regulations would be based on certain general and specific criteria. A general criterion is that the AEC would need to be consistent with good engineering judgment. When used in our regulations, the phrase “good engineering judgment” has a specific meaning as described in 40 CFR 1068.5. By specifying that the AEC be consistent with good engineering judgment, we address unforeseen technical details that may arise.

We are also proposing three specific criteria that must be met. Each of these criteria is intended to ensure that any adverse environmental impacts are minimized. These criteria are:

- The AEC must be designed so that it cannot be activated without the specific permission of the certificate holder. We would specify that the AEC must require the input of a temporary code or equivalent security feature.

- The AEC must become inactive within 24 engine hours of becoming active (or other period we approve in unusual circumstances).

- The manufacturer must show that the AEC deactivate emission controls (such as inducement strategies) only to the extent necessary to address the expected emergency situation.

(3) Allowable Use of Emergency AECs

This allowance is intended generally to address SCR-equipped engines operating in emergency situations when DEF is unavailable. In such cases, inducement strategies could result in a loss of power of the engine which could effectively prevent the equipment from functioning. Under this provision, a manufacturer could include a dormant feature in the engine’s control software that could be activated to disable inducement strategies.

We are also proposing to allow this for other types of controls, where a manufacturer can clearly demonstrate that this relief could be needed. We are requesting comment about whether we should specifically identify such other controls or leave the regulatory text more open ended.

Finally, we are requesting comment about the circumstances under which we should allow the AEC to be activated. Should emergency situations include only those circumstances where human life is at stake? Should it be allowed automatically whenever a federal disaster is declared?

VII. Economic, Environmental, and Health Impacts of Proposed Rule

A. Economic Impacts

(1) Economic Impacts of Emergency Vehicle Proposal

EPA expects the economic effects of this proposal to be small, and to potentially have benefits that are a natural result of easing constraints.

(a) Costs to Manufacturers

Due to the optional and voluntary nature of this proposal, there are no direct regulatory compliance costs to engine manufacturers. To the extent manufacturers elect to develop and deploy upgrades to engines for emergency vehicles, they may voluntarily incur some degree of costs associated with the following:

- Design and testing to determine effectiveness of potential AECs.
- Education & outreach to intermediate vehicle manufacturers and end users.
- Deployment of AECs onto new and in-use emergency vehicles.
- Labeling costs.

EPA expects any fixed costs would be small, and any variable costs would apply only to the engines sold for installation in emergency vehicles or emergency equipment, which comprise less than one percent of the heavy-duty on-road fleet, and an even smaller fraction of the nonroad fleet. As per standard practice, manufacturers would be free to set a fair market price for any approved AEC or field modification they offer, to offset the costs incurred in its development.

(b) Operational Costs

Depending on the type of AEC or field modification that a manufacturer voluntarily elects to deploy, some operational costs could increase and some could decrease.

(i) Maintenance and Warranty Costs

When an emergency vehicle is experiencing frequent plugging of its DPF, this increases maintenance costs for owners and warranty costs for manufacturers. Maintenance costs can include service calls for a technician-controlled regeneration, towing fees where on-site regeneration cannot be achieved, and costs to deploy reserve vehicles while the impaired vehicle is being serviced. These costs are expected to decrease with this proposal, and are discussed further below.

Manufacturers incur warranty costs when a vehicle under warranty must be returned for service. Because this proposed action would allow manufacturers the flexibility to improve the reliability of their engines, EPA expects warranty costs for emergency vehicles and engines in emergency vehicles would decrease as a result of this action.

Should an AEC be deployed that allows manual active regenerations at more frequent intervals, this could increase the total number of regenerations, exposing the DPF substrate to more frequent thermal stress and general wear & tear. However, while it is expected that the frequency of regenerations would increase, the duration of each regeneration would decrease because the total soot loading of the DPF would likely remain unchanged or be reduced due to other control strategies within the approved AEC. Because manufacturers are held to strict standards related to the warranty, maintenance and durability of these systems, EPA expects that measures will be taken to ensure that any AEC that is deployed would not decrease the ash cleaning interval or

otherwise decrease the durability of the emission control system.³⁸

With this proposal, manufacturers would have the flexibility to design alternate calibrations to reduce soot loading to the DPF and extend the interval between regenerations. There would also be more flexibility to enable more passive and automatic active regenerations, which both expose the DPF to less thermal stress than do manual active regenerations. In summary, EPA does not expect any warranty or maintenance costs would increase due to this proposal, and it is very likely that these would decrease. Furthermore, EPA believes that the potential for reduced warranty costs may help to offset the cost to produce and deploy any optional AECDs. Similarly, EPA believes the potential for reduced maintenance and operational costs may offset the cost to owners for obtaining requested AECDs.

(ii) Fuel Costs From Dosing

Where DPF systems employ fuel dosing to enable active automatic regenerations, it is uncertain whether liberalizing the parameters for initiating regenerations would affect fuel consumption. Operators have reported that vehicles burn more fuel during regenerations, though the quantity varies among vehicles.

Where automatic active regenerations employ fuel dosing, it is uncertain whether fuel consumption would increase with an increased number of regenerations during a given operating period. If all else were to remain the same, it is likely that the duration of each automatic active regeneration may be decreased. To the extent regenerations are enabled with other means besides fuel, or demand for regenerations is reduced through recalibration, then any potential increase in fuel use from dosing would be mitigated.

As an illustration, we have estimated the additional fuel use for a truck with a dosing strategy where its regeneration interval is decreased from 25 hours to eight hours, due to the increased availability of operator-commanded regenerations. In this example, we assume a single regeneration consumes approximately half a gallon of supplemental fuel. If the vehicle has average engine operating hours of 1,200 per year, then its number of regeneration events would increase from about 50 per year to 150 per year, under

the above assumptions. If the amount of supplemental fuel use remained unchanged under the new regime (a conservative assumption) then potentially the vehicle could consume an additional 50 gallons of fuel per year from the increased frequency of regenerations alone. Considering current costs of ultra low sulfur diesel fuel, this could translate to about \$200 per vehicle in additional annual fuel costs.

As explained above, EPA does not believe this is a likely scenario, as the amount of fuel used per regeneration event would likely decrease with increasing frequency, and engine manufacturers would be likely to adjust combustion parameters to avoid placing additional thermal stress on the DPF. A more detailed analysis of fuel use and potential costs associated with dosing strategies is included in a memo to the docket associated with this rulemaking.³⁹

(c) Societal Costs

Because this proposal eases constraints on the development of robust DPF systems, the economic impacts can only improve with this action. It is presumed that the benefits to society of enabling first responders to act quickly when needed outweigh the costs to society of any temporary increase in emissions from this small segment of vehicles.

(2) Economic Impacts of SCR Maintenance Proposal

This action would codify previously published final agency actions regarding SCR maintenance intervals. No new regulatory burdens would be imposed. Rather, by codifying former decisions that were based on administrative petitions and of limited applicability, EPA is providing regulatory certainty that will allow affected manufacturers to plan their product development accordingly.

(3) Economic Impacts for Nonroad Engines Used in Emergency Situations

EPA expects the economic effects of this proposal to be small, and to potentially have benefits that are a natural result of easing constraints. Due to the optional and voluntary nature of this proposal, there are no direct regulatory compliance costs to engine manufacturers. To the extent manufacturers elect to develop and deploy upgrades to engines for emergency vehicles, they may voluntarily incur some degree of costs.

We do not expect there to be any operator costs for this allowance, other than the potential cost associated with sending written confirmation of an emergency situation to the certificate holder. However, since this option would be activated rarely (or perhaps not at all), total costs to operators would be negligible.

B. Environmental Impacts

(1) Environmental Impacts of Emergency Vehicle Proposal

We expect any environmental impacts from this proposal would be small. By promulgating these amendments, it is expected that the emissions from this segment of the heavy-duty fleet would not change significantly.

(a) Fleet Characterization and Emission Inventory

EPA estimates that on-road emergency vehicles comprise less than one percent of the national heavy-duty fleet. According to the International Council on Clean Transportation (ICCT), less than one percent of all new heavy-duty truck registrations in 2003 to 2007 were for emergency vehicles (includes class 8 fire trucks plus other class 3–8 emergency vehicles).⁴⁰ On average, the ICCT's data suggest that approximately 5,700 new emergency vehicles are sold in the U.S. each year; about 0.8 percent of the 3.4 million new heavy-duty trucks registered between 2003 and 2007. The available information indicates that the emergency vehicles included in the scope of this rulemaking have lower annual vehicle miles traveled than average non-emergency vehicles. Therefore, we conclude that they contribute less than 1% of the annual air emissions from the heavy-duty diesel truck fleet.

(b) Emission Impacts From Auxiliary Emission Control Devices on Emergency Vehicles

Due to the optional and voluntary nature of this action, it is difficult to estimate its overall emissions impact accurately. The proposed amendments offer many options to manufacturers, and the emissions impacts will depend on which options and strategies are employed, and for how many vehicles.

(i) NO_x Emissions Impacts

During both automatic active and manual active regenerations, emission rates increase for some pollutants, especially NO_x when post-DPF after-treatment devices are not present. The

³⁸ EPA prohibits engine manufacturers from requiring repair or replacement of particulate traps on heavy heavy-duty diesel engines more than once every 150,000 miles. 40 CFR 86.004–25(b)(4)(iii).

³⁹ See memo dated May 4, 2012, "Fuel Use With Dosing for DPF Regeneration," Docket ID EPA–HQ–OAR–2011–1032.

⁴⁰ ICCT, May 2009, "Heavy-Duty Vehicle Market Analysis: Vehicle Characteristics & Fuel Use, Manufacturer Market Shares."

higher than normal combustion chamber temperatures during active regeneration with high rates of oxidation occurring across the catalyst can create conditions conducive to NO_x formation. From certification data for 2008 model year engines, the difference between the NO_x emission rate during normal operation and the rate during active regeneration can range from an undetectably small difference to a five-fold increase. The magnitude of the NO_x increase is only part of the story, however. As part of their certifications, engine manufacturers may provide frequency factors that adjust for the average excess emissions during DPF regeneration. As used in engine certification, the frequency factor indicates the percent of test cycles during which DPF regeneration is expected to occur. From certification data for 2008 and 2011 model year engines, DPF regeneration frequency factors for heavy-duty engines range from near zero to nearly 20 percent. Overall, the certification data indicate that the higher the increase in NO_x during a DPF regeneration event, the less often active regeneration occurs on that engine, especially over the transient test cycle. A summary of this information is presented in a memo to the docket associated with this rulemaking.⁴¹

As a result of this proposed action, it is possible that some engine manufacturers will submit applications for AECD's with liberalized parameters under which automatic active and/or manual active regenerations may occur, for emergency vehicles. Under these liberalized parameters, several outcomes are possible, depending on the engineering design. While the NO_x emission rate during DPF regeneration could increase above the rate of the current certified configuration, it is also possible that the duration of each event could decrease. While the frequency of manual active regenerations could increase if the engine controls permitted operators to initiate parked regeneration at any soot loading, it is also possible the frequency of automatic or manual active regenerations could decrease with the new designs, making wider use of passive regeneration strategies. Given that it is difficult to estimate how popular each option may be, and what other actions may be taken to alter engines and/or emission control systems, EPA has provided examples of

possible emission scenarios due to this proposal in a memo to the docket.⁴²

(ii) PM Emissions Impacts

In the comment letters EPA received urging swift action providing relief for emergency vehicles, it was often cited that the pollution from a structural fire is far worse than the tailpipe emissions of a fire truck. To provide some perspective on this, EPA is providing a brief discussion of PM emissions in this section.

A rough method for estimating emissions from structural fires is obtained by multiplying a national average factor of 2.3 fires per 1,000 residents by the national population, along with a PM emission factor of 10.8 lb per ton burned, and an average fuel loading of 1.1 tons burned per fire. Using these estimates, EPA calculates just under 5,000 tons of PM is emitted in the U.S. each year from structural fires. A more detailed analysis of PM emissions from structural fires in relation to PM emissions from emergency vehicles is included in a memo to the docket associated with this rulemaking.⁴³

We expect manufacturers who choose to develop optional AECDs for emergency vehicles to employ strategies that prevent the occurrence of abnormal conditions of the emission control system. Where preventive strategies alone are not demonstrated to be failsafe, EPA expects there may be instances where it is justified to provide engine exhaust backpressure relief, either mechanical or through other means. While we expect this will not be a widespread solution, there may be cases where a relief valve may be employed on a vehicle whose DPF became plugged frequently, allowing temporary emission control bypass to occur as a last resort to prevent engine failure. An example of possible PM emissions changes due to this proposal is presented in a memo to the docket associated with this rulemaking.⁴⁴

(iii) Fuel Use From Dosing

As described above in Section IV.C, only some control systems employ fuel dosing as a strategy to initiate active regeneration. In a memo to the docket associated with this rulemaking, EPA estimates the potential increase in fuel use due to more frequent operator-commanded regenerations with dosing at an average of about 50 gallons per year per vehicle, if other measures to

reduce the need for regenerations are not taken.⁴⁵ The emissions associated with this supplemental fuel use are discussed above. EPA requests comment on the impact of this proposed action on fuel consumption in emergency vehicles whose active regeneration strategies include fuel dosing.

(2) Environmental Impacts of SCR Maintenance Proposal

EPA believes that the likelihood of emissions-related maintenance occurring in use would remain unchanged as a result of this action. Therefore, there are no anticipated adverse environmental impacts.

(3) Environmental Impacts for Nonroad Engines Used in Emergency Situations

EPA does not expect any significant environmental effects as a result this proposal. This option would be activated rarely (or perhaps not at all) and would only affect emissions for a very short period.

C. Health Effects

EPA's clean diesel standards are already providing substantial benefits to public health and welfare and the environment through significant reductions in emissions of NO_x, PM, nonmethane hydrocarbons (NMHC), carbon monoxide, sulfur oxides (SO_x), and air toxics. We project that by 2030, the on-highway program alone will reduce annual emissions of NO_x, NMHC, and PM by 2.6 million, 115,000 and 109,000 tons, respectively. These emission reductions will prevent 8,300 premature deaths, over 9,500 hospitalizations, and 1.5 million work days lost. All told, the monetized benefits of the on-highway rule plus the nonroad diesel Tier 4 rule total over \$150 billion. A sizeable part of the benefits in the early years of these programs has come from large reductions in the amount of direct and secondary PM emitted by the existing fleet of heavy-duty engines and vehicles, by requiring the use of the higher quality diesel fuel in these vehicles. While this proposed action may slightly increase some emissions, as explained in the previous section, we do not expect that these small increases will significantly diminish the health benefits of our stringent clean diesel standards.

VIII. Public Participation

We request comment by July 27, 2012 on all aspects of this proposal. This section describes how you can participate in this process.

⁴² See NO_x Memo, Note 41, above.

⁴¹ See memo dated May 4, 2012, "NO_x Emissions from DPF Regeneration," Docket ID EPA-HQ-OAR-2011-1032.

⁴³ See Memo dated May 4, 2012, "PM Emissions Impacts," Docket ID EPA-HQ-OAR-2011-1032.

⁴⁴ See PM memo, Note 43, above.

⁴⁵ See Fuel Dosing Memo, Note 39, above.

A. How do I submit comments?

We are opening a formal comment period by publishing this document. We will accept comments through July 27, 2012. If you have an interest in the program described in this document, we encourage you to comment on any aspect of this rulemaking. We request comment on various topics throughout this proposal.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. If you disagree with parts of the proposed program, we encourage you to suggest and analyze alternate approaches to meeting the goals described in this proposal. You should send all comments, except those containing proprietary information, to our Air Docket (see **ADDRESSES**) before the end of the comment period.

If you submit proprietary information for our consideration, you should clearly separate it from other comments by labeling it "Confidential Business Information (CBI)." You should send CBI directly to the contact person listed under **FOR FURTHER INFORMATION CONTACT** instead of the public docket. This will help ensure that no one inadvertently places proprietary information in the docket. If you want us to use your confidential information as part of the basis for the final rule, you should send a non-confidential version of the document summarizing the key data or information. We will disclose information covered by a claim of confidentiality only through the application of procedures described in 40 CFR part 2. If you do not identify information as confidential when we receive it, we may make it available to the public without notifying you.

EPA is also publishing a Direct Final Rule (DFR) addressing the emergency vehicle provisions described in Section IV of this document. If we receive adverse comments on the emergency vehicle provisions in this proposal by July 9, 2012, we will publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect, and we will complete the process of responding to comments and issuing a final rule.

EPA is publishing the DFR to expedite the deployment of solutions that will best ensure the readiness of the nation's emergency vehicles. We request that commenters identify in your comments any portions of the emergency vehicle proposed action described in Section IV above with which you agree and support as proposed, in addition to any comments regarding suggestions for improvement or provisions with which

you disagree. In the case of a comment that is otherwise unclear whether it is adverse, EPA would interpret relevant comments calling for more flexibility or less restrictions for emergency vehicles as supportive of the direct final action. In this way, the EPA will be able to adopt those elements of the DFR that are fully supported and most needed today, while considering and addressing any adverse comments received on the proposed rule, in the course of developing the final rule.

Note that Docket Number EPA-HQ-OAR-2011-1032 is being used for both the DFR and this Notice of Proposed Rulemaking (NPRM).

B. Will there be a public hearing?

We will hold a public hearing at the EPA's National Vehicle and Fuels Emission Laboratory, 2565 Plymouth Road in Ann Arbor, Michigan on June 27, 2012. The hearing will start at 10:00 a.m. and continue until everyone has had a chance to speak.

If you would like to present testimony at the public hearing, we ask that you notify the contact person listed above under **FOR FURTHER INFORMATION CONTACT** at least ten days before the hearing. You should estimate the time you will need for your presentation and identify any needed audio/visual equipment. We suggest that you bring copies of your statement or other material for the EPA panel and the audience. It would also be helpful if you send us a copy of your statement or other materials before the hearing.

We will make a tentative schedule for the order of testimony based on the notifications we receive. This schedule will be available on the morning of the hearing. In addition, we will reserve a block of time for anyone else in the audience who wants to give testimony. We will conduct the hearing informally, and technical rules of evidence won't apply. We will arrange for a written transcript of the hearing and keep the official record of the hearing open for 30 days to allow you to submit supplementary information. You may make arrangements for copies of the transcript directly with the court reporter.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The proposed regulatory relief for emergency vehicles would be voluntary and optional, and the proposed revisions for engine and vehicle maintenance would merely codify existing guidelines. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Numbers 2060-0104 and 2060-0287. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business primarily engaged in shipbuilding and repairing as defined by NAICS code 336611 with 1,000 or fewer employees (based on Small Business Administration size standards); (2) a small business that is primarily engaged in freight or passenger transportation on the Great Lakes as defined by NAICS codes 483113 and 483114 with 500 or fewer employees (based on Small Business Administration size standards); (3) a small business primarily engaged in commercial and industrial machinery and equipment repair and maintenance as defined by NAICS code 811310 with annual receipts less than \$7 million (based on Small Business Administration size standards); (4) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (5) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on

small entities, I certify that proposed rule would not have a significant economic impact on a substantial number of small entities.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the rule on small entities.” 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule provides regulatory relief related to emergency vehicles and codifies existing guidelines related to engine and vehicle maintenance. As such, we anticipate no costs and therefore no regulatory burden associated with this rule. We have concluded that this rule will not increase regulatory burden for affected small entities.

D. Unfunded Mandates Reform Act

This proposal contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, or tribal governments. The proposal imposes no enforceable duty on any State, local or tribal governments. EPA has determined that this proposal contains no regulatory requirements that might significantly or uniquely affect small governments. The agency has determined that this proposal does not contain a Federal mandate that may result in expenditures of \$100 million or more for the private sector in any one year. Manufacturers have the flexibility and will likely choose whether or not to use optional AECD's based on their strategies for complying with the applicable emissions standards. Similarly, manufacturers may choose to use DEF maintenance intervals longer than the minimums proposed in this action, and manufacturers may elect to use SCR strategies that consume lower amounts of DEF. Thus, today's proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), 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.”

This proposed action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule would apply to manufacturers of heavy-duty diesel engines and not to state or local governments. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between the agency and State and local governments, the agency specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This proposal will be implemented at the Federal level and would impose compliance costs only on affected engine manufacturers depending on the extent to which they take advantage of the flexibilities offered. Tribal governments would be affected only to the extent they purchase and use vehicles with regulated engines. Thus, Executive Order 13175 does not apply to this proposed rule. EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: “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.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Energy Effects

This proposed action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials, specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority

populations and low-income populations in the United States.

EPA has determined that this proposed rule would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This action is expected to increase the level of environmental protection for all affected populations because this proposed rule increases the ways that manufacturers can demonstrate compliance with heavy-duty engine standards.

List of Subjects

40 CFR Part 85

Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Administrative practice and procedure, Confidential business information, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 1039

Environmental Protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: May 23, 2012.

Lisa P. Jackson,
Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency proposes to amend title 40, chapter I of the Code of Federal Regulations as follows:

PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

1. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart R—[Amended]

2. Add § 85.1716 to subpart R to read as follows:

§ 85.1716 Approval of an emergency vehicle field modification (EVFM).

This section describes how you may implement design changes for an emergency vehicle that has already been placed into service to ensure that the vehicle will perform properly in emergency situations. This applies for any light-duty vehicle, light-duty truck, or heavy-duty vehicle meeting the definition of *emergency vehicle* in 40 CFR 86.004–2 or 86.1803. In this

section, “you” refers to the certifying manufacturer and “we” refers to the EPA Administrator and any authorized representatives.

(a) You must notify us in writing of your intent to install or distribute an emergency vehicle field modification (EVFM). In some cases you may install or distribute an EVFM only with our advance approval, as specified in this section.

(b) Include in your notification a full description of the EVFM and any documentation to support your determination that the EVFM is necessary to prevent the vehicle from losing speed, torque, or power due to abnormal conditions of its emission control system, or to prevent such abnormal conditions from occurring during operation related to emergency response. Examples of such abnormal conditions may include excessive exhaust backpressure from an overloaded particulate trap, or running out of diesel exhaust fluid for engines that rely on urea-based selective catalytic reduction. Your determination must be based on an engineering evaluation or testing or both.

(c) You may need our advance approval for your EVFM, as follows:

(1) Where the proposed EVFM is identical to an AECD we approved under this part for an engine family currently in production, no approval of the proposed EVFM is necessary.

(2) Where the proposed EVFM is for an engine family currently in production but the applicable demonstration is based on an AECD we approved under this part for an engine family no longer in production, you must describe to us how your proposed EVFM differs from the approved AECD. Unless we say otherwise, your proposed EVFM is deemed approved 30 days after you notify us.

(3) If we have not approved an EVFM comparable to the one you are proposing, you must get our approval before installing or distributing it. In this case, we may request additional information to support your determination under paragraph (b) of this section, as follows:

(i) If we request additional information and you do not provide it within 30 days after we ask, we may deem that you have retracted your request for our approval; however, we may extend this deadline for submitting the additional information.

(ii) We will deny your request if we determine that the EVFM is not necessary to prevent the vehicle from losing speed, torque, or power due to abnormal conditions of the emission control system, or to prevent such

abnormal conditions from occurring, during operation related to emergency response.

(iii) Unless we say otherwise, your proposed EVFM is deemed approved 30 days after we acknowledge that you have provided us with all the additional information we have specified.

(4) If your proposed EVFM is deemed to be approved under paragraph (c)(2) or (3) of this section and we find later that your EVFM in fact does not meet the requirements of this section, we may require you to no longer install or distribute it.

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

3. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

4. Section 86.004–2 is amended as follows:

a. By adding a definition for “Ambulance” in alphabetical order.

b. By revising the definition for “Defeat device”.

c. By adding definitions for “Diesel exhaust fluid”, “Emergency vehicle”, and “Fire truck” in alphabetical order.

§ 86.004–2 Definitions.

* * * * *

Ambulance has the meaning given in § 86.1803.

Defeat device means an auxiliary emission control device (AECD) that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless:

(1) Such conditions are substantially included in the applicable Federal emission test procedure for heavy-duty vehicles and heavy-duty engines described in subpart N of this part;

(2) The need for the AECD is justified in terms of protecting the vehicle against damage or accident;

(3) The AECD does not go beyond the requirements of engine starting; or

(4) The AECD applies only for engines that will be installed in *emergency vehicles*, and the need is justified in terms of preventing the engine from losing speed, torque, or power due to abnormal conditions of the emission control system, or in terms of preventing such abnormal conditions from occurring, during operation related to emergency response. Examples of such abnormal conditions may include excessive exhaust backpressure from an overloaded particulate trap, and running

out of diesel exhaust fluid for engines that rely on urea-based selective catalytic reduction.

Diesel exhaust fluid (DEF) has the meaning given in § 86.1803.

Emergency vehicle means a vehicle that is an ambulance or a fire truck.

Fire truck has the meaning given in § 86.1803.

* * * * *

5. Section 86.004–25 is amended as follows:

- a. By revising paragraph (b)(4) introductory text.
- b. By adding paragraph (b)(4)(v).
- c. By revising paragraph (b)(6)(i) introductory text and (b)(6)(i)(H).
- d. By adding paragraph (b)(6)(i)(I).

§ 86.004–25 Maintenance.

* * * * *

(b) * * *

(4) For diesel-cycle heavy-duty engines, emission-related maintenance in addition to or at shorter intervals than the following specified values will not be accepted as technologically necessary, except as provided in paragraph (b)(7) of this section:

* * * * *

(v) For engines that use selective catalytic reduction, the replenishment of diesel exhaust fluid shall occur according to the following schedule:

(A) For heavy-duty engines in vocational vehicles such as dump trucks, concrete mixers, refuse trucks and similar applications that are typically centrally fueled, at an interval, in miles or hours of vehicle operation, that is no less than the vehicle’s fuel capacity.

(B) For all other heavy-duty engines, at an interval, in miles or hours of vehicle operation, that is no less than twice the vehicle’s fuel capacity.

* * * * *

(6)(i) The following components are defined as critical emission-related components:

* * * * *

(H) Components comprising the selective catalytic reduction system (including diesel exhaust fluid tank).

(I) Any other component whose primary purpose is to reduce emissions or whose failure would commonly increase emissions of any regulated pollutant without significantly degrading engine performance.

* * * * *

6. Section 86.0004–28 is amended by revising paragraph (i) introductory text to read as follows:

§ 86.004–28 Compliance with emission standards.

* * * * *

(i) Emission results from heavy-duty engines equipped with exhaust aftertreatment may need to be adjusted to account for regeneration events. This provision only applies for engines equipped with emission controls that are regenerated on an infrequent basis. For the purpose of this paragraph (i), the term “regeneration” means an event during which emission levels change while the aftertreatment performance is being restored by design. Examples of regenerations are increasing exhaust gas temperature to remove sulfur from an adsorber or increasing exhaust gas temperature to oxidize PM in a trap. For the purpose of this paragraph (i), the term “infrequent” means having an expected frequency of less than once per transient test cycle. Calculation and use of adjustment factors are described in paragraphs (i)(1) through (5) of this section. If your engine family includes engines with one or more AECs for emergency vehicle applications approved under paragraph (4) of the definition of “defeat device” in § 86.004–2, do not consider additional regenerations resulting from those AECs when calculating emission factors or frequencies under this paragraph (i).

* * * * *

7. Section 86.095–35 is amended by revising paragraph (a)(3)(iii)(O) to read as follows:

§ 86.095–35 Labeling.

(a) * * *

(3) * * *

(iii) * * *

(O) For engines with one or more approved AECs for emergency vehicle applications under paragraph (4) of the definition of “defeat device” in § 86.004–2, the statement: “THIS ENGINE IS FOR INSTALLATION IN EMERGENCY VEHICLES ONLY.”

* * * * *

Subpart B—[Amended]

8. Section 86.131–00 is amended by adding paragraph (g) to read as follows:

§ 86.131–00 Vehicle preparation.

* * * * *

(g) You may disable any AECs that have been approved solely for emergency vehicle applications under paragraph (4) of the definition of “defeat device” in § 86.004–2. The emission standards do not apply when any of these AECs are active.

Subpart N—[Amended]

9. Section 86.1305–2010 is amended by adding paragraph (i) to read as follows:

§ 86.1305–2010 Introduction; structure of subpart.

* * * * *

(i) You may disable any AECs that have been approved solely for emergency vehicle applications under paragraph (4) of the definition of “defeat device” in § 86.004–2. The emission standards do not apply when any of these AECs are active.

10. Section 86.1370–2007 is amended by adding paragraph (h) to read as follows:

§ 86.1370–2007 Not-To-Exceed test procedures.

* * * * *

(h) Emergency vehicle AECs. If your engine family includes engines with one or more approved AECs for emergency vehicle applications under paragraph (4) of the definition of “defeat device” in § 86.004–2, the NTE emission limits do not apply when any of these AECs are active.

Subpart S—[Amended]

11. Section 86.1803–01 is amended as follows:

a. By adding a definition for “Ambulance” in alphabetical order.

b. By revising the definition for “Defeat device”.

c. By adding definitions for “Diesel exhaust fluid”, “Emergency vehicle”, and “Fire truck” in alphabetical order.

§ 86.1803–01 Definitions.

* * * * *

Ambulance means a vehicle used for emergency medical care that provides all of the following:

(1) A driver’s compartment.

(2) A patient compartment to accommodate an emergency medical services provider and one patient located on the primary cot so positioned that the primary patient can be given intensive life-support during transit.

(3) Equipment and supplies for emergency care at the scene as well as during transport.

(4) Safety, comfort, and avoidance of aggravation of the patient’s injury or illness.

(5) Two-way radio communication.

(6) Audible and visual traffic warning devices.

* * * * *

Defeat device means an auxiliary emission control device (AEC) that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless:

(1) Such conditions are substantially included in the Federal emission test procedure;

(2) The need for the AECD is justified in terms of protecting the vehicle against damage or accident;

(3) The AECD does not go beyond the requirements of engine starting; or

(4) The AECD applies only for emergency vehicles and the need is justified in terms of preventing the vehicle from losing speed, torque, or power due to abnormal conditions of the emission control system, or in terms of preventing such abnormal conditions from occurring, during operation related to emergency response. Examples of such abnormal conditions may include excessive exhaust backpressure from an overloaded particulate trap, and running out of diesel exhaust fluid for engines that rely on urea-based selective catalytic reduction.

Diesel exhaust fluid (DEF) means a liquid compound used in conjunction with selective catalytic reduction to reduce NOx emissions. Diesel exhaust fluid is generally understood to conform to the specifications of ISO 22241.

Emergency vehicle means a vehicle that is an ambulance or a fire truck.

Fire truck means a vehicle designed to be used under emergency conditions to transport personnel and equipment and to support the suppression of fires and mitigation of other hazardous situations.

12. Section 86.1807-01 is amended by adding paragraphs (h) and (i) to read as follows:

§ 86.1807-01 Vehicle labeling.

(h) Vehicles powered by model year 2007 through 2013 diesel-fueled engines must include permanent readily visible labels on the dashboard (or instrument panel) and near all fuel inlets that state "Use Ultra Low Sulfur Diesel Fuel Only" or "Ultra Low Sulfur Diesel Fuel Only".

(i) For vehicles with one or more approved AECDs for emergency vehicles under paragraph (4) of the definition of "defeat device" in § 86.1803, include the following statement on the emission control information label: "THIS VEHICLE HAS A LIMITED EXEMPTION AS AN EMERGENCY VEHICLE."

13. Subpart S is amended by removing § 86.1807-07.

§ 86.1807-07 [Removed]

14. Section 86.1834-01 is amended as follows:

a. By revising paragraph the introductory text of (b)(4).

b. By adding paragraph (b)(4)(iii).

c. By revising paragraph (b)(6)(i)(H).
d. By adding paragraph (b)(6)(i)(I).

§ 86.1834-01 Allowable maintenance.

(b) * * *

(4) For diesel-cycle vehicles, emission-related maintenance in addition to, or at shorter intervals than the following will not be accepted as technologically necessary, except as provided in paragraph (b)(7) of this section:

(iii) For vehicles that use selective catalytic reduction, the replenishment of diesel exhaust fluid shall occur at an interval, in miles or hours of vehicle operation, that is no less than the scheduled oil change interval.

(6) * * *

(i) * * *

(H) Components comprising the selective catalytic reduction system (including diesel exhaust fluid tank).

(I) Any other component whose primary purpose is to reduce emissions or whose failure would commonly increase emissions of any regulated pollutant without significantly degrading engine performance.

15. Section 86.1840-01 is amended by revising paragraph (c) to read as follows:

§ 86.1840-01 Special test procedures.

(c) Manufacturers of vehicles equipped with periodically regenerating aftertreatment devices must propose a procedure for testing and certifying such vehicles, including SFTP testing, for the review and approval of the Administrator. The manufacturer must submit its proposal before it begins any service accumulation or emission testing. The manufacturer must provide with its submittal sufficient documentation and data for the Administrator to fully evaluate the operation of the aftertreatment devices and the proposed certification and testing procedure.

PART 1039—CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD COMPRESSION-IGNITION ENGINES

16. The authority citation for part 1039 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart B—[Amended]

17. Section 1039.115 is amended by adding paragraphs (g)(4) and (5) to read as follows:

§ 1039.115 What other requirements apply?

* * * * *

(g) * * *
(4) The auxiliary emission control device applies only for engines that will be installed in emergency equipment and the need is justified in terms of preventing the equipment from losing speed or power due to abnormal conditions of the emission control system, or in terms of preventing such abnormal conditions from occurring, during operation related to emergency response. Examples of such abnormal conditions may include excessive exhaust backpressure from an overloaded particulate trap, and running out of diesel exhaust fluid for engines that rely on urea-based selective catalytic reduction. The emission standards do not apply when any AECDs approved under this paragraph (g)(4) are active.

(5) The auxiliary emission control device operates only in emergency situations as defined in § 1039.665 and meets all of the requirements of that section, and you meet all of the requirements of that section.

18. Section 1039.125 is amended by adding paragraphs (a)(2)(iii) and (a)(3)(iii) to read as follows:

§ 1039.125 What maintenance instructions must I give to buyers?

(a) * * *

(2) * * *

(iii) For SCR systems, the minimum interval for replenishing the diesel exhaust fluid is the number of engine operating hours necessary to consume a full tank of fuel based on normal usage starting from full fuel capacity for the equipment.

(3) * * *

(iii) For SCR systems, the minimum interval for replenishing the diesel exhaust fluid is the number of engine operating hours necessary to consume a full tank of fuel based on normal usage starting from full fuel capacity for the equipment.

19. Section 1039.130 is amended by revising paragraph (b)(3) to read as follows:

§ 1039.130 What installation instructions must I give to equipment manufacturers?

(b) * * *

(3) Describe the instructions needed to properly install the exhaust system and any other components. Include instructions consistent with the requirements of § 1039.205(u). Also describe how to properly size diesel

exhaust fluid reservoirs consistent with the specifications in § 1039.125(a) if applicable.

* * * * *

20. Section 1039.135 is amended by adding paragraph (c)(15) to read as follows:

§ 1039.135 How must I label and identify the engines I produce?

* * * * *

(c) * * *

(15) For engines with one or more approved auxiliary emission control devices for emergency equipment applications under § 1039.115(g)(4), the statement: "THIS ENGINE IS FOR INSTALLATION IN EMERGENCY EQUIPMENT ONLY."

* * * * *

Subpart F—[Amended]

21. Section 1039.501 is amended by adding paragraph (g) to read as follows:

§ 1039.501 How do I run a valid emission test?

* * * * *

(g) You may disable any AECs that have been approved solely for emergency equipment applications under § 1039.115(g)(4).

22. Section 1039.525 is amended by revising the introductory text to read as follows:

§ 1039.525 How do I adjust emission levels to account for infrequently regenerating aftertreatment devices?

This section describes how to adjust emission results from engines using aftertreatment technology with infrequent regeneration events. For this section, "regeneration" means an intended event during which emission levels change while the system restores aftertreatment performance. For example, exhaust gas temperatures may increase temporarily to remove sulfur from adsorbers or to oxidize accumulated particulate matter in a trap. For this section, "infrequent" refers to regeneration events that are expected to occur on average less than once over the applicable transient duty cycle or ramped-modal cycle, or on average less than once per typical mode in a discrete-mode test. If your engine family includes engines with one or more AECs for emergency equipment applications approved under § 1039.115(g)(4), do not consider additional regenerations resulting from those AECs when calculating emission factors or frequencies under this section.

* * * * *

Subpart G—[Amended]

23. Add § 1039.665 to subpart G to read as follows:

§ 1039.665 Special provisions for use of engines in emergency situations.

This section specifies provisions that allow for AECs that are necessary to ensure proper functioning of engines and equipment regulated under this part in emergency situations. For purposes of this section, an emergency situation is one in which the functioning (or malfunctioning) of emission controls poses a significant risk to human life. For example, a situation in which a feature of emission controls inhibits the performance of an engine being used to rescue a person from a life-threatening situation would be an emergency situation. AECs approved under this section are not defeat devices.

(a) Manufacturers may ask for approval under this section at any time; however, we encourage manufacturers to obtain preliminary approval before submitting an application for certification. We may allow manufacturers to apply an approved emergency AEC to engines and equipment that have already been placed into service.

(b) We will approve an AEC where we determine the following criteria are met:

(1) Activation of the AEC cannot occur without the specific permission of the certificate holder, and must require the input of a temporary code or equivalent security feature.

(2) The AEC must become inactive within 24 engine hours of becoming active.

(3) The AEC may deactivate emission controls as necessary to address the emergency situation. For purposes of this paragraph (b)(3), inducement strategies related to operating SCR-equipped engines without reductant are considered to be emission controls.

(4) The AEC's design is consistent with good engineering judgment.

(c) The certificate holder must keep records to document requests for and use of emergency AECs under this section.

(1) The operator (or other person responsible for the engine/equipment) must send a written request to the certificate holder prior to use, or a written confirmation of a verbal request within 30 days of making the request, including a description of the emergency situation, the reason for the use of the AEC, and a signature from an official acknowledging the conditions of the emergency situation

(such as a county sheriff, fire marshal, or hospital administrator). Such requests are deemed to be submissions to EPA. Where written confirmation is not submitted by the operator, we will deem operation of the engine with an activated emergency AEC to be a violation of 40 CFR 1068.101(b)(1).

(2) If the operator does not submit the applicable confirmation within 30 days, the certificate holder must send written notification to the operator that failure to submit written confirmation may subject the operator to penalties under 40 CFR 1068.101.

(3) Within 60 days of the end of each calendar year in which the certificate holder authorizes use of the AEC, the certificate holder must send a report to the Designated Compliance Officer to summarize such use, including a description of the emergency situation precipitating each use, and copies of the written confirmation provided by operators (or statements that the operator did not provide confirmation). We may require more frequent reporting if we find that the certificate holder does not collect or attempt to collect written confirmation for each situation.

(d) We may set other reasonable conditions to ensure that this provision is not used to circumvent the emission standards of this part.

24. Add § 1039.670 to subpart G to read as follows:

§ 1039.670 Approval of an emergency equipment field modification (EEFM).

This section describes how you may implement design changes for emergency equipment that has already been placed into service to ensure that the equipment will perform properly in emergency situations.

(a) You must notify us in writing of your intent to install or distribute an emergency equipment field modification (EEFM). In some cases you may install or distribute an EEFM only with our advance approval, as specified in this section.

(b) Include in your notification a full description of the EEFM and any documentation to support your determination that the EEFM is necessary to prevent the equipment from losing speed, torque, or power due to abnormal conditions of its emission control system, or to prevent such abnormal conditions from occurring during operation related to emergency response. Examples of such abnormal conditions may include excessive exhaust backpressure from an overloaded particulate trap, or running out of diesel exhaust fluid (DEF) for engines that rely on urea-based selective catalytic reduction. Your determination

must be based on an engineering evaluation or testing or both.

(c) You may need our advance approval for your EEFM, as follows:

(1) Where the proposed EEFM is identical to an AECD we approved under this part for an engine family currently in production, no approval of the proposed EEFM is necessary.

(2) Where the proposed EEFM is for an engine family currently in production but the applicable demonstration is based on an AECD we approved under this part for an engine family no longer in production, you must describe to us how your proposed EEFM differs from the approved AECD. Unless we say otherwise, your proposed EEFM is deemed approved 30 days after you notify us.

(3) If we have not approved an EEFM comparable to the one you are proposing, you must get our approval before installing or distributing it. In this case, we may request additional information to support your determination under paragraph (b) of this section, as follows:

(i) If we request additional information and you do not provide it within 30 days after we ask, we may deem that you have retracted your request for our approval; however, we may extend this deadline for submitting the additional information.

(ii) We will deny your request if we determine that the EEFM is not

necessary to prevent the equipment from losing speed, torque, or power due abnormal conditions of the emission control system, or to prevent such abnormal conditions from occurring, during operation related to emergency response.

(iii) Unless we say otherwise, your proposed EEFM is deemed approved 30 days after we acknowledge that you have provided us with all the additional information we have specified.

(4) If your proposed EEFM is deemed to be approved under paragraph (c)(2) or (3) of this section and we find later that your EEFM in fact does not meet the requirements of this section, we may require you to no longer install or distribute it.

Subpart I—[Amended]

25. Section 1039.801 is amended by adding definitions for “Diesel exhaust fluid” and “Emergency equipment” in alphabetical order to read as follows:

§ 1039.801 What definitions apply to this part?

* * * * *

Diesel exhaust fluid (DEF) means a liquid compound used in conjunction with selective catalytic reduction to reduce NO_x emissions. *Diesel exhaust fluid* is generally understood to conform to the specifications of ISO 22241.

* * * * *

Emergency equipment means either of the following types of equipment:

(1) Specialized vehicles used to perform aircraft rescue and fire-fighting functions at airports, with particular emphasis on saving lives and reducing injuries coincident with aircraft fires following impact or aircraft ground fires.

(2) Wildland fire apparatus, which includes any apparatus equipped with a slip-on fire-fighting module, designed primarily to support wildland fire suppression operations.

* * * * *

26. Section 1039.805 is amended by adding abbreviations for “DEF”, “EEFM”, “ISO”, and “SCR” in alphabetical order to read as follows:

§ 1039.805 What symbols, acronyms, and abbreviations does this part use?

* * * * *

DEF Diesel exhaust fluid.

EEFM Emergency equipment field modification.

* * * * *

ISO International Organization for Standardization (see www.iso.org).

* * * * *

SCR Selective catalytic reduction.

* * * * *

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