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Presidential Documents

Title 3—

The President

Proclamation 8760 of November 30, 2011

Critical Infrastructure Protection Month, 2011

By the President of the United States of America

A Proclamation

From irrigation to the Internet, our Nation's critical infrastructure supports an incredible array of services and industries that are essential to our continued success and prosperity. Critical infrastructure includes all systems and assets, both physical and virtual, that make vital contributions to our security, economic stability, public health, or safety. This month, we affirm the fundamental importance of our critical infrastructure and recommit to preparing for, responding to, and recovering from hazardous events and emergencies efficiently and effectively.

My Administration is resolute in our dedication to a safe, secure future for our Nation. Natural disasters, pandemic diseases, and acts of terrorism can pose serious risks to our critical infrastructure, and it is imperative we are prepared in the event of an emergency. To reduce risks and improve our national preparedness, we are fortifying our partnerships with State, local, territorial, and tribal governments to close gaps in our protection programs and promote collaboration at all levels of government. We are also engaging a wide variety of private stakeholders, including critical infrastructure owners and operators, to expand and reinforce critical infrastructure protection. And, with the *If You See Something, Say Something* campaign, we are empowering individuals and communities across America to help improve public safety. All of us have a role to play in strengthening our national security, and together, we are taking steps to foster a culture of resilience.

As we navigate new and uncertain challenges in the digital age, we must also address the growing threat cyber attacks present to our transportation networks, electricity grid, financial systems, and other assets and infrastructure. Cybersecurity remains a priority for my Administration, and we are committed to protecting our critical infrastructure by taking decisive action against cyber threats. To ensure the safety of our most vital operations, we are working to give public and private organizations the ability to obtain cybersecurity assistance quickly and effectively. These efforts will bolster our ability to withstand any attack, whether virtual or physical.

During Critical Infrastructure Protection Month, we reflect on our responsibility to protect the vital systems and assets that sustain our country and our people. Strengthening our national security and resilience is a task for all of us, and by promoting awareness and partnering with one another, we can make essential progress toward safe, secure, and prosperous horizons for every American.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 2011 as Critical Infrastructure Protection Month. I call upon the people of the United States to recognize the importance of protecting our Nation's critical resources and to observe this month with appropriate events and training to enhance our national security and resilience.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of November, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2011–31412
Filed 12–5–11; 8:45 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8761 of November 30, 2011

National Impaired Driving Prevention Month, 2011

By the President of the United States of America

A Proclamation

Though we have made progress in the fight to reduce drunk driving, our Nation continues to suffer an unacceptable loss of life from traffic accidents that involve drugs, alcohol, and distracted driving. To bring an end to these heartbreaking outcomes, we must take action by promoting rigorous enforcement measures and effective substance abuse prevention programs. During National Impaired Driving Prevention Month, we recommit to preventing tragedy before it strikes by ensuring our family members and friends stay safe, sober, and drug-free on the road.

As we strive to reduce the damage drug use inflicts upon our communities, we must address the serious and growing threat drunk, drugged, and distracted driving poses to all Americans. Alcohol and drugs, both illicit and prescribed, can impair judgment, reaction time, motor skills, and memory, eroding a person's ability to drive safely and responsibly. Distracted driving, including the use of electronic equipment behind the wheel, can also put lives at risk. To confront these issues, my Administration is working to decrease the incidence of drugged driving by 10 percent over the next 5 years as part of our 2011 National Drug Control Strategy. We are collaborating with State and local governments to bolster enforcement efforts, implement more effective legislation, and support successful, evidence-based prevention programs. These ongoing initiatives are supplemented by our *Drive Sober or Get Pulled Over* campaign, which aims to deter impaired driving during the holiday season.

While enforcement and legislation are critical elements of our strategy, we know that the parents, educators, and community leaders who work with young people every day are our Nation's best advocates for responsible decisionmaking. Research suggests that younger drivers are particularly susceptible to the hazards of drugged driving. To help our families and communities build awareness about impaired driving, my Administration released a toolkit that includes information about drugged driving, discussion guides, and tip sheets for preventing driving under the influence of alcohol and drugs. These materials are available with a variety of other resources at: www.TheAntiDrug.com.

All of us have the power to effect change and work to end drunk, drugged, and distracted driving in America. In our homes and communities, we can engage our youth and discuss the consequences of drug and alcohol abuse. In our clinics and hospitals, health care providers can redouble their efforts to recognize patients with substance abuse problems and offer medical intervention. And in governing bodies across our country, State and local officials can explore new legal actions that will hold drugged drivers accountable and encourage them to seek treatment. As we come together with our loved ones this holiday season, let us renew our commitment to drive safely, act responsibly, and live drug-free.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 2011 as National Impaired Driving Prevention Month. I urge all Americans to

make responsible decisions and take appropriate measures to prevent impaired driving.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of November, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2011–31416
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Presidential Documents

Proclamation 8762 of November 30, 2011

World AIDS Day, 2011

By the President of the United States of America

A Proclamation

On World AIDS Day, 30 years after the first cases of HIV/AIDS were reported, we stand with the individuals and communities affected by HIV and recommit to progress toward an AIDS-free generation.

My Administration is taking action to turn the corner on the HIV/AIDS pandemic by investing in research that promises new and proven methods to prevent infection and better therapies for people living with HIV. In the past year, the National Institutes of Health has reported important progress. We now know that treatment of HIV not only improves clinical outcomes, but can also dramatically reduce the risk of transmission. Studies on the use of antiretroviral medications to prevent infection of HIV-negative individuals show promising results. And research is ongoing to devise new prevention methods that may one day offer innovative ways to prevent the spread of HIV, like microbicides that can curb the risk of infection in women. By pursuing the next breakthrough treatment in the fight against HIV, continuing research to develop a vaccine, and incorporating new scientific tools into our programs, we are taking important steps toward an AIDS-free generation.

To combat the HIV epidemic in the United States, we are implementing the first comprehensive National HIV/AIDS Strategy in our country's history, which calls for strong, coordinated policy initiatives, enhanced HIV/AIDS education, collaboration across the Federal Government, and robust engagement with individuals, communities, and businesses across America. As part of these efforts, we are embracing the best science available to prevent new HIV infections, and we are testing new approaches to integrating housing, prevention, care, and substance abuse and mental health services related to HIV/AIDS. We are implementing the Affordable Care Act, which mandates new consumer protections and new options for purchasing health insurance for all Americans by 2014, including those with HIV. We are also striving to secure employment opportunities for people living with HIV by working to end discrimination based on HIV status.

To address the global HIV pandemic, we are working with nations around the world to advance comprehensive prevention efforts and provide lifesaving medicine to millions of people living with HIV. We are integrating cutting-edge science into the President's Emergency Plan for AIDS Relief (PEPFAR) that will do even more to prevent new HIV infections, including more effective drug regimens to prevent mother-to-child HIV transmission and low-cost approaches like voluntary medical male circumcision. When combined with other proven approaches, such as condoms, HIV testing and counseling, and programs to support behavior change, these advances can dramatically reduce HIV incidence and save lives. As we move forward, we will maintain our commitment to rigorously measuring the impact of these approaches, revising them appropriately, and incorporating new ideas and technologies as they become available.

Recognizing that a coordinated strategy is essential to our success, we are partnering with a wide variety of stakeholders to promote HIV/AIDS awareness, prevention, and treatment. Here at home, States, tribes, territories,

and local governments are vital partners in implementing the National HIV/AIDS Strategy, and we are joined by a host of public and private supporters and collaborators in PEPFAR. Partnerships with corporations, foundations, faith-based institutions, academic institutions, and other organizations are critically important to the fight against HIV, and we will work to strengthen these ties in the years ahead.

At this pivotal time in the worldwide response to HIV, the United States is preparing to welcome the global community to Washington, D.C., for the 19th International AIDS Conference in July 2012. We look forward to working with and learning from people living with HIV, clinicians, researchers, practitioners, and advocates from across the globe. On this World AIDS Day, let us reflect on the people we have lost and those we hold dear who are living with or affected by HIV/AIDS. And as we pay tribute to the past and current heroes in the struggle against this disease, let us recommit to bringing an end to this tragic pandemic and pursuing an AIDS-free generation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States do hereby proclaim December 1, 2011, as World AIDS Day. I urge the Governors of the States and the Commonwealth of Puerto Rico, officials of the other territories subject to the jurisdiction of the United States, and the American people to join me in appropriate activities to remember those who have lost their lives to AIDS and to provide support and comfort to those living with this disease.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of November, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

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Rules and Regulations

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0733; Directorate Identifier 2010–NE–36–AD; Amendment 39–16885; AD 2011–25–09]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division (PW) PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain PW4000 turbofan engines. This AD was prompted by an updated low-cycle fatigue (LCF) life analysis performed by PW. This AD requires removing certain part number (P/N) high-pressure turbine (HPT) stage 1 and HPT stage 2 airseals and HPT stage 1 airseal rings before their published life limit and establishes a new lower life limit for these parts. We are issuing this AD to prevent failure of these parts, which could lead to an uncontained engine failure and damage to the airplane.

DATES: This AD is effective January 10, 2012.

ADDRESSES: For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: (860) 565–1605. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: James Gray, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park; *phone:* (781) 238–7742; *fax:* (781) 238–7199; *email: james.e.gray@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on July 14, 2011 (76 FR 41430). That NPRM proposed to require removing certain P/N HPT stage 1 and HPT stage 2 airseals and HPT stage 1 airseal rings before their published life limit, and establishes a new lower life limit for these parts.

Comments

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

Request To Publish Date When Chapter 5 Will Be Revised

One commenter, Lufthansa Technik AG (Lufthansa), requested that we note in the AD that Chapter 5 will be revised and indicate when it will occur. Lufthansa believes this knowledge will help optimize planning for removal of parts that will be close to their reduced life limits when Chapter 5 is revised.

We do not agree. Although Chapter 5 may be revised in the future, we do not know when. If Chapter 5 is revised in the future, we will publish an NPRM that will allow the public an opportunity to comment. We did not change the AD as a result of this comment.

Request To Indicate How To Perform Pro-Rata Calculation

One commenter, SR Technics, requested that the AD define how to perform the pro-rata calculation of the parts' life limit after the effective date of the AD for parts that have been installed on engines with different thrust loads.

We do not agree. Information on how to track part life for parts that have been installed on engines with different thrust loads can be found in the relevant engine manual. We did not change the AD as a result of this comment.

Request for Industry Support Program

One commenter, FedEx Express (FedEx), indicated that the proposed AD would affect 174 engines in its fleet and cost FedEx $8,149,290. FedEx requested that Pratt & Whitney, therefore, provide an industry support program to help alleviate this financial burden.

We do not agree. We do not have the authority to require a design approval holder to offer such a program. We did not change the AD as a result of this comment.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes to the Unsafe Condition paragraph made for clarification.

We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (76 FR 41430, July 14, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 41430, July 14, 2011).

Costs of Compliance

We estimate that this AD will affect 869 engines installed on airplanes of U.S. registry. We also estimate that, because the removals will be performed at piece-part level, no additional work-hours will be required. Prorated life for the HPT is about $46,835 per engine. Based on these figures, we estimate the total cost of this AD to U.S. operators is $40,699,615.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–25–09 Pratt & Whitney Division: Amendment 39–16885; Docket No. FAA–2011–0733; Directorate Identifier 2010–NE–36–AD.

(a) Effective Date

This AD is effective January 10, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Pratt & Whitney Division (PW) turbofan engines, with high-pressure turbine (HPT) stage 1 airseal, part number (P/N) 50L879; HPT stage 2 airseal, P/N 53L030; or HPT stage 1 airseal ring, P/N 50L664, installed:

(1) PW4000–100″ Engines

PW4000–100″ engine models PW4164, PW4164C, PW4164C/B, PW4168, and PW4168A.

(2) PW4000–94″ Engines

(i) PW4000–94″ engine models PW4060, PW4060A, PW4060C, PW4062, PW4062A, PW4156A, PW4158, PW4160, PW4460, and PW4462 that have incorporated either Engineering Change Numbers EC92KK322G, H, I, J, and K, or one of the following PW Service Bulletins (SBs): PW4ENG 72–490, PW4ENG 72–504, PW4ENG 72–512, PW4ENG 72–572, PW4ENG 72–588, PW4ENG 73–150; as indicated with a (–3), (–3A), or (–3B) suffix on the engine data plate.

(ii) PW4000–94″ engine models PW4050, PW4052, PW4056, PW4152, PW4156, and PW4650 that have incorporated either Engineering Change Numbers EC92KK322G, H, I, J, and K, or one of the following PW SBs: PW SB PW4ENG 72–490, PW4ENG 72–504, PW4ENG 72–512, PW4ENG 72–572, PW4ENG 72–588, PW4ENG 73–150; as indicated with a (–3), (–3A), or (–3B) suffix on the engine data plate.

(d) Unsafe Condition

This AD was prompted by an updated low-cycle fatigue (LCF) life analysis performed by PW. We are issuing this AD to prevent failure of these parts, which could lead to an uncontained engine failure and damage to the airplane.

(e) Compliance

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

(f) Removing From Service, the Stage 1 HPT Airseal, P/N 50L879

Remove the stage 1 HPT airseal, P/N 50L879, at the next piece-part exposure after the effective date of this AD or before accumulating the number of cycles listed in Table 1 of this AD, whichever occurs later.

TABLE 1—REMOVAL OF STAGE 1 HPT AIRSEALS, P/N 50L879, BY CYCLES-SINCE-NEW (CSN)

For engine model . . .	Remove stage 1 HPT airseal by . . .
(1) Listed in paragraph (c)(1) of the Applicability Section of this AD	12,600 CSN.
(2) Listed in paragraph (c)(2)(i) of the Applicability Section of this AD	13,900 CSN.
(3) Listed in paragraph (c)(2)(ii) of the Applicability Section of this AD	18,900 CSN.

(g) Removing From Service, the Stage 2 HPT Airseal, P/N 53L030

Remove the stage 2 HPT airseal, P/N 53L030, at the next piece-part exposure after the effective date of this AD or before accumulating the number of cycles listed in Table 2 of this AD, whichever occurs later.

TABLE 2—REMOVAL OF STAGE 2 HPT AIRSEALS, P/N 53L030, BY CSN

For engine model . . .	Remove stage 2 HPT airseal by . . .
(1) Listed in paragraph (c)(1) of the Applicability Section of this AD	13,900 CSN.

TABLE 2—REMOVAL OF STAGE 2 HPT AIRSEALS, P/N 53L030, BY CSN—Continued

For engine model . . .	Remove stage 2 HPT airseal by . . .
(2) Listed in paragraph (c)(2)(i) of the Applicability Section of this AD	13,800 CSN.
(3) Listed in paragraph (c)(2)(ii) of the Applicability Section of this AD	15,900 CSN.

(h) Removing From Service, the Stage 1 HPT Airseal Ring, P/N 50L664

Remove the stage 1 HPT airseal ring, P/N 50L664, at the next piece-part exposure after the effective date of this AD or before accumulating the number of cycles listed in Table 3 of this AD, whichever occurs later.

TABLE 3—REMOVAL OF STAGE 1 HPT AIRSEAL RING, P/N 50L664, BY CSN

For engine model . . .	Remove stage 1 HPT airseal ring by * * *
(1) Listed in paragraph (c)(2)(i) of the Applicability Section of this AD	14,800 CSN.
(2) Listed in paragraph (c)(2)(ii) of the Applicability Section of this AD	16,800 CSN.

(i) Installation Prohibition

After the effective date of this AD, do not install any stage 1 HPT airseal, P/N 50L879, stage 2 HPT airseal, P/N 53L030, or stage 1 HPT airseal ring, P/N 50L664, that is at piece-part exposure and exceeds the new life limit listed in Table 1, Table 2, or Table 3 of this AD.

(j) Definitions

For the purpose of this AD, piece-part exposure means that the part is completely disassembled and removed from the engine.

(k) Alternative Methods of Compliance (AMOCs)

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

(l) Related Information

For more information about this AD, contact James Gray, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; *phone:* (781) 238–7742; *fax:* (781) 238–7199; *email: james.e.gray@faa.gov.*

(m) Material Incorporated by Reference

None.

Issued in Burlington, MA, on November 30, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–31177 Filed 12–5–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 110112021–1680–03]

RIN 0691–AA76

International Services Surveys: Amendments to the BE–120, Benchmark Survey of Transactions in Selected Services and Intangible Assets With Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the Bureau of Economic Analysis, Department of Commerce (BEA) to set forth the reporting requirements for the BE–120, Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons. The amended regulations for the BE–120 include both definition changes and the addition of three schedules to better collect data in accordance with new international economic accounting standards. In addition, this rule changes the BE–120 survey title from ''Benchmark Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons'' to ''Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons'' because the term ''intellectual property'' is better understood by U.S. respondents.

The BE–120 survey covers transactions in selected services and intellectual property with foreign persons in benchmark years. In non-benchmark years, the universe estimates for these transactions are derived from sample data reported on BEA's follow-on survey, which is the Quarterly Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons (BE–125).

The data collected by the BE–120 will be used by BEA to estimate the trade in services component of the U.S. International Transactions Accounts and other economic accounts compiled by BEA. The data are also needed by the U.S. government to monitor U.S. exports and imports of selected services and intellectual property; analyze their impact on the U.S. and foreign economies; support U.S. international trade policy for selected services and intellectual property; and assess and promote U.S. competitiveness in international trade in services. In addition, the data will improve the ability of U.S. businesses to identify and evaluate market opportunities.

DATES: The final rule is effective January 5, 2012.

FOR FURTHER INFORMATION CONTACT: Chris Emond, Chief, Special Surveys Branch, Balance of Payments Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; email *Christopher.Emond@bea.gov*; or phone (202) 606–9826.

SUPPLEMENTARY INFORMATION: This rule amends 15 CFR 801.10 to update certain reporting requirements for the BE–120, Benchmark Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons. The revised

regulations for the BE–120 include both definition changes and the addition of three schedules to better collect data in accordance with new international standards. In addition, this rule would change the title of the BE–120 survey and make other non-substantive format changes to the regulations.

In the August 12, 2011 **Federal Register** (76 FR 50158–50161), BEA published a notice of proposed rulemaking to amend 15 CFR 801.10 to set forth the reporting requirements for the BE 120, Benchmark Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons. No comments were received on the proposed rule. Thus, the proposed rule is adopted without change.

Description of Changes

Upon the effective date of this rule, BEA will conduct the revised BE–120 survey every five years, with the initial survey covering fiscal year 2011, pursuant to the authority provided by the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108), hereinafter, ''the Act.'' The revised BE–120 survey covers purchases from and sales to foreign persons of any of the 36 types of services or intellectual property listed in paragraph 801.10(c) in benchmark years. In non-benchmark years, the universe estimates for these transactions are derived from sample data reported on BEA's follow-on survey, which is the Quarterly Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons (BE–125). BEA will send the survey to potential respondents in March of 2012; responses will be due by June 30, 2012.

This rule revises the regulations for the BE–120 to collect data on a mandatory basis for the same services categories that were covered by the previous version of the survey. However, this rule revises the definition of covered services; some of the services categories that were included in the ''other selected services'' category in the prior survey will be collected separately. These services include agricultural services; disbursements to fund production costs of motion pictures; disbursements to fund news-gathering costs and production costs of program material other than news; and waste treatment and depollution services. This rule also makes non-substantive format changes to the definition of covered services for better organization. Specifically, this rule numbers the types of services or intellectual property into a list of 36 transactions.

In addition, this rule revises the regulations for the BE–120 survey to include three new schedules, Schedules D, E and F, to collect, on a voluntary basis, additional information related to intellectual property, contract manufacturing services, and merchanting services. The regulations at 15 U.S.C. 801.10(b)(ii) are amended to describe the three new schedules, to indicate the entity that is to complete each schedule, and to provide instructions for the type of data to be reported. For example, Schedule D is to be completed by a U.S. person who engages in contract manufacturing services transactions with foreign persons. Schedule E is to be completed by a U.S. person who engages in intellectual property transactions with foreign persons. Schedule F is to be completed by U.S. persons who engage in merchanting services transactions with foreign persons. Responses from these schedules will help BEA determine whether respondents are able to supply data in a manner that will allow BEA to publish statistics on international services transactions in accordance with international economic accounting guidelines.

Finally, this rule changes the BE–120 survey title from ''Benchmark Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons'' to ''Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons'' because the term ''intellectual property'' is better understood by U.S. respondents.

BEA maintains a continuing dialogue with respondents and with data users, including its own internal users, to ensure that, as far as possible, the required data serve their intended purposes and are available from existing records, that instructions are clear, and that unreasonable burdens are not imposed. In reaching decisions about the questions to include in the survey, BEA considered the Government's need for the data, the burden imposed on respondents, the quality of the likely responses (for example, whether the data are available on respondents' books), and BEA's experience in previous benchmark, annual, and quarterly surveys.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), which provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services and publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection.

In Section 3 of Executive Order 11961, as amended by Executive Orders 12318 and 12518, the President delegated the responsibilities under the Act for performing functions concerning international trade in services to the Secretary of Commerce, who has redelegated them to BEA.

Data from the survey are needed to monitor U.S. exports and imports of selected services and intellectual property; analyze their impact on the U.S. and foreign economies; compile and improve the U.S. international transactions, national income and product, and input-output accounts; support U.S. international trade policy for services and intellectual property; assess and promote U.S. competitiveness in international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This final rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

Paperwork Reduction Act

The collection-of-information requirement in this final rule has been approved by the Office of Management and Budget (OMB) under Control Number 0608–0058 pursuant to the requirements of the Paperwork Reduction Act.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number.

The benchmark survey is expected to result in the filing of reports from approximately 15,000 respondents. Approximately 7,500 respondents will report either mandatory or voluntary data on the survey and approximately 7,500 will file exemption claims. The respondent burden for this collection of information will vary from one respondent to another, but is estimated

to average twelve hours for the respondents that file mandatory or voluntary data. This estimate includes time for reviewing the instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. For other responses, the estimate is two hours. Thus, the total respondent burden for the survey is estimated at 105,000 hours.

Comments are requested concerning: (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 burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the final rule should be sent both to *Christopher.emond@bea.gov* and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project, Attention PRA Desk Officer for BEA, via email at *pbugg@omb.eop.gov*, or by FAX at (202) 395–7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the economic impact of this rule. As a result, final regulatory flexibility analysis is not required and none was prepared.

List of Subjects in 15 CFR Part 801

International transactions, Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: November 22, 2011.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

■ 1. The authority citation for 15 CFR Part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; and E.O. 11961, 3 CFR, 1977 Comp., p.86, as amended by E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518, 3 CFR, 1985 Comp., p. 348.

■ 2. Revise § 801.10 to read as follows:

§ 801.10 Rules and regulations for the BE–120, Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons.

The BE–120, Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons, will be conducted covering fiscal year 2011 and every fifth year thereafter. All legal authorities, provisions, definitions, and requirements contained in section 801.1 through 801.9(a) are applicable to this survey. Additional rules and regulations for the BE–120 survey are given in paragraphs (a) through (c) of this section. More detailed instructions and descriptions of the individual types of transactions covered are given on the report form itself.

(a) The BE–120 survey consists of two parts and six schedules. Part I requests information needed to contact the respondent and the reporting period. Part II requests information needed to determine whether a report is required and information about the reporting entity. Each of the six schedules covers one or more types of transactions and is to be completed only if the U.S. reporter has transactions of the type(s) covered by the particular schedule.

(b) *Who must report* —(1) *Mandatory reporting.* A BE–120 report is required from each U.S. person that had sales to foreign persons that exceeded $2 million during the fiscal year covered of any of the types of services or intellectual property listed in paragraph (c) of this section, or had purchases from foreign persons that exceeded $1 million during the fiscal year covered of any of the types of services or intellectual property listed in paragraph (c) of this section. Because the reporting threshold ($2 million for sales and $1 million for purchases) applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both sales and purchases.

(i) The determination of whether a U.S. person is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed records search.

(ii) U.S. persons that file pursuant to this mandatory reporting requirement must complete Parts I and II of Form BE–120 and all applicable schedules. The total values of transactions applicable to schedules A, B, and C are to be entered in the appropriate column(s) and, except for sales of merchanting services, these amounts must be distributed among the countries involved in the transactions. For sales of merchanting services, the data are not required to be reported by individual foreign country, although this information may be provided voluntarily. Schedule D is to be completed by a U.S. person who engages in contract manufacturing services transactions with foreign persons. Schedule E is to be completed by a U.S. person who engages in intellectual property transactions with foreign persons. Schedule F is to be completed by U.S. persons who engage in merchanting services transactions with foreign persons.

(iii) Application of the exemption levels to each covered transaction is indicated on the schedule for that particular type of transaction. It should be noted that an item other than sales or purchases may be used as the measure of a given type of transaction for purposes of determining whether the threshold for mandatory reporting of the transaction is exceeded.

(2) *Voluntary reporting.* If, during the fiscal year covered, the U.S. person's total transactions (either sales or purchases) in any of the types of transactions listed in paragraph (c) of this section are $2 million or less for sales or $1 million or less for purchases, the U.S. person is requested to provide an estimate of the total for each type of transaction. Provision of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed records search. Because the exemption threshold applies separately to sales and purchases, the voluntary reporting option may apply only to sales, only to purchases, or to both sales and purchases.

(3) Any U.S. person that receives the BE–120 survey form from BEA, but is not subject to the mandatory reporting requirements and chooses not to report voluntarily, must file an exemption claim by completing pages one through five of the BE–120 survey and returning it to BEA. This requirement is necessary to ensure compliance with reporting

requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(c) *Covered types of services.* The services covered by the BE–120 include sales and purchases for the following transactions (transaction types 1–8 include rights to use, rights to distribute, or outright sales or purchases):

(1) Rights related to industrial processes and products;

(2) Rights related to books, CD's, digital music, etc.;

(3) Rights related to trademarks;

(4) Rights related to performances and events pre-recorded on motion picture film and TV tape (including digital recordings);

(5) Rights related to broadcast and recording of live performances and events;

(6) Rights related to general use computer software;

(7) Business format franchising fees;

(8) Other intellectual property;

(9) Accounting, auditing, and bookkeeping services;

(10) Advertising services;

(11) Auxiliary insurance services;

(12) Computer and data processing services;

(13) Construction services;

(14) Data base and other information services;

(15) Educational and training services;

(16) Engineering, architectural, and surveying services;

(17) Financial services (purchases only);

(18) Industrial engineering services;

(19) Industrial-type maintenance, installation, alteration, and training services;

(20) Legal services;

(21) Management, consulting, and public relations services (includes expenses allocated to/from a parent and its affiliates);

(22) Merchanting services;

(23) Mining services;

(24) Operational leasing services;

(25) Trade-related services, other than merchanting services;

(26) Performing arts, sports, and other live performances, presentations, and events;

(27) Premiums paid on primary insurance (payments only);

(28) Losses recovered on primary insurance;

(29) Research and development services;

(30) Telecommunications services;

(31) Agricultural services;

(32) Contract manufacturing services;

(33) Disbursements to fund production costs of motion pictures;

(34) Disbursements to fund news-gathering costs and production costs of program material other than news;

(35) Waste treatment and depollution services; and

(36) Other selected services.

[FR Doc. 2011–30914 Filed 12–5–11; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice 7706]

RIN 1400–AC57

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

AGENCY: Bureau of Consular Affairs, State.

ACTION: Final rule.

SUMMARY: This rule adopts without change the interim final rule published in the **Federal Register**, 75 FR 28188, on May 20, 2010 (Public Notice 7018). Specifically, the rule proposed changes to the Schedule of Fees for Consular Services (Schedule) for nonimmigrant visa and border crossing card application processing fees. This rulemaking adopts as final the change from $131 to $140 for the fee charged for the processing of an application for most non-petition-based nonimmigrant visas (Machine-Readable Visas or MRVs) and adult Border Crossing Cards (BCCs). The rule also provides new tiers of the application fee for certain categories of petition-based nonimmigrant visas and treaty trader and investor visas. Finally, the rule adopts as final the increase in the BCC fee charged to Mexican citizens under age 15 who apply in Mexico, and whose parent or guardian already has a BCC or is applying for one, from $13 to $14. This latter change results from a congressionally mandated surcharge that went into effect in 2009.

The Department of State is adjusting the fees to ensure that sufficient resources are available to meet the costs of providing consular services in light of an independent cost of service study's findings that the U.S. Government is not fully covering its costs for the processing of these visas under the current cost structure. The Department endeavors to recover the cost of providing services that benefit specific individuals, as opposed to the general public. See OMB Circular A–25, section 6(a)(1), (a)(2)(a). For this reason, the Department has adjusted the Schedule.

DATES: *Effective Date:* This rule is effective December 6, 2011.

FOR FURTHER INFORMATION CONTACT: Polly Hill, Office of the Comptroller, Bureau of Consular Affairs, Department of State; *phone:* (202) 663–1301, *telefax:* (202) 663–2599; *email: fees@state.gov.*

SUPPLEMENTARY INFORMATION:

Background

For the complete explanation of the background of this rule, including the rationale for it, the Department's authority to make the fee changes in question, and an explanation of the CoSM that produced the fee amounts, consult the prior public notices: 75 FR 66076 (Dec. 14, 2009); 75 FR 14111 (Mar. 24, 2010); and 75 FR 28188 (May 20, 2010).

The Department published a proposed rule in the **Federal Register**, 74 FR 66076, on December 14, 2009, proposing to amend 22 CFR 22.1. Specifically, the rule proposed changes to the Schedule of Fees for Consular Services for nonimmigrant visa and border crossing card application processing fees, and provided 60 days for comments from the public. In response to requests by the public for more information and a further opportunity to submit comments, the Department published a supplementary notice in the **Federal Register**, 75 FR 14111, on March 24, 2010. The supplementary notice provided a more detailed explanation of the CoSM, the activity-based costing model that the Department used to determine the proposed fees for consular services, and reopened the comment period for an additional 15 days. During this and the previous 60-day comment period, 81 comments were received, either by email or through the submission process at *www.regulations.gov.* The Department analyzed these 81 comments in the interim final rule at 75 FR 28188, 28190–82, and does not reproduce that analysis here. Instead, the current notice addresses only the additional comments received in the further 60 days during which the comment period for this interim final rule was open. In total, the public has been given 135 days to comment on this change to the Schedule of Fees.

This rule establishes the following fees for these categories corresponding to projected cost figures for the visa category as determined by the CoSM. These fees incorporate the $1 Wilberforce surcharge that must be added to all nonimmigrant MRVs, *see* Public Law 110–457, Title II, § 239(a):

—H, L, O, P, Q, and R: $150;
—E: $390; and
—K: $350.

The Department rounded these fees to the nearest $10 for the ease of converting to foreign currencies, which

are most often used to pay the fee. The additional revenue resulting from this rounding will be used to cover the costs of Global Support Strategy (GSS) services.

Analysis of Comments

The proposed rule was published for comment on December 14, 2009. During the comment period, which initially closed February 12, 2010 and was subsequently extended until April 8, 2010, the Department received 81 comments. For an analysis of those comments, please see the interim final rule in the **Federal Register**, 75 FR 14111, published May 20, 2010 (Public Notice 7018).

The Department published the interim final rule on May 20, 2010, and reopened the comment period for an additional 60 days. During that comment period, which closed on July 19, 2010, the Department received an additional nine comments. The following analysis addresses these nine comments. Of the nine, three were in support of the increase. Reasons for support included endorsement of the fee changes as necessary to allow the Department to meet its budget.

Two comments criticized the increased K-category fiancé(e) visa fee, arguing that the increase in the K visa fee will make it more difficult for U.S. citizens to bring their loved ones to the United States. While the Department appreciates the financial difficulties that increased fees can create, it has determined that it must recover the cost of providing the service. The Department is adjusting the fee for K-category fiancé(e) visas from $131 to $350 specifically because adjudicating the K visa requires a review of extensive documentation and a more in-depth interview of the applicant than other categories of Machine Readable Visas (MRVs). Rather than setting a single MRV fee applicable to all MRVs regardless of category as was done in the past, the Department has concluded that it will be more equitable to set the fee for each MRV category at a level commensurate with the average cost of producing that particular product. The more extensive K visa processing procedure requires pre-processing of the case at the National Visa Center, where the petition is received from the Department of Homeland Security (DHS), packaged, and assigned to the appropriate embassy or consulate. K visa processing also requires intake and review of materials not required by some other categories of nonimmigrant visas, such as the I–134 affidavit of support and the DS–2054 medical examination report. *See* 75 FR 14111, 14113 (discussing some of the extra steps needed to process a K visa).

The higher incidence of fraud in K visa applications also requires, in many cases, a more extensive fraud investigation than is necessary for some other types of visa. Indeed, the Department of State's processing of K visas is almost identical to that required for a family-based immigrant visa, so it follows that the costs of K visa processing are similar to those for immigrant visas. Spouses, children, and parents applying for immigrant visas to the United States currently pay the Department of State a $330 application processing fee as well as a $74 immigrant visa security surcharge, Items 32 and 36 on the Schedule of Fees.

The Department received three comments from the same commenter concerning instances in which specific subsets of E-category or H-category visas appear to the commenter to require simpler processing, and suggesting that those subsets should pay lower fees than standard E and H applicants. The Department decided to charge a higher fee for visa categories that require more complex processing, seeing this as a more equitable solution than spreading the additional cost to produce certain visa categories (H, L, O, P, Q, R, E, and K) across all visa categories. The commenter appears not to challenge this decision as concerns tiered fees for visa categories more broadly. He argued, however, that there is no reason to charge more than $140—the base MRV fee—to Singaporean and Chilean H–1B1 visa applicants; such applicants, if approved, qualify for non-petition-based visas to work in a specialty occupation under legislation implementing treaties between the United States and those countries. The commenter made a similar argument with respect to E–3 visas issued to Australian applicants pursuant to legislation that authorizes non-petition based visas for Australians to work in a specialty occupation; he argued that E–3s should cost the same as H–1B1 visas for Singaporean and Chilean applicants and thus have the same fee. Another commenter suggested that the costs of processing E visas for spouses and children must be less than for principal applicants, and that therefore these derivative applicants should be charged a lower fee.

Yet as the proposed and interim final rules explained, the CoSM showed that some categories of visa require more time and resources to process than others. On average, H-category visas require the Department to perform a number of additional tasks and processes beyond those that are necessary for producing a BCC or other MRV, including review of extensive documentation and a more in-depth interview of the applicant. E-category visas require considerably more tasks on average than H-category visas and most other MRV categories. The Department has previously explained that, because E–3 visas are not petition-based when issued overseas, they require the Department of State visa adjudicator to both determine whether the employment falls under the E–3 program (similar to the work DHS performs in adjudicating a petition), and assess the eligibility of the applicant; this process is more like that required for other E visas than the process for most H visas, for which DHS has already adjudicated a petition. *See* 75 FR 28188, 28191.

In addition, the fees established by this rule are based on unit costs—global average costs for service types as a whole. The most recent CoSM, on which the new Schedule of Fees is based, improved substantially upon prior cost of service models by identifying unit costs not just for nonimmigrant visas as a whole, but for specific visa classes that involved more work (e.g., H, E, K, etc.). This CoSM did not, however, distinguish between subcategories of visas (e.g., E–1 versus E–3; H versus H–1B1). Instead, the cost model averaged together the cost of processing all subcategories of a particular type of visa. Admittedly, the amount of resources required to adjudicate individual applicants can vary significantly from case to case. As an example, a B1/B2 applicant could be a individual with a long history of good travel to the United States, and the adjudication could be made in just minutes; a different B1/B2 applicant could, however, be seeking to travel to the United States for extensive medical care over a period of years, which would require the officer to spend much more time considering the case before making a decision. The Department does not, however, charge these applicants different fees based on the time spent. The cost of the more time-consuming case and the cost of the less time-consuming case are both taken into account in determining an average unit cost for the visa category. In the same vein, the time spent adjudicating a principal applicant for an E–1 visa generally will take more time than that required to adjudicate that applicant's minor, accompanying children; the application fee charged to those applicants is based on a unit cost that takes into account both the higher-cost and the lower-cost processing. The Government Accountability Office

(GAO) has noted that government agencies should define the classes of persons subject to their fees by the ''smallest unit that is practical.'' GAO, 3 *Principles of Federal Appropriations Law* (3d ed. 2008) 12–161 (citing *Electronic Industries Ass'n* v. *FCC,* 554 F. 2d 1109, 1116 (DC Cir. 1976)). The Department determined that establishing four separate tiers of fees in this latest Schedule, based on visa category, was equitable and practical. The Department will explore the practicability of expanding in a future fee schedule the number of separate unit costs examined in the CoSM to the visa subcategory level, while keeping in mind the need to balance the administrative burden with the potential benefit to applicants.

A comment submitted jointly by United Airlines, Inc., and the U.S. Travel Association expressed concerns about how the CoSM ensured that administrative support costs were correctly attributed to individual consular services, and urged that costs for positions not dedicated to fee-based consular activities be excluded from the CoSM. As previously stated, to address the sharing and allocation of administrative support costs at embassies and consulates, the Department uses the International Cooperative Administrative Support Services (ICASS). The CoSM includes not all Department of State ICASS costs, but rather only the share of those costs equal to the share of consular ''desks'' at all embassies and consulates. The consular share of ICASS costs was then assigned within the model to all overseas services. While the Department will continue to endeavor to assign and allocate costs in the most accurate manner possible, its CoSM includes all costs for consular services—whether a fee is charged for those services or not. The Department will review, and continuously seek to keep accurate, the calculations used for allocating ICASS costs to specific service types.

Regulatory Findings

Administrative Procedure Act

The provisions of 5 U.S.C. 553 and 554 have been followed through the course of this rule making, and the Department cannot identify any adverse impact on the conduct of foreign affairs from the use of these procedures. This final rule is effective upon publication. This rule was previously published as an interim final rule on May 20, 2010, with an effective date 15 days from the date of that publication (*i.e.,* on June 4, 2010). The Department provided ''good cause'' justification at that time under 5 U.S.C. 553(d)(3). *See* 75 F.R. at 28192–28193.

Regulatory Flexibility Act

This rulemaking is subject to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq;* however, no action is required under this Act. The Department has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6). This rule raises the application processing fee for nonimmigrant visas. Although the issuance of some of these visas is contingent upon approval by DHS of a petition filed by a U.S. company with DHS, and these companies pay a fee to DHS to cover the processing of the petition, the visa itself is sought and paid for by an individual foreign national overseas who seeks to come to the United States for a temporary stay. The amount of the petition fees that are paid by small entities to DHS is not controlled by the amount of the visa fees paid by individuals to the Department of State. While small entities may be required to cover or reimburse employees for application fees, the exact number of such entities that does so is unknown. Given that the increase in petition fees accounts for only 7 percent of the total percentage of visa fee increases, the modest 15 percent increase in the application fee for employment-based nonimmigrant visas is not likely to have a significant economic impact on the small entities that choose to reimburse the applicant for the visa fee.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501–1504.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Executive Order 12866

OMB considers this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), *Regulatory Planning and Review,* September 30, 1993. Accordingly, this rule was submitted to OMB for review. This rule is necessary in light of the Department of State's CoSM finding that the cost of processing nonimmigrant visas has increased since the fee was last set in 2007. The Department is setting the nonimmigrant visa fees in accordance with 31 U.S.C. 9701 and other applicable legal authority, as described in detail in other notices associated with this rulemaking (RIN 1400–AC57). *See, e.g.,* 31 U.S.C. 9701(b)(2)(A) (agency head may prescribe regulations establishing charge for service or thing of value provided by agency based on, *inter alia,* costs to Government). This regulation sets the fees for nonimmigrant visas at the amount required to recover the costs associated with providing this service to foreign nationals.

Executive Order 13563

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Orders 12372 and 13132

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities do not apply to this rule.

Executive Order 13175

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of section 5 of Executive

Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new or modify any existing reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 22

Consular services, fees, passports and visas.

Accordingly, for the reasons stated in the preamble, 22 CFR part 22 is amended as follows:

PART 22—[AMENDED]

■ 1. The authority citation for part 22 is revised to read as follows:

Authority: 8 U.S.C. 1101 note, 1153 note, 1183a note, 1351, 1351 note, 1713, 1714, 1714 note; 10 U.S.C. 2602(c); 11 U.S.C. 1157 note; 22 U.S.C. 214, 214 note, 1475e, 2504(a), 4201, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; Exec. Order 10,718, 22 FR 4632 (1957); Exec. Order 11,295, 31 FR 10603 (1966).

■ 2. Revise § 22.1 Item 21 to read as follows:

§ 22.1 Schedule of fees.

* * * * *

SCHEDULE OF FEES FOR CONSULAR SERVICES

Item No.	Fee
* * * * * * *	
Nonimmigrant Visa Services	
21. Nonimmigrant visa and border crossing card application processing fees (per person):	
(a) Non-petition-based nonimmigrant visa (except E category)	$140
(b) H, L, O, P, Q and R category nonimmigrant visa	$150
(c) E category nonimmigrant visa	$390
(d) K category nonimmigrant visa	$350
(e) Border crossing card—age 15 and over (valid 10 years)	$140
(f) Border crossing card—under age 15; for Mexican citizens if parent or guardian has or is applying for a border crossing card (valid 10 years or until the applicant reaches age 15, whichever is sooner)	$14
* * * * * * *	

Dated: August 9, 2011.

Patrick F. Kennedy,

Under Secretary of State for Management, Department of State.

[FR Doc. 2011–31175 Filed 12–5–11; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

22 CFR Part 126

RIN 1400–AD00

[Public Notice 7708]

Amendment to the International Traffic in Arms Regulations: Additional Method of Electronic Payment of Registration Fees

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to identify the Federal Reserve Wire Network (FedWire) as another method of electronic payment of registration fees, so as to provide a choice in and facilitate the submission of fees by registrants.

DATES: This rule is effective December 6, 2011.

FOR FURTHER INFORMATION CONTACT: Tanya A. Phillips, Office of Defense Trade Controls Compliance, U.S. Department of State, telephone (202) 632–2797, or email *DDTCResponseTeam@state.gov. ATTN*: Registration—Additional Method of Electronic Payment of Registration Fees.

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC) is responsible for the collection of registration fees from persons in the business of manufacturing, exporting, and/or brokering defense articles or defense services.

On February 24, 2011, the Department proposed electronic payment as the sole method of the submission of registration fees (*see* the proposed rule, ''Amendment to the International Traffic in Arms Regulations: Electronic Payment of Registration Fees; 60-Day Notice of the Proposed Statement of Registration Information Collection,'' 76 FR 10291). That proposal received no public comment within the established comment period. The final rule (76 FR 45195, July 28, 2011) took effect on September 26, 2011, and identified Automated Clearing House (ACH) as the means by which U.S. entities may electronically submit their registration fees.

Since the implementation of that rule, a considerable number of intended registrants have contacted the Department, inquiring if payment may be made using the Federal Reserve Wire Network (FedWire), as they were experiencing difficulties in originating ACH transactions. This rule seeks to address these concerns. Therefore, to §§ 122.2 and 129.4 of the ITAR, where registration fee payment is described, FedWire is added as an acceptable electronic payment method.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from section 553 (Rulemaking) and section 554 (Adjudications) of the Administrative Procedure Act. Since the Department is of the opinion that this rule is exempt from 5 U.S.C. 553, it is the view of the Department of State that the provisions of section 553(d) do not apply to this rulemaking.

Regulatory Flexibility Act

Since this amendment is not subject to 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Act of 1995

This amendment does not involve a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments.

Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

Executive Order 12866

The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

Executive Order 12988

The Department of State has reviewed this amendment in light of sections 3(a) and 3(b) (2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13563

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Order 13175

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Parts 122 and 129

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 122 and 129 are amended as follows:

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

■ 1. The authority citation for part 122 continues to read as follows:

Authority: Secs. 2 and 38, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311; 1977 Comp. p. 79, 22 U.S.C. 2651a.

■ 2. Section 122.2 is amended by revising paragraph (a) to read as follows:

§ 122.2 Submission of registration statement.

(a) *General.* An intended registrant must submit a Department of State Form DS–2032 (Statement of Registration) to the Office of Defense Trade Controls Compliance by registered or overnight mail delivery, and must submit an electronic payment via Automated Clearing House or Federal Reserve Wire Network payable to the Department of State of one of the fees prescribed in § 122.3(a) of this subchapter. Automated Clearing House (ACH) and Federal Reserve Wire Network (FedWire) are electronic networks used to process financial transactions in the United States. Intended registrants should access the Directorate of Defense Trade Control's Web site at *http://www.pmddtc.state.gov* for detailed guidelines on submitting an ACH or FedWire electronic payment. Electronic payments must be in U.S. currency and must be payable through a U.S. financial institution. Cash, checks, foreign currency, or money orders will not be accepted. In addition, the Statement of Registration must be signed by a senior officer (e.g., Chief Executive Officer, President, Secretary, Partner, Member, Treasurer, General Counsel) who has been empowered by the intended registrant to sign such documents. The intended registrant also shall submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the United States. The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package. Registrants may not establish new entities for the purpose of reducing registration fees.

* * * * *

PART 129—REGISTRATION AND LICENSING OF BROKERS

■ 3. The authority citation for part 129 continues to read as follows:

Authority: Sec. 38, Pub. L. 104–164, 110 Stat. 1437, (22 U.S.C. 2778).

■ 4. Section 129.4 is amended by revising paragraph (a) to read as follows:

§ 129.4 Registration statement and fees.

(a) *General.* An intended registrant must submit a Department of State Form DS–2032 (Statement of Registration) to the Office of Defense Trade Controls Compliance by registered or overnight mail delivery, and must submit an electronic payment via Automated Clearing House (ACH), Federal Reserve Wire Network (FedWire), or Society for Worldwide Interbank Financial Telecommunications (SWIFT), payable to the Department of State of the fees prescribed in § 122.3(a) of this subchapter. Automated Clearing House and FedWire are electronic networks used to process financial transactions originating from within the United States and SWIFT is the messaging service used by financial institutions worldwide to issue international transfers for foreign accounts. Payment methods (i.e., ACH, FedWire, and SWIFT) are dependent on the source of the funds (U.S. or foreign bank) drawn from the applicant's account. The originating account must be the registrant's account and not a third party's account. Intended registrants should access the Directorate of Defense Trade Control's Web site at *http://www.pmddtc.state.gov* for detailed guidelines on submitting ACH, FedWire, and SWIFT electronic payments. Payments, including from foreign brokers, must be in U.S. currency, payable through a U.S. financial institution. Cash, checks, foreign currency, or money orders will not be accepted. The Statement of Registration must be signed by a senior officer (e.g., Chief Executive Officer, President, Secretary, Partner, Member, Treasurer, General Counsel) who has been empowered by the intended registrant to sign such documents. The intended registrant, whether a U.S. or foreign person, shall submit documentation that demonstrates it is

incorporated or otherwise authorized to do business in its respective country. Foreign persons who are required to register shall provide information that is substantially similar in content to that which a U.S. person would provide under this provision (e.g., foreign business license or similar authorization to do business). The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package. Registrants may not establish new entities for the purpose of reducing registration fees.

* * * * *

Dated: November 29, 2011.

Ellen O. Tauscher,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2011–31273 Filed 12–5–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9554]

RIN 1545–BJ07

Extending Religious and Family Member FICA and FUTA Exceptions to Disregarded Entities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document describes a correction to final and temporary regulations (TD 9554) extending the exceptions from taxes under the Federal Insurance Contributions Act (''FICA'') and the Federal Unemployment Tax Act (''FUTA'') under sections 3121(b)(3) (concerning individuals who work for certain family members), 3127 (concerning members of religious faiths), and 3306(c)(5) (concerning persons employed by children and spouses and children under 21 employed by their parents) of the Internal Revenue Code (''Code'') to entities that are disregarded as separate from their owners for Federal tax purposes. The temporary regulations also clarify the existing rule that the owners of disregarded entities, except for qualified subchapter S subsidiaries, are responsible for backup withholding and related information reporting requirements under section 3406. These regulations were published in the **Federal Register** on Tuesday, November 1, 2011 (76 FR 67363).

DATES: This correction is effective on December 6, 2011, and is applicable on November 1, 2011.

FOR FURTHER INFORMATION CONTACT: Joseph Perera, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this document are under section 7701 of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9554) contain an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recording requirements.

Correction of Publication

Accordingly, 26 CFR part 301 is corrected by making the following correcting amendment:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.7701–2T is revised to read as follows:

§ 301.7701–2T Business entities; definitions (temporary).

(a) through (c)(2)(iv) [Reserved]. For further guidance, see § 301.7701–2(a) through (c)(2)(iv).

(A) *In general.* Section § 301.7701–2(c)(2)(i) (relating to certain wholly owned entities) does not apply to taxes imposed under Subtitle C—Employment Taxes and Collection of Income Tax (Chapters 21, 22, 23, 23A, 24 and 25 of the Internal Revenue Code). However, § 301.7701–2(c)(2)(i) does apply to withholding requirements imposed under section 3406 (backup withholding). The owner of a business entity that is disregarded under § 301.7701–2 is subject to the withholding requirements imposed under section 3406 (backup withholding). Section 301.7701–2(c)(2)(i) also applies to taxes imposed under Subtitle A, including Chapter 2—Tax on Self Employment Income. The owner of an entity that is treated in the same manner as a sole proprietorship under § 301.7701–2(a) will be subject to tax on self-employment income.

(B) [Reserved]. For further guidance, see § 301.7701–2(c)(2)(iv)(B).

(C) *Exceptions.* For exceptions to the rule in § 301.7701–2(c)(2)(iv)(B), see sections 31.3121(b)(3)–1(d), 31.3127–1(c), and 31.3306(c)(5)–1(d).

(D) through (e)(4) [Reserved]. For further guidance, see § 301.7701–2(c)(2)(iv)(D) through (e)(4).

(5) Paragraphs (c)(2)(iv)(A) and (c)(2)(iv)(C) of this section apply to wages paid on or after December 6, 2011. For rules that apply to paragraph (c)(2)(iv)(A) of this section before December 6, 2011, see 26 CFR part 301 revised as of April 1, 2009. However, taxpayers may apply paragraphs (c)(2)(iv)(A) and (c)(2)(iv)(C) of this section to wages paid on or after January 1, 2009.

(e)(6) through (e)(7) [Reserved]. For further guidance, see § 301.7701–2(e)(6) through (e)(7).

(8) *Expiration Date.* The applicability of paragraphs (c)(2)(iv)(A) and (c)(2)(iv)(C) of this section expires on or before December 5, 2014.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2011–31182 Filed 12–5–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 50

[Docket No. OAG 142; AG Order No. 3314–2011]

RIN 1105–AB38

Office of the Attorney General; Assumption of Concurrent Federal Criminal Jurisdiction in Certain Areas of Indian Country

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Final rule.

SUMMARY: This rule establishes the procedures for an Indian tribe whose Indian country is subject to State criminal jurisdiction under Public Law 280 (18 U.S.C. 1162(a)) to request that the United States accept concurrent criminal jurisdiction within the tribe's Indian country, and for the Attorney General to decide whether to consent to such a request.

DATES: *Effective Date:* This rule is effective January 5, 2012.

FOR FURTHER INFORMATION, CONTACT: Mr. Tracy Toulou, Director, Office of Tribal

Justice, Department of Justice, at (202) 514–8812 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Discussion

For more than two centuries, the Federal Government has recognized Indian tribes as domestic sovereigns that have unique government-to-government relationships with the United States. Congress has broad authority to legislate with respect to Indian tribes, however, and has exercised this authority to establish a complex jurisdictional scheme for the prosecution of crimes committed in Indian country. (The term ''Indian country'' is defined in 18 U.S.C. 1151.) Criminal jurisdiction in Indian country typically depends on several factors, including the nature of the crime; whether the alleged offender, the victim, or both are Indian; and whether a treaty, Federal statute, executive order, or judicial decision has conferred jurisdiction on a particular government.

Here, three Federal statutes are particularly relevant: The General Crimes Act (also known as the Indian Country Crimes Act), 18 U.S.C. 1152; the Major Crimes Act (also known as the Indian Major Crimes Act), 18 U.S.C. 1153; and Public Law 280, Act of Aug. 15, 1953, Public Law 83–280, 67 Stat. 588, *codified in part as amended at* 18 U.S.C. 1162. Under the General Crimes and Major Crimes Acts, which apply to most of Indian country, jurisdiction to prosecute most crimes in Indian country rests with the Federal Government, the tribal government, or both concurrently. State criminal jurisdiction in Indian country is generally limited to crimes committed by non-Indians against non-Indian victims, as well as victimless crimes committed by non-Indians.

But there is an important exception to this general rule: In certain areas of Indian country, Public Law 280 renders the General Crimes and Major Crimes Acts inapplicable and instead gives the States jurisdiction over crimes committed by or against Indians. Specifically, the Public Law 280 criminal-jurisdiction provision codified at 18 U.S.C. 1162 applies in parts of Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin. (Section 1162(a) expressly exempts some areas of Indian country in these States, such as the Red Lake Reservation in Minnesota and the Warm Springs Reservation in Oregon; and some of these States have formally ''retroceded'' jurisdiction over other reservations.) In the areas of Indian country covered by section 1162, which are known as ''mandatory'' Public Law 280 jurisdictions, the Federal Government can prosecute violations of general Federal criminal statutes that apply nationwide, such as Federal narcotics laws, but typically cannot prosecute violent crimes such as murder, assault with a dangerous weapon, or felony child abuse.

In contrast, the provision originating in Public Law 280 that is codified at 25 U.S.C. 1321 provides a basis for other States to elect to assume criminal jurisdiction in Indian country on an optional basis, subject to the consent of the affected tribe. In the Indian country of these tribes, known as ''optional'' Public Law 280 jurisdictions, the Department concludes that the applicable statutes, including the Tribal Law and Order Act of 2010 (TLOA), provide that the Federal Government has concurrent jurisdiction under the General Crimes and Major Crimes Acts. *See* U.S. Department of Justice, United States Attorneys' Manual, tit. 9, Criminal Resource Manual § 688 (Federal Government may exercise concurrent criminal jurisdiction in ''the so-called 'option states' * * * which assumed jurisdiction pursuant to Public Law 280 after its enactment''); *United States* v. *High Elk,* 902 F.2d 660, 661 (8th Cir. 1990) (per curiam) (holding that Federal courts retain Major Crimes Act jurisdiction in those States that voluntarily assumed jurisdiction under Public Law 280); *cf. Negonsott* v. *Samuels,* 507 U.S. 99, 105–06 (1993) (holding that a different Federal statute conferred criminal jurisdiction on a State without divesting the United States of concurrent criminal jurisdiction). *But cf. United States* v. *Burch,* 169 F.3d 666, 669–71 (10th Cir. 1999) (holding that a 1984 ''direct congressional grant of jurisdiction over [crimes committed in one town in] Indian country'' vested Colorado with exclusive jurisdiction akin to mandatory jurisdiction under Pub. L. 280).

The Tribal Law and Order Act of 2010

The TLOA was enacted on July 29, 2010, as title II of Public Law 111–211. The purpose of the TLOA is to help the Federal Government and tribal governments better address the unique public-safety challenges that confront tribal communities.

Section 221(b) of the new law, now codified at 18 U.S.C. 1162(d), permits an Indian tribe with Indian country subject to mandatory State criminal jurisdiction under Public Law 280 to request that the United States accept concurrent jurisdiction to prosecute violations of the General Crimes Act and the Major Crimes Act within that tribe's Indian country. As the statute states, this jurisdiction will be concurrent among the Federal Government, the State government, and (where applicable) the tribal government. *See* 18 U.S.C. 1162(d)(2). Section 221(b) provides for the United States to assume concurrent criminal jurisdiction at the tribe's request, and after consultation between the tribe and the Attorney General and consent to Federal jurisdiction by the Attorney General. The State need not consent. Once the United States has accepted concurrent criminal jurisdiction, Federal authorities can investigate and prosecute offenses that Public Law 280 currently bars them from prosecuting.

Assumption of Concurrent Federal Criminal Jurisdiction

This rule establishes the framework and procedures for a mandatory Public Law 280 tribe to request the assumption of concurrent Federal criminal jurisdiction within the Indian country of the tribe that is subject to Public Law 280. It also describes the process to be used by the Attorney General in deciding whether to consent to such a request.

The TLOA provides that the Attorney General is the deciding official for requests submitted by Indian tribes under 18 U.S.C. 1162(d). Given the potentially high volume of requests, the large number of Department of Justice components and non-Department partners that should be conferred with, and the detailed tribe-by-tribe analyses that may be needed, the Attorney General is delegating decisional authority under 18 U.S.C. 1162(d) to the Deputy Attorney General. The Office of the Deputy Attorney General will receive recommendations from the Office of Tribal Justice, the Executive Office for United States Attorneys, and the Federal Bureau of Investigation, and also will consider any comments from other Department components (including the Bureau of Prisons and the Office of Community Oriented Policing Services) and other Federal, tribal, State, and local entities. The Office of Tribal Justice will handle the staffing and tracking of assumption requests.

The Department will begin to accept tribal requests for the assumption of concurrent Federal criminal jurisdiction on the date this rule becomes effective. Any tribe that previously submitted a request should resubmit its request and ensure that it conforms to the requirements of this final rule.

In accordance with Executive Order 13175 of November 6, 2000, which requires consultation between Federal agencies and tribes on certain matters, the Department has held tribal consultations regarding these assumption procedures.

Retrocession of State Criminal Jurisdiction

Assumption of concurrent Federal criminal jurisdiction under this rule does not require the approval of any State. The statute being implemented, 18 U.S.C. 1162(d), authorizes the Federal Government to assume such jurisdiction pursuant to a tribe's request and with the consent of the Attorney General; it does not require State consent to the change in Federal jurisdiction. After a tribe has submitted a request under 18 U.S.C. 1162(d), the Department will publish a notice in the **Federal Register** inviting input from affected State and local law enforcement authorities. But ultimately, it is the tribe's request and the Attorney General's consent that will determine whether the United States accepts concurrent criminal jurisdiction.

The process described in this rule is separate and distinct in this respect from Public Law 280's ''retrocession'' process for transferring criminal jurisdiction from the State government to the Federal Government. *See* 25 U.S.C. 1323(a). The retrocession process is initiated by the State, not the tribe, and thus cannot occur without the State's consent.

The process described in this rule is also distinct from the retrocession process in the further respect that the State will not lose any criminal jurisdiction as a result of the Federal Government's assumption of jurisdiction under this rule. As 18 U.S.C. 1162(d) makes clear, the jurisdiction assumed by the Federal Government under that provision is concurrent with State jurisdiction and, where applicable, tribal jurisdiction. By contrast, Federal acceptance of jurisdiction through the retrocession process under 25 U.S.C. 1323(a) eliminates criminal jurisdiction previously held by the State in areas covered by the retrocession.

Where 18 U.S.C. 1162(d) Does Not Apply

The process described in this rule applies only to Indian country that is subject to ''mandatory'' Public Law 280 State criminal jurisdiction under 18 U.S.C. 1162. As indicated above, the Department concludes that the United States has concurrent jurisdiction over General Crimes Act and Major Crimes Act violations in areas where States have assumed criminal jurisdiction under ''optional'' Public Law 280. Accordingly, although the TLOA provides for the United States to ''accept'' concurrent criminal jurisdiction in these areas ''[a]t the request of an Indian tribe, and after consultation with and consent by the Attorney General,'' 25 U.S.C. 1321(a)(2), the Department's view is that such concurrent Federal jurisdiction exists, whether or not the United States formally accepts such jurisdiction with the Attorney General's consent pursuant to individual tribal requests under this provision. Accordingly, the Department is not establishing procedures in this rule for processing individual requests from tribes for acceptance of concurrent Federal jurisdiction in areas subject to State criminal jurisdiction under ''optional'' Public Law 280.

Comments on the Proposed Rule

In response to the proposed rule published on May 23, 2011, *see* Assumption of Concurrent Federal Criminal Jurisdiction in Certain Areas of Indian Country, 76 FR 29675 (May 23, 2011), with a comment period through July 7, 2011, the Department of Justice received eight sets of comments: three from tribal governments, one from a non-profit organization, two from associations of county officials, one from a county attorney, and one from a private individual. These eight sets of comments included a number of comments related to other sections of the TLOA; only those comments relating to the proposed rule establishing procedures for making requests for concurrent Federal criminal jurisdiction are addressed here.

Information To Determine Whether the Assumption of Concurrent Federal Criminal Jurisdiction Will Improve Public Safety

One comment requested information in the rule that would indicate the effectiveness of Federal law enforcement in Indian country where concurrent Federal criminal jurisdiction already exists. In addition, the comment requested information about Federal law enforcement agency resources to help tribes determine whether the agencies are equipped adequately to be effective. Similarly, another comment requested information regarding Federal funding and staffing so that State agencies can gauge Federal law enforcement capacity.

The Department declines to adopt these suggestions. The extent of Federal law enforcement in Indian country where concurrent jurisdiction already exists is influenced by a wide variety of factors, some of which may be unique to a particular tribe. Therefore, generalizations about Federal law enforcement in Indian country could result in inaccurate and largely unhelpful guidance for tribes considering whether to submit requests pursuant to this rule. Moreover, information about Federal law enforcement agency resources is subject to change each fiscal year and thus can be an unreliable predictor of future resources.

Tribal, Federal, State, and Local Communication and Participation

One comment requested an amendment to 28 CFR 50.25(c) to include a requirement that the Department provide notice (with an opportunity for comment) to State and local agencies that are responsible for investigating and prosecuting criminal violations in the Indian country of the tribe.

The Department concurs with this suggestion and is amending the final rule to require that tribes requesting assumption of concurrent Federal criminal jurisdiction identify such agencies in their requests, and that the Office of Tribal Justice provide written notice to those agencies within 30 days of receiving the request.

Two comments asked that the rule require the Office of Tribal Justice to provide the requesting tribe a copy of comments and recommendations submitted by others, and allow the tribe an opportunity to respond in writing.

The Department generally concurs with this suggestion, but reserves the right to exercise discretion in determining what to share with the tribe. For example, the Department has an obligation to protect personally identifiable information and law enforcement sensitive information. The final rule is being amended to note that the Office of Tribal Justice may provide the requesting tribe with appropriately redacted copies of comments and will allow the tribe an opportunity to respond in writing.

One comment suggested that the rule require a public meeting to solicit comments, which should be taken into consideration when evaluating tribal requests.

The Department declines to adopt this suggestion. Requests will be published in the **Federal Register** and notice will be sent in writing to the State and local agencies referenced above. Those agencies and the public will have ample opportunity to provide comments. While the Department reserves the option to hold public meetings in appropriate cases, the Department declines to make such meetings mandatory in all cases.

One comment asked that the rule require the Deputy Attorney General and the Office of Tribal Justice to meet personally with the tribe to discuss the

request, comments, and recommendations submitted by others.

The Department declines to adopt this suggestion. The rule requires that the Office of Tribal Justice consult with the requesting tribe before forming a recommendation to the Deputy Attorney General. The Department believes the process established by the rule will provide requesting tribes sufficient opportunity for meaningful consultation on their requests and on any comments or recommendations from other parties.

Measurable Criteria for Determining the Need for Concurrent Federal Criminal Jurisdiction

One comment asked that 28 CFR 50.25(d) include criteria for evaluating current law enforcement agencies' successes or failures. This comment also asked for the inclusion of a provision identifying criteria for assessing existing resources and the application of those resources by agencies servicing the tribe requesting the assumption of concurrent Federal criminal jurisdiction. An additional comment proposed that the final rule should require a ''prima facie'' showing by the tribe that concurrent Federal criminal jurisdiction is necessary.

The Department declines to adopt these suggestions. The Department will determine which specified factors are relevant to evaluating a request for assumption of concurrent Federal jurisdiction in any particular case. Such factors will include an assessment of current law enforcement agencies' resources and the application of those resources within the Indian country of the tribe. Moreover, the tribal request must ''explain why the assumption of concurrent Federal criminal jurisdiction will improve public safety and criminal law enforcement and reduce crime in the Indian country of the requesting tribe.'' 28 CFR 50.25(b)(2). There is no need to require a ''prima facie'' showing that concurrent Federal criminal jurisdiction is necessary.

One comment noted that the list of factors for consideration in the proposed rule, 28 CFR 50.25(d)(4) through (7), is too broadly written and does not adequately characterize the standards the Department will apply when evaluating a request. The comment requested that the listed factors be more clearly defined, and relate to public safety, law enforcement needs, and implementation of the TLOA.

The Department partly concurs with this suggestion and is adding a new 28 CFR 50.25(d)(1), which expressly provides for consideration of whether consenting to the request will improve public safety and criminal law enforcement and reduce crime in the Indian country of the requesting tribe.

Threshold Requirements for Tribal Requests

Three comments suggested that consideration of or consent to tribal requests be conditioned on the inclusion of specific features in that tribe's justice system, such as due process protections for defendants, publicly available criminal codes, procedural and evidentiary rules, protections for victims' rights, and procedures to protect victim information.

The Department declines to adopt these suggestions. The Department will review information about a requesting tribe's justice system as one factor in evaluating a tribal request. But these comments suggest a mistaken belief that assumption of concurrent Federal criminal jurisdiction will alter the criminal jurisdiction of the tribe making the request. Neither this rule nor the statute it implements, 18 U.S.C. 1162(d), alters existing tribal, State, or local jurisdiction. Therefore, there is no need to impose such additional requirements on a requesting tribe.

Periodic Assessments and Amendments

One comment suggested that the rule should include a provision for periodic review and should allow for future amendments.

The Department declines to adopt these suggestions. The statute being implemented in this rule, 18 U.S.C. 1162(d), does not provide for revisiting decisions to consent to the assumption of concurrent Federal criminal jurisdiction; rather, it indicates that such concurrent Federal criminal jurisdiction is established when the Attorney General consents to a tribal request. To the extent the comment refers to this rule, all regulations are subject to potential future amendment; an explicit statement to that effect in this rule is unnecessary.

Redundancy and Confusion

One comment noted that in the proposed rule, 28 CFR 50.25(d)(4) through (7) overlaps considerably with 28 CFR 50.25(e) and (g), and that 28 CFR 50.25(h) overlaps considerably with 28 CFR 50.25(d) and 50.25(e). The comment asked that these provisions be consolidated to reduce redundancy and avoid possible confusion.

The Department partly concurs with this suggestion. The Department is deleting from the final rule 28 CFR 50.25(e) through (g) of the proposed rule, which the Department agrees are substantially redundant of provisions in 28 CFR 50.25(d).

One comment asked that the Department remove the words ''assumption'' and ''acceptance'' of Federal concurrent jurisdiction because the statute being implemented in the rule, 18 U.S.C. 1162(d), provides for such jurisdiction automatically by operation of law when certain conditions are met.

The Department declines to adopt this suggestion. Using the words ''assumption'' and ''acceptance'' adds clarity to the rule.

One comment suggested that the Department remove references to section 221 of the TLOA to avoid confusion and instead refer directly to 18 U.S.C. 1162(d).

The Department concurs with this suggestion and is amending the final rule accordingly.

Time Frames

One comment suggested that the Department change the language in 28 CFR 50.25(c)(2) from ''promptly'' to ''within 30 days of receipt,'' and provide a 60-day comment period.

The Department concurs with the suggestion to change the language in 28 CFR 50.25(c)(2) from ''promptly'' to ''[w]ithin 30 days of receipt of a tribal request.'' The Department also concurs with the suggestion that the comment period be defined, and is amending the rule to include a 45-day comment period. This somewhat shorter comment period will help the Department reach a decision within the timeframe contemplated in the rule.

One comment asked that the rule be amended to account for factors that may prompt a tribe to request assumption of concurrent Federal criminal jurisdiction outside of the two prioritized timeframes.

The Department declines to adopt this suggestion. The rule as written allows a tribe to submit a request at any time and allows the Deputy Attorney General to make a final decision on such a request at any time. *See* 28 CFR 50.25(c)(5).

One comment asks that the rule identify a time limit on the duration of the comment period provided to State and local law enforcement agencies, to avoid delaying the assumption of concurrent Federal criminal jurisdiction.

The Department concurs with this suggestion and is amending the rule to specify a 45-day comment period.

Partial Jurisdiction

One comment noted that 18 U.S.C. 1162(d) does not provide authority for assumption of jurisdiction over a subset

of violations of the General Crimes and Major Crimes Acts because the TLOA makes 18 U.S.C. 1152 and 1153 indivisibly applicable. The same comment also notes that 18 U.S.C. 1162(d) does not provide authority for assumption of jurisdiction over only part of the Indian country of the tribe because 18 U.S.C. 1162(d)(1) states that 18 U.S.C. 1152 and 1153 ''shall apply in the areas of the Indian country of the Indian tribe.''

As noted in the proposed rule, the Department added this provision in response to requests from tribal leaders during tribal consultation. While the Department initially believed that the language of the statute was sufficiently ambiguous to permit requests for assumption of concurrent Federal criminal jurisdiction over a subset of violations of the General Crimes and Major Crimes Acts or in a limited geographic portion of the tribe's Indian country, upon further review the Department now concludes that such an interpretation does not have sufficient support in the language or legislative history of the TLOA. Moreover, such partial jurisdiction could create practical difficulties, complicating further the complex criminal jurisdictional rules of Federal Indian law. Accordingly, the rule is being modified to remove the reference to partial assumptions of concurrent criminal jurisdiction. We note, however, that for those tribes whose Indian country is located partly in a State with mandatory criminal jurisdiction under Public Law 280 and partly in a State that does not have such mandatory Public Law 280 jurisdiction, the tribe's request for the assumption of concurrent Federal criminal jurisdiction under this rule would pertain only to that part of the tribe's Indian country that is located in a State with mandatory criminal jurisdiction under Public Law 280.

State Interests

One comment suggests providing notice to and accepting input from State governors or their designees.

The Department concurs with this suggestion and is amending the final rule to require that the Office of Tribal Justice copy the relevant governor's office on the notices sent to State or local law enforcement agencies when a request for assumption of concurrent Federal criminal jurisdiction is received.

Appeals

One comment asks that the rule include a provision stating that granted requests are non-appealable in the same way denied requests are non-appealable under 28 CFR 50.25(h)(4) of the proposed rule.

The Department concurs with this suggestion and is amending the final rule accordingly.

Additional Changes

The Department is amending the rule to note that requests will be accepted as soon as the rule becomes effective. As noted above, tribes that have submitted requests prior to the effective date should resubmit the requests and ensure that their requests conform to the requirements of the final rule.

Regulatory Certifications

Executive Order 12866—Regulatory Planning and Review

This regulation has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866 of September 30, 1993 (''Regulatory Planning and Review''), as amended. The Department of Justice has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), and, accordingly, this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132—Federalism

This regulation 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. The statutory process provided under 18 U.S.C. 1162(d) allows the United States to assume concurrent criminal jurisdiction over offenses in a particular area of Indian country, without eliminating or affecting the State's existing criminal jurisdiction, and this rule does not expand or change this authorization. This regulation merely establishes procedures providing for the Deputy Attorney General, by delegation, to make an informed decision in considering, in consultation with other Federal, tribal, State, and local authorities, whether or not to consent to a request from an individual tribe for the Federal Government to assume concurrent criminal jurisdiction within that tribe's Indian country. Even if the Deputy Attorney General exercises his discretion to assume concurrent jurisdiction under this regulation, the State retains all of its existing jurisdiction. Furthermore, the Department of Justice will work with the relevant State and local agencies to determine how best to share concurrent criminal jurisdiction with the State and (where applicable) the tribe and to coordinate investigations and prosecutions, just as the Department works with States and tribes in other areas with concurrent criminal jurisdiction. Therefore, in accordance with Executive Order 13132 of August 4, 1999, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in section 3(a) and (b)(2) of Executive Order 12988 of February 5, 1996.

Executive Order 13175—Consultation and Coordination with Indian Tribal Governments

This rule comports with Executive Order 13175 of November 6, 2000. The rule has significant tribal implications, as it will have substantial direct effects on one or more Indian tribes and on the relationship between the Federal Government and Indian tribes. The Department therefore has engaged in meaningful consultation and collaboration with tribal officials in developing this rule. More specifically, the Department of Justice participated in six consultations with tribal officials on the Tribal Law and Order Act of 2010. The dates and locations of those tribal consultations were as follows:

- October 14, 2010, in Billings, Montana
- October 20, 2010, in Albuquerque, New Mexico
- October 28, 2010, in Miami, Florida
- November 16, 2010, in Albuquerque, New Mexico
- December 8, 2010, in Palm Springs, California
- March 23, 2011, in Hayward, Wisconsin

The last two consultation sessions focused on section 221 of Public Law 111–211, and the March 23, 2011 consultation expressly addressed a draft version of the proposed rule.

During these consultations, some tribal officials expressed a desire to see the Attorney General consent to each and every tribal request for concurrent Federal criminal jurisdiction. Other tribal officials raised more specific concerns. In direct response to the latter, the Department of Justice significantly rewrote portions of the proposed rule that is now being finalized. Seven changes included in the final rule are particularly noteworthy.

First, rather than providing that the Department will attempt to give priority

only to those tribal requests received by August 31 of any calendar year, the final rule provides that the Department will attempt to give priority to requests received by August 31 or by February 28. This change effectively doubles the number of annual cycles in which the Department will attempt to consider tribal requests on a prioritized basis.

Second, the final rule clarifies why it is unnecessary, under the Department's view of the applicable statutes, for tribes in ''optional'' Public Law 280 jurisdictions to submit individual requests for formal acceptance of concurrent Federal criminal jurisdiction.

Third, the final rule clarifies that Federal agencies are to supply comments and information relevant to each tribal request, rather than merely announcing their overall support or opposition for each request.

Fourth, the final rule reiterates that the assumption of concurrent Federal criminal jurisdiction under 18 U.S.C. 1162(d) does not require the agreement, consent, or concurrence of any State or local government.

Fifth, the final rule expressly provides that the Department's Office of Tribal Justice may give appropriate technical assistance to any tribe that wishes to prepare and submit a renewed request, following the denial of an earlier request.

Sixth, the final rule states that the assumption of concurrent Federal criminal jurisdiction will commence within six months of the decision to assume jurisdiction, if feasible, rather than merely mandating action within twelve months.

Seventh and finally, the final rule requires that notice of a decision consenting to the request for assumption of concurrent Federal criminal jurisdiction will be published in the **Federal Register**.

The Department of Justice thus believes that many of the concerns that tribal officials expressed about 18 U.S.C. 1162(d) and the draft proposed regulation at the tribal consultations in 2010 and 2011 have now been met.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This rule provides only a framework for processing requests by Indian tribes for the assumption of concurrent Federal criminal jurisdiction over certain Indian country crimes, as provided for by 18 U.S.C. 1162(d).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104–4.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This final rule contains a new ''collection of information'' covered by the Paperwork Reduction Act of 1995 (PRA), as amended, 44 U.S.C. 3501–3521. Under the PRA, a covered 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 control number assigned by the Office of Management and Budget (OMB). 44 U.S.C. 3507(a)(3), 3512. The information collection in this final rule requires Indian tribes seeking assumption of concurrent criminal jurisdiction by the United States to provide to the Department certain information relating to public safety within the Indian country of the tribe. The Department submitted an information collection request to OMB for review and approval in accordance with the review procedures of the PRA. OMB approved the collection on September 27, 2011, and assigned OMB control number 1105–0091. The Department of Justice did not receive any comments specifically about the proposed collection.

List of Subjects in 28 CFR Part 50

Administrative practice and procedure, Crime, Indians.

Accordingly, for the reasons set forth in the preamble, part 50 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 50—STATEMENTS OF POLICY

■ 1. The authority citation for part 50 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 1162; 28 U.S.C. 509, 510; 42 U.S.C. 1921 *et seq.,* 1973c; and Public Law 107–273, 116 Stat. 1758, 1824.

■ 2. Section 50.25 is added to read as follows:

§ 50.25 Assumption of concurrent Federal criminal jurisdiction in certain areas of Indian country.

(a) *Assumption of concurrent Federal criminal jurisdiction.* (1) Under 18 U.S.C. 1162(d), the United States may accept concurrent Federal criminal jurisdiction to prosecute violations of 18 U.S.C. 1152 (the General Crimes, or Indian Country Crimes, Act) and 18 U.S.C. 1153 (the Major Crimes, or Indian Major Crimes, Act) within areas of Indian country in the States of Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin that are subject to State criminal jurisdiction under Public Law 280, 18 U.S.C. 1162(a), if the tribe requests such an assumption of jurisdiction and the Attorney General consents to that request. Once the Attorney General has consented to an Indian tribe's request for assumption of concurrent Federal criminal jurisdiction, the General Crimes and Major Crimes Acts shall apply in the Indian country of the requesting tribe that is located in any of these ''mandatory'' Public Law 280 States, and criminal jurisdiction over those areas shall be concurrent among the Federal Government, the State government, and (where applicable) the tribal government. Assumption of concurrent Federal criminal jurisdiction under 18 U.S.C. 1162(d) does not require the agreement, consent, or concurrence of any State or local government.

(2) Under 25 U.S.C. 1321(a)(2), the United States may exercise concurrent Federal criminal jurisdiction in other areas of Indian country as to which States have assumed ''optional'' Public Law 280 criminal jurisdiction under 25 U.S.C. 1321(a), if a tribe so requests and after consultation with and consent by the Attorney General. The Department's view is that such concurrent Federal criminal jurisdiction exists under applicable statutes in these areas of Indian country, even if the Federal Government does not formally accept such jurisdiction in response to petitions from individual tribes. This rule therefore does not establish procedures for processing requests from tribes under 25 U.S.C. 1321(a)(2).

(b) *Request requirements.* (1) A tribal request for assumption of concurrent Federal criminal jurisdiction under 18 U.S.C. 1162(d) shall be made by the chief executive official of a federally recognized Indian tribe that occupies Indian country listed in 18 U.S.C. 1162(a). For purposes of this section, a chief executive official may include a tribal chairperson, president, governor, principal chief, or other equivalent position.

(2) The tribal request shall be submitted in writing to the Director of the Office of Tribal Justice at the Department of Justice. The first page of the tribal request shall be clearly marked: ''Request for United States Assumption of Concurrent Federal Criminal Jurisdiction.'' The tribal request shall explain why the assumption of concurrent Federal criminal jurisdiction will improve public safety and criminal law enforcement and reduce crime in the Indian country of the requesting tribe. The tribal request shall also identify each local or State agency that currently has jurisdiction to investigate or prosecute criminal violations in the Indian country of the tribe and shall provide contact information for each such agency.

(c) *Process for handling tribal requests.* (1) Upon receipt of a tribal request, the Office of Tribal Justice shall:

(i) Acknowledge receipt; and

(ii) Open a file.

(2) Within 30 days of receipt of a tribal request, the Office of Tribal Justice shall:

(i) Publish a notice in the **Federal Register**, seeking comments from the general public;

(ii) Send written notice of the request to the State and local agencies identified by the tribe as having criminal jurisdiction over the tribe's Indian country, with a copy of the notice to the governor of the State in which the agency is located, requesting that any comments be submitted within 45 days of the date of the notice;

(iii) Seek comments from the relevant United States Attorney's Offices, the Federal Bureau of Investigation, and other Department of Justice components that would be affected by consenting to the request; and

(iv) Seek comments from the Department of the Interior (including the Bureau of Indian Affairs), the Department of Homeland Security, other affected Federal departments and agencies, and Federal courts.

(3) As soon as possible but not later than 30 days after receipt of a tribal request, the Office of Tribal Justice shall initiate consultation with the requesting tribe, consistent with applicable Executive Orders and Presidential Memoranda on tribal consultation.

(4) To the extent appropriate and consistent with applicable laws and regulations, including requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, governing personally identifiable information, and with the duty to protect law enforcement sensitive information, the Office of Tribal Justice may share with the requesting tribe any comments from other parties and provide the tribe with an opportunity to respond in writing.

(5) An Indian tribe may submit a request at any time after the effective date of this rule. However, requests received by February 28 of each calendar year will be prioritized for decision by July 31 of the same calendar year, if feasible; and requests received by August 31 of each calendar year will be prioritized for decision by January 31 of the following calendar year, if feasible. The Department will seek to complete its review of prioritized requests within these time frames, recognizing that it may not be possible to do so in each instance.

(d) *Factors.* Factors that will be considered in determining whether or not to consent to a tribe's request for assumption of concurrent Federal criminal jurisdiction include the following:

(1) Whether consenting to the request will improve public safety and criminal law enforcement and reduce crime in the Indian country of the requesting tribe.

(2) Whether consenting to the request will increase the availability of law enforcement resources for the requesting tribe, its members, and other residents of the tribe's Indian country.

(3) Whether consenting to the request will improve access to judicial resources for the requesting tribe, its members, and other residents of the tribe's Indian country.

(4) Whether consenting to the request will improve access to detention and correctional resources for the requesting tribe, its members, and other residents of the tribe's Indian country.

(5) Other comments and information received from the relevant United States Attorney's Offices, the Federal Bureau of Investigation, and other Department of Justice components that would be affected by consenting to the request.

(6) Other comments and information received from the Department of the Interior (including the Bureau of Indian Affairs), the Department of Homeland Security, other affected Federal departments and agencies, and Federal courts.

(7) Other comments and information received from tribal consultation.

(8) Other comments and information received from other sources, including governors and State and local law enforcement agencies.

(e) *Decision.* (1) The decision whether to consent to a tribal request for assumption of concurrent Federal criminal jurisdiction shall be made by the Deputy Attorney General after receiving written recommendations from the Office of Tribal Justice, the Executive Office for United States Attorneys, and the Federal Bureau of Investigation.

(2) The Deputy Attorney General will:

(i) Consent to the request for assumption of concurrent Federal criminal jurisdiction, effective as of some future date certain within the next twelve months (and, if feasible, within the next six months), with or without conditions, and publish a notice of the consent in the **Federal Register**;

(ii) Deny the request for assumption of concurrent Federal criminal jurisdiction; or

(iii) Request further information or comment before making a final decision.

(3) The Deputy Attorney General shall explain the basis for the decision in writing.

(4) The decision to grant or deny a request for assumption of concurrent Federal criminal jurisdiction is not appealable. However, at any time after a denial of such a request, a tribe may submit a renewed request for assumption of concurrent Federal criminal jurisdiction. A renewed request shall address the basis for the prior denial. The Office of Tribal Justice may provide appropriate technical assistance to any tribe that wishes to prepare and submit a renewed request.

(f) *Retrocession of State criminal jurisdiction.* Retrocession of State criminal jurisdiction under Public Law 280 is governed by 25 U.S.C. 1323(a) and Executive Order 11435 of November 21, 1968. The procedures for retrocession do not govern a request for assumption of concurrent Federal criminal jurisdiction under 18 U.S.C. 1162(d).

Dated: November 28, 2011.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2011–31313 Filed 12–5–11; 8:45 am]

BILLING CODE 4410–07–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0983]

RIN 1625–AA00

Safety Zone; Power Line Replacement, West Bay, Panama City, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a portion of West Bay Creek and West Bay, to include all waters between the Highway 79 Fixed Bridge and the mouth of West Bay Creek out to buoy markers 27 and 28 of the Intracoastal Waterway. This action is necessary for the protection of vessels and persons on navigable waters during the replacement of overhead power lines. Entry into, transiting or anchoring in this zone is prohibited to all vessels and persons unless specifically authorized by the Captain of the Port (COTP) Mobile or a designated representative.

DATES: *Effective Date:* This rule is effective in the CFR from December 6, 2011 until 11:59 p.m. December 31, 2011. This rule is effective with actual notice for purposes of enforcement beginning 12:01 a.m. November 14, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0983 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–0983 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and U.S. Coast Guard Sector Mobile (spw), Building 102, Brookley Complex South Broad Street Mobile, AL 36615, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because there is insufficient time to publish a NPRM. The Coast Guard held a meeting with Gulf Coast Power Company on October 13, 2011 to discuss potential safety hazards associated with their project to replace overhead power lines crossing the Intracoastal Waterway. The Coast Guard decided that it would be in the best interest for public safety to establish a temporary safety zone. Publishing a NPRM for this safety zone is impracticable because it would unnecessarily delay the required safety zone's effective date and would unnecessarily interfere with an ongoing power line enhancement project. The safety zone is needed to protect persons and vessels from safety hazards associated with the replacement of overhead power lines.

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**. Following a safety meeting held on October 13, 2011 with Gulf Coast Power Company, to discuss potential safety hazards associated with their project to replace overhead power lines crossing the Intracoastal Waterway, the Coast Guard decided that a temporary safety zone would be in the best interest for public safety. Providing 30 day notice would be impracticable, and would unnecessarily interfere with an ongoing power line enhancement project. Any delay to affecting this safety zone would be impracticable because immediate action is needed to protect persons and vessels from safety hazards associated with the replacement of overhead power lines.

Basis and Purpose

Gulf Coast Power Company is replacing their 115 kilovolt power lines with new 230 kilovolt power lines to increase their power capacity in the West Bay area. The COTP Mobile is establishing a temporary safety zone for a portion of West Bay to protect persons and vessels during the replacement of the overhead power lines.

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

Discussion of Rule

The Coast Guard is establishing a temporary safety zone for a portion of West Bay Creek and West Bay, to include all waters between the Highway 79 Fixed Bridge and the mouth of West Bay Creek out to buoy markers 27 and 28 of the Intracoastal Waterway. This temporary rule will protect the safety of life and property in this area. Entry into, transiting or anchoring in this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the COTP Mobile or a designated representative. The COTP may be contacted by telephone at (251) 441–5976.

The COTP Mobile or a designated representative will inform the public through broadcast notice to mariners of changes in the effective period and enforcement times for the safety zone. This rule is effective from November 14, 2011 through December 31, 2011. Enforcement times will be during daylight hours only and exact enforcement dates will be broadcasted via a Safety Broadcast Notice to Mariners.

Regulatory Analyses

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

Regulatory Planning and Review

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

The temporary safety zone established in this rule will restrict vessel traffic from entering, transiting or anchoring in a small portion of West Bay Creek and West Bay, during the replacement of overhead power lines. The effect of this regulation will not be significant for several reasons: (1) This rule will only

affect vessel traffic for a short duration; (2) vessels may request permission from the COTP to transit through the safety zone; and (3) the impacts on routine navigation are expected to be minimal. Notifications to the marine community will be made through local notice to mariners and broadcast notice to mariners. These notifications will allow the public to plan operations around the affected area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in affected portions of West Bay Creek and West Bay, during the replacement of overhead power lines. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The zone is limited in size, is of short duration and vessel traffic may request permission from the COTP Mobile or a designated representative to enter or transit through the zone.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone to protect the public from dangers associated with power line replacement. An environmental analysis checklist and a categorical exclusion

determination will be made available as directed under the **ADDRESSES** section.

List of Subjects 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0983 to read as follows:

§ 165.T08–0983 Safety Zone; Power Line Replacement, West Bay, Panama City, FL

(a) *Location.* The following area is a safety zone: A portion of West Bay Creek and West Bay, to include all waters between the Highway 79 Fixed Bridge and the mouth of West Bay Creek out to buoy markers 27 and 28 of the Intracoastal Waterway.

(b) *Effective dates.* This rule will be effective from November 14, 2011, through December 31, 2011. Enforcement times will be during daylight hours only and exact enforcement dates will be broadcasted via a Safety Broadcast Notice to Mariners.

(c) *Regulations.* (1) In accordance with the general regulations in 33 CFR part 165, subpart C, entry into this zone is prohibited unless authorized by the Captain of the Port Mobile or a designated representative.

(2) Vessels desiring to enter into or passage through the zone must request permission from the Captain of the Port Mobile or a designated representative. They may be contacted on VHF–FM channels 16 or by telephone at (251) 441–5976.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or designated representative. Designated representatives include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(d) *Informational Broadcasts:* The Captain of the Port or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Dated: November 10, 2011.

D.J. Rose,

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

[FR Doc. 2011–31265 Filed 12–5–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0881; FRL–9499–4]

Interim Final Determination To Defer Sanctions, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to defer imposition of sanctions based on a proposed approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern SJVUAPCD Rules 2020 and 2201.

DATES: This interim final determination is effective on December 6, 2011. However, comments will be accepted until January 5, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0881, by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
- *Email: R9airpermits@epa.gov.*
- *Mail or deliver:* Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

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

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

I. Background

On May 11, 2010 (75 FR 26102), we finalized a limited approval and limited disapproval of San Joaquin Valley Unified Air Pollution Control District (''SJVUAPCD'' or ''District'') Rules 2020 (Exemptions) and 2201 (New and Modified Stationary Source Review Rule), which were submitted to EPA by the California Air Resources Board (CARB). These rules strengthened the SIP, but contained deficiencies in enforceability that prevented full approval. Both rules contained references to California Health and Safety Code (CH&SC) under circumstances where the State law has not been submitted to EPA for approval into the SIP. This disapproval action started a sanctions clock for imposition of sanctions pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31. Under 40 CFR 52.31(d)(1), offset sanctions apply eighteen months after the effective date of a disapproval and highway sanctions apply six months after the offset sanctions, unless we determine that the deficiencies forming the basis of the disapproval have been corrected. The effective date of our May 11, 2010 final rule was June 10, 2010, and thus, the offset sanctions will apply beginning on December 10, 2011, unless we determine that the deficiencies forming the basis of the disapproval have been corrected.

On August 18, 2011 and April 21, 2011, SJVUAPCD adopted revisions to Rule 2020 and Rule 2201, respectively, that were intended, among other purposes, to correct the deficiencies identified in our limited disapproval action. On September 28, 2011 and May 19, 2011, the State submitted amended SJVUAPCD Rule 2020 and amended SJVUAPCD Rule 2201, respectively, to EPA as revisions to the California SIP. In the Proposed Rules section of today's **Federal Register**, we have proposed full approval of the amended rules because we believe that they correct the deficiencies in the rules identified in our May 11, 2010 disapproval action, and they otherwise meet all applicable CAA requirements. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to defer the imposition of sanctions triggered by our May 11, 2010 limited disapproval.

EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised SJVUAPCD Rules 2020 and 2201, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 52.31(d). If no comments are submitted that change our assessment, then all sanctions clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to defer CAA section 179 sanctions associated with SJVUAPCD Rules 2020 and 2201 based on our proposal to approve the State's SIP revisions as correcting the specified deficiencies that prompted the finding to initiate sanctions clocks.

Because EPA has preliminarily determined that the SJVUAPCD has corrected the specified deficiencies prompting EPA's limited disapproval action, we have determined that it is appropriate to relieve the SJVUAPCD from the pending imposition of sanctions as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal of the District's amended rules and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal of amended District Rules 2020 and 2201. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action defers Federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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

This rule does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefore, and established an effective date of December 6, 2011. 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 rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 6, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not

be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping requirements.

Dated: November 22, 2011.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

[FR Doc. 2011–31184 Filed 12–5–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2011–0017; EPA–R05–OAR–2011–0106; FRL–9499–7]

Approval and Promulgation of Air Quality Implementation Plans; Ohio and Indiana; Redesignation of the Ohio and Indiana Portions Cincinnati-Hamilton Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of an adverse comment, EPA is withdrawing the October 19, 2011 (76 FR 64825), direct final rule approving Ohio's and Indiana's requests to redesignate their respective portions of the Cincinnati-Hamilton nonattainment area (for Ohio: Butler, Clermont, Hamilton, and Warren Counties, Ohio; for Indiana: a portion of Dearborn County) to attainment for the 1997 annual National Ambient Air Quality Standard (NAAQS or standard) for fine particulate matter ($PM_{2.5}$). In the direct final rule, EPA stated that if adverse comments were received by November 18, 2011, the rule would be withdrawn and not take effect. On October 19, 2011, EPA received a comment. EPA interprets this comment as adverse and, therefore, EPA is withdrawing the direct final rule. EPA will address the comment in a subsequent final action based upon the proposed rulemaking action, also published on October 19, 2011 (76 FR 64880). EPA will not institute a second comment period on this action.

DATES: The direct final rule published at 76 FR 64825 on October 19, 2011, is withdrawn as of December 6, 2011.

FOR FURTHER INFORMATION CONTACT: Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

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

Dated: November 23, 2011.

Susan Hedman,

Regional Administrator, Region 5.

PART 52—[AMENDED]

■ Accordingly, the amendments to 40 CFR 52.776 and 40 CFR 52.1880 published in the **Federal Register** on October 19, 2011 (76 FR 64825) on page 64837 are withdrawn as of December 6, 2011.

PART 81—[AMENDED]

■ Accordingly, the amendments to 40 CFR 81.315 and 40 CFR 81.336 published in the **Federal Register** on October 19, 2011 (76 FR 64825) on pages 64837–64838 are withdrawn as of December 6, 2011.

[FR Doc. 2011–31136 Filed 12–5–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2009–0443; FRL–9492–3]

RIN 2060–AR17

Air Quality Designations for the 2008 Lead (Pb) National Ambient Air Quality Standards

Correction

In rule document 2011–29460 appearing on pages 72097–72120 in the issues of Tuesday, November 22, 2011, make the following corrections:

§ 81.337 [Corrected]

■ 1. On page 72115, in the first table on the page, the column heading ''Designation for the 2008 NAAQS'' should read ''Designation for the 2008 NAAQS[a]''.

§ 81.338 [Corrected]

■ 2. On page 72115, in the second table on the page, the column heading ''Designation for the 2008 NAAQS'' should read ''Designation for the 2008 NAAQS[a]''.

§ 81.339 [Corrected]

■ 3. On page 72115, in the third table on the page, the column heading ''Designation for the 2008 NAAQS'' should read ''Designation for the 2008 NAAQS[a]''.

§ 81.340 [Corrected]

■ 4. On page 72115, in the last table on the page, the column heading ''Designation for the 2008 NAAQS'' should read ''Designation for the 2008 NAAQS[a]''.

§ 81.341 [Corrected]

■ 5. On page 72116, in the first table on the page, the column heading ''Designation for the 2008 NAAQS'' should read ''Designation for the 2008 NAAQS[a]''.

§ 81.342 [Corrected]

■ 6. On page 72116, in the second table on the page, the column heading ''Designation for the 2008 NAAQS'' should read ''Designation for the 2008 NAAQS[a]''.

[FR Doc. C1–2011–29460 Filed 12–5–11; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1998–0007; FRL–9500–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the State Marine of Port Arthur Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a direct final Notice of Deletion of the State Marine of Port Arthur (SMPA) Superfund Site located in Port Arthur, Texas (Jefferson County), from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Texas, through the Texas Commission on Environmental Quality, because EPA has determined that all appropriate response actions at these identified parcels under CERCLA, other than operation, maintenance, and Five-Year Reviews, have been completed.

However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective February 6, 2012 unless EPA receives adverse comments by January 5, 2012. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1998–0007, by one of the following methods:

- *http://www.regulations.gov:* Follow Internet on-line instructions for submitting comments.
- *Email:* Rafael Casanova, *casanova.rafael@epa.gov.*
- *Fax:* (214) 665–6660.
- *Mail:* Rafael A. Casanova; U.S. Environmental Protection Agency, Region 6; Superfund Division (6SF–RA); 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202–2733.
- *Hand delivery:* U.S. Environmental Protection Agency, Region 6; 1445 Ross Avenue, Suite 700; Dallas, Texas 75202–2733; *Contact:* Rafael A. Casanova (214) 665–7437. 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–AFUND–1998–0007. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the 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:

1. U.S. Environmental Protection Agency, Region 6; 1445 Ross Avenue, Suite 700; Dallas, Texas 75202–2733; Hours of operation: Monday thru Friday, 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m. *Contact:* Rafael A. Casanova (214) 665–7437.

2. Port Arthur Public Library; 4615 9th Avenue; Port Arthur, Texas 77642–5799; Hours of operation: Monday thru Thursday, 9 a.m. to 9 p.m.; Friday, 9 a.m. to 6 p.m.; Saturday, 9 a.m. to 5 p.m.; and Sunday, 2 p.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Rafael A. Casanova, Remedial Project Manager; U.S. Environmental Protection Agency, Region 6; Superfund Division (6SF–RA); 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202–2733; *telephone number:* (214) 665–7437; *email: casanova.rafael@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

EPA Region 6 is publishing this direct final Notice of Deletion for the State Marine of Port Arthur (SMPA) Superfund Site (Site), from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR Part 300 which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial action if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective February 6, 2012 unless EPA receives adverse comments January 5, 2012. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent for Deletion in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion and the deletion will not take effect. EPA, will as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Deletion and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the SMPA Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year

reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to the deletion of all areas and media within the SMPA Superfund Site:

1. EPA has consulted with the state of Texas prior to developing this direct final Notice of Deletion and the Notice of Intent for Deletion co-published in the ''Proposed Rules'' section of the **Federal Register**.

2. EPA has provided the state 30 working days for review of this notice and the parallel Notice of Intent for Deletion prior to their publication today, and the state, through the Texas Commission on Environmental Quality, has concurred on this deletion of the Site from the NPL.

3. Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent for Deletion is being published in a major local newspaper, The Port Arthur News. The newspaper announces the 30-day public comment period concerning the Notice of Intent for Deletion of the Site from the NPL.

4. The EPA placed copies of documents supporting the deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

5. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Deletion and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for further response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the SMPA Superfund Site from the NPL. A map of the Site, including the aerial extent of the Site proposed for deletion, is available in the deletion docket:

Site Location and History

The SMPA Superfund Site (Site, CERCLIS ID–TXD099801102), a former barge-cleaning operation and municipal landfill, occupied a 17-acre industrial tract of land located approximately 4.5 miles east-northeast of the City of Port Arthur on Old Yacht Club Road on Pleasure Islet. Pleasure Islet is a peninsula located approximately 0.5 miles southwest of the mouth of the Neches River. The Site is bordered by the Palmer Barge Line Superfund Site to the north, by Old Yacht Club Road to the west, by undeveloped property to the south, and Sabine Lake to the east.

Pleasure Islet is a manmade landmass consisting of dredge spoils generated during the construction and maintenance of the Sabine-Neches canal, also called the Intercoastal Waterway. The canal was constructed between 1898 and approximately 1920 in the vicinity of Sabine Lake and the Neches River, between the current Site location and the mainland. Between 1955 and 1957, a portion of the canal along the western side of Pleasure Islet was abandoned, and a new canal was cut along the eastern and southern sides of Pleasure Islet. Pleasure Islet was created when a land bridge was constructed across the abandoned portions of the canal, between the northern tip of Pleasure Island and the mainland. Vehicle access to the Site is limited to a single dirt road starting at the western Site border along Old Yacht Club Road.

Ownership of Pleasure Islet was transferred from the State of Texas to the City of Port Arthur, Texas, in 1955. Development of the islet and the Site began after 1957, following construction of the land bridge across the abandoned portions of the Sabine-Neches Canal. In approximately 1963, the City of Port Arthur began municipal landfill operations in the northern and central portions of the islet. Initially, the landfill consisted of a burn pit in which wastes were incinerated. By December 1969, burn operations were discontinued, and the landfill was used solely for disposal of wastes. Between 1969 and 1972, landfill disposal operations expanded to include the central and northern portions of the Site and the property north of the Site. Between 1972 and 1974, disposal activities were generally concentrated in the northern parts of the islet. In December 1974, the City of Port Arthur closed the landfill in accordance with Texas Department of Health regulations, which required covering the entire landfill with approximately two feet of fine-grained fill material. The cover material is believed to be dredge spoils that originated on the islet. Site operations began about 1973 under the names of State Welding and Marine Works and the Golden Triangle Shipyard. The construction of wastewater impoundments in the northwestern portion of the Site was also reported. The impoundments were reportedly unlined earthen dike areas approximately two acres in size used to store oil and wastewater from barge-cleaning operations. Inspection reports indicate that wastewater from barge-cleaning operations was directed to two aboveground storage tanks and then pumped to the wastewater impoundments. Some of the oil from the tanks was diverted to an old ship, located on the land, that was used as an oil/water separator. Oil from the separator was collected for reuse, potentially on the Site. The Site included the locations of the former wastewater impoundments, waste water treatment facility, tar burn area, above ground storage tank area, maintenance shed area, distillation column, the former location of the Lauren Refining Company Tank Farm area, non-source areas of the Site, sediments, and ground water. The Site is currently being operated by the owner as an industrial property for metal scrapping activities.

The surface water migration pathway was scored as part of the Hazard Ranking System Documentation Record. EPA determined that the Site warranted further investigation to assess the nature and extent of the human health and environmental risks associated with the Site's previous barge-cleaning and landfill activities. The site was proposed to be included on the NPL on March 6, 1998 (63 FR 11340) and made final July 28, 1998 (63 FR 40182).

The EPA's Time Critical Removal Action, completed in August 2001, consisted of the removal and off-site disposal of waste materials, water treatment, oil and water separation, and stabilization and off-site disposal of sludge materials. This Removal Action addressed the materials that posed a risk

to human health and ecological receptors.

The investigations of the Site included the locations of the former wastewater impoundments, waste water treatment facility, tar burn area, above ground storage tank area, maintenance shed area, Lauren Refining Company tank farm area, non-source areas of the Site, ground water, and the sediments of Sabine Lake.

Remedial Investigation and Supplemental Remedial Investigation

The objectives of the Remedial Investigation (RI) for the Site were to:

- To determine the nature and extent of contamination known or suspected on-site and off-site locations, and
- To assess the potential human health and ecological risks associated with the Site.

The objectives of the Supplemental Remedial Investigation (SRI) for the Site were to:

- Collect and analyze sediment samples to determine if contaminants in Sabine Lake sediments posed an unacceptable risk to benthic organisms.
- Collect and analyze subsurface soil samples from the wastewater impoundment area to determine if contaminants in the impoundment soil could serve as a potential source of contamination to the ground water and eventually to benthic organisms in the sediments of Sabine Lake.
- Collect and analyze subsurface soil samples from the wastewater impoundment area to determine if contaminants in the impoundment soil posed an unacceptable risk to future onsite construction workers.
- Install and develop monitoring wells at two of the soil boring locations in the wastewater impoundment area for associated ground water sampling.
- Collect and analyze ground water samples to determine if Site ground water is a current or potentially future source of contamination to benthic organisms in Sabine Lake.
- Store, analyze, and properly dispose of any investigation-derived waste that is produced during field activities in support of the Supplemental Remedial Investigation.

The RI scope of work focused on collecting additional information not obtained during previous investigations. The 2001 RI investigation consisted of two sampling events. The first sampling event consisted of collecting sediment samples from off-site locations in Sabine Lake. The second sampling event consisted of collecting soil and ground water samples from on-site locations. The following tasks were completed during the RI:

- Completion of five shallow and six deep borings ranging in depths from 4.0 to 9.0 and 25.0 to 60.0 feet below the ground's surface (bgs), respectively.
- Installation of six ground water monitoring wells.
- Collection of surface soil samples from 87 locations ranging in depth from 0.0 to 6.0 inches bgs.
- Collection of intertidal samples from nine locations ranging in depth from 0.0 to 6.0 inches bgs.
- Collection of sediment samples from 46 locations ranging in depth from 0.0 to 6.0 feet bgs.

The RI analytical results were compared to commercial/industrial protective concentration levels (PCLs) established by the Texas Risk Reduction Program, and where appropriate, to background levels for the Site's contaminants of concern (COCs).

The most frequently detected COCs for all sediment samples collected were metals including arsenic, lead, and mercury. For intertidal sediments, six metals (antimony, arsenic, cadmium, lead, mercury, and selenium) and one semi-volatile organic compound (SVOC, pentachlorophenol) exceeded their respective PCLs. Constituents that exceeded PCLs for nearshore sediments included six metals (arsenic, barium, beryllium, cadmium, lead, and mercury) and one SVOC (3,3 dichlorobenzidine). Only arsenic, lead, and mercury exceeded PCLs for off-shore sediments.

The most frequently detected COCs for soils were metals including antimony, arsenic, barium, lead, mercury, and silver. These metals consistently exceeded the ^{Gw} Soil PCL (*i.e.,* the soil-to-ground water leaching of COCs to ground water). Based on the distribution of these constituents, their occurrence is most likely a result of the former incineration and landfill operations. In general, the metals were widely distributed across the Site and not limited to the Site's source areas.

Isolated detections of the SVOCs (benzo[a]pyrene, benzo[a]anthracene, benzo[a]fluoranthene, and pentachlorophenol) were reported at relatively low concentrations for on-site soils. Because the SVOC exceedances were only detected at isolated locations, impact from operations on the Site appeared minimal.

Nine constituents including eight metals (antimony, arsenic, barium, beryllium, lead, manganese, silver, and thallium) and one SVOC (pentachlorophenol) exceeded ^{Gw} Soil $_{Ing}$ PCLs (Exposure pathway: Soil-to-ground water leaching COCs to ground water). Based on a preliminary comparison of ground water analytical results to Class 3 ground water criteria, no constituents exceeded Class 3 ground water PCLs and it is unrealistic to assume any beneficial use of the shallow ground water. The State of Texas defines ground water resources based on water quality and sustainable well yield. A Class 3 ground water bearing unit is not capable of producing greater than a 150 gallon/day ground water flow with a Total Dissolved Solids content less than 10,000 milligrams/liter.

The SRI included an investigation of the former wastewater impoundments to determine if waste materials were still present that could be a source of contamination to the Sabine Lake sediments. Soil samples were analyzed for metals and SVOCs. The SRI also included the installation of ground water monitoring wells downgradient of the former wastewater impoundments and the collection of sediments samples from Sabine Lake. These samples were also analyzed for metals and SVOCs.

The screening level ecological risk assessment indicates that selenium concentrations in the Site sediments from the SRI may pose a risk to benthic invertebrates; however, the selenium concentrations are within one order of magnitude of the primary effects screening level. Furthermore, results from the soils and ground water data do not indicate that a selenium pathway exists from the Site to the sediments as the potential source of selenium contamination. Therefore, the EPA has determined that no Remedial Action is warranted for the Site soils to prevent contamination of the Site sediments. Based on selenium concentrations in the sediments, no Remedial Action is warranted for the Site sediments to protect ecological receptors.

Selected Remedy

Based on the results of the Baseline Human Health Risk Assessment (BHHRA) and Screening Level Ecological Risk Assessment (SLERA), the EPA's Selected Remedy for the SMPA Superfund Site, identified in the April 2007 Record of Decision, was ''No Further Action is Necessary.'' Institutional controls will be required to ensure that the current and future use of the Site remains for industrial or commercial purposes. The ''No Further is Action Necessary'' remedy is based on an industrial/commercial land use scenario.

Remedial Action Objectives

The Remedial Action Objectives (RAOs) for the Site are based on the future redevelopment of the Site for industrial/commercial land use and protecting future industrial/construction

workers and ecological receptors. The RAOs for the Site were:

- Prevent exposure to contaminated soil/sediment via ingestion, inhalation, or dermal contact that would result in an excess carcinogenic risk of 1.0×10^{-5} or a Hazard Index of 1.0.
- Prevent exposure of contaminated soil/sediment to aquatic or terrestrial organisms via direct contact or indirect ingestion of bioaccumulative chemicals that would result in a Hazard Quotient of 1.0.
- Prevent or minimize migration of soil contaminants to ground water.
- Prevent or minimize further migration of soil and sediment contaminants to surface water that could result in exceedance of ambient water quality criteria.

Response Actions

Based on the results of the BHHRA and SLERA, the EPA's Selected Remedy for the SMPA Superfund Site was ''No Further Action is Necessary.'' The EPA has obtained a Restrictive Covenant from the landowner indicating that the future use of the property is restricted to commercial/industrial purposes. The Restrictive Covenant was filed in the appropriate property records at the County Clerk's office in Jefferson County on March 25, 2011.

Cleanup Goals

The cleanup goals, accomplished by the 2001 Time Critical Removal Action, included the removal, treatment, and off-site disposal of the liquids and sludges in the above ground storage tanks and drums. There were no cleanup goals selected in the Record of Decision.

Operation and Maintenance

Operation and maintenance activities at the Site will include surface water and sediment sampling. In addition, the restrictive covenant will be monitored to ensure it is effective in maintaining industrial/commercial land use at the Site.

Five-Year Reviews

Since remaining conditions at the Site will not allow for unlimited use and unrestricted exposure, a Five-Year Review must be conducted for the Site to ensure that future Site development is consistent with the industrial cleanup standards for which the remedy is based and that conditions remain protective of human health and the environment. As part of the Five-Year Review, sediment sampling and monitoring will be considered in Sabine Lake adjacent to the Site to ensure that the remedy remains protective of ecological receptors. The EPA will conduct a statutory review before April 18, 2012.

Community Involvement

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k) and CERCLA Section 117, 42 U.S.C. 9617. Documents in the deletion docket which the EPA relied on for recommendation for the deletion from the NPL are available to the public in the information repositories, and a notice of availability of the Notice of Intent for Deletion has been published in The Port Arthur News to satisfy public participation procedures required by 40 CFR 300.425(e)(4).

Determination That the Criteria for Deletion Have Been Met

In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. The EPA, in consultation with the State of Texas (through the Texas Commission on Environmental Quality), has determined that based on the results of the BHHRA and SLERA and the completion of the EPA's Time Critical Removal Action that addressed contamination at the Site that posed a risk to human health and the environment, the EPA's Selected Remedy for the SMPA Superfund Site was ''No Further Action is Necessary.'' The EPA has implemented all appropriate response actions required; no further response action by responsible parties is appropriate; and the RI, SRI, BHHRA, and SLERA, have shown that the release poses no significant threat to public health or the environment under a commercial/industrial land use scenario and, therefore, the taking of additional remedial measures is not appropriate. EPA received a letter, dated May 25, 2011, from the State of Texas, through the Texas Commission on Environmental Quality, concurring on the deletion of the SMPA Superfund Site from the NPL.

V. Deletion Action

The EPA, with concurrence of the State of Texas, through the Texas Commission on Environmental Quality, has determined that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring, and Five-Year Reviews, have been completed. Therefore, EPA is deleting the SMPA Superfund Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective February 6, 2012 unless EPA receives adverse comments by January 5, 2012. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: November 14, 2011.

Al Armendariz,

Regional Administrator, Region 6.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by removing the entry ''State Marine of Port Arthur, Jefferson County'' under TX.

[FR Doc. 2011–31260 Filed 12–5–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1231]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood

Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Madison	Unincorporated areas of Madison County (11–04–3252P).	September 8, 2011; September 15, 2011; *The Huntsville Times.*	The Honorable Mike Gillespie, Chairman, Madison County Commission, 10 North Side Square, Huntsville, AL 35801.	January 13, 2012	010151
Tuscaloosa	Town of Coaling (11–04–2431P).	September 8, 2011; September 15, 2011; *The Tuscaloosa News.*	The Honorable Charles Foster, Mayor, Town of Coaling, 11281 Stephens Loop, Coaling, AL 35453.	January 13, 2012	010480
Tuscaloosa	Unincorporated areas of Tuscaloosa County (11–04–2431P).	September 8, 2011; September 15, 2011; *The Tuscaloosa News.*	The Honorable W. Hardy McCollum, Probate Judge, Tuscaloosa County Commission, 714 Greensboro Avenue, Tuscaloosa, AL 35401.	January 13, 2012	010201
Arizona:					
Coconino	City of Flagstaff (11–09–2204P).	June 3, 2011; June 10, 2011; *The Arizona Daily Sun.*	The Honorable Sara Presler, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001.	May 27, 2011	040020
Pima	City of Tucson (11–09–1158P).	August 5, 2011; August 12, 2011; *The Arizona Daily Star.*	The Honorable Bob Walkup, Mayor, City of Tucson, 255 West Alameda Street, Tucson, AZ 85701.	August 29, 2011	040076
Pima	Unincorporated areas of Pima County (11–09–0275P).	September 20, 2011; September 27, 2011; *The Daily Territorial.*	The Honorable Ramón Valadez, Chairman, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	January 25, 2012	040073
Pima	Unincorporated areas of Pima County (12–09–0017P).	May 31, 2011; June 7, 2011; *The Daily Territorial.*	The Honorable Ramón Valadez, Chairman, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	October 6, 2011	040073
Colorado:					

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Douglas	Town of Castle Rock (11–08–0329P).	September 8, 2011; September 15, 2011; *The Douglas County News-Press*.	The Honorable Paul Donahue, Mayor, Town of Castle Rock, 100 North Wilcox Street, Castle Rock, CO 80104.	January 13, 2012	080050
Douglas	Unincorporated areas of Douglas County (11–08–0329P).	September 8, 2011; September 15, 2011; *The Douglas County News-Press*.	The Honorable Jill E. Repella, Chair, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	January 13, 2012	080049
Larimer	Unincorporated areas of Larimer County (11–08–0189P).	September 8, 2011; September 15, 2011; *The Fort Collins Coloradoan*.	The Honorable Tom Donnelly, Chairman, Larimer County Board of Commissioners, 200 West Oak Street, 2nd Floor, Fort Collins, CO 80522.	September 29, 2011	080101
Florida:					
Broward	Town of Hillsboro Beach (11–04–3579P).	June 28, 2011; July 5, 2011; *The Sun-Sentinel*.	The Honorable Dan Dodge, Mayor, Town of Hillsboro Beach, 1210 Hillsboro Mile, Hillsboro Beach, FL 33062.	June 21, 2011	120040
Monroe	Unincorporated areas of Monroe County (11–04–5095P).	September 28, 2011; October 5, 2011; *The Key West Citizen*.	The Honorable Heather Carruthers, Mayor, Monroe County, 530 Whitehead Street, Key West, FL 33040.	February 2, 2012	125129
Orange	City of Orlando (11–04–2561P).	June 30, 2011; July 7, 2011; *The Orlando Weekly*.	The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, 3rd Floor, Orlando, FL 32808.	November 4, 2011	120186
Orange	City of Orlando (11–04–5608P).	September 29, 2011; October 6, 2011; *The Orlando Weekly*.	The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, 3rd Floor, Orlando, FL 32808.	September 20, 2011	120186
Pinellas	City of Gulfport (10–04–7908P).	September 15, 2011; September 22, 2011; *The St. Petersburg Times*.	The Honorable Mike Yakes, Mayor, City of Gulfport, 2401 53rd Street, Gulfport, FL 33707.	January 20, 2012	125108
Pinellas	Unincorporated areas of Pinellas County (10–04–7908P).	September 15, 2011; September 22, 2011; *The St. Petersburg Times*.	The Honorable Susan Latvala, Chair, Pinellas County Board of Supervisors, 315 Court Street, Clearwater, FL 33756.	January 20, 2012	125139
Sumter	Unincorporated areas of Sumter County (11–04–6000P).	September 8, 2011; September 15, 2011; *The Sumter County Times*.	The Honorable Don Burgess, Chairman, Sumter County Board of Commissioners, 7375 Powell Road, Wildwood, FL 34785.	August 30, 2011	120296
Nevada:					
Clark	City of Las Vegas (11–09–0799P).	September 1, 2011; September 8, 2011; *The Las Vegas Review-Journal*.	The Honorable Oscar B. Goodman, Mayor, City of Las Vegas, 400 Stewart Avenue, 10th Floor, Las Vegas, NV 89101.	January 6, 2012	325276
Clark	City of North Las Vegas (11–09–0799P).	September 1, 2011; September 8, 2011; *The Las Vegas Review-Journal*.	The Honorable Shari L. Buck, Mayor, City of North Las Vegas, 2200 Civic Center Drive, North Las Vegas, NV 89030.	January 6, 2012	320007
South Carolina:					
Dorchester	Unincorporated areas of Dorchester County (10–04–8306P).	August 24, 2011; August 31, 2011; *The Summerville Journal Scene*.	The Honorable Larry S. Hargett, Chairman, Dorchester County Council, 201 Johnston Street, Dorchester, SC 29477.	December 29, 2011	450068
Spartanburg	Unincorporated areas of Spartanburg County (11–04–4008P).	September 8, 2011; September 15, 2011; *The Spartanburg Herald-Journal*.	The Honorable Jeffrey A. Horton, Chairman, Spartanburg County Council, 366 North Church Street, Suite 1000, Spartanburg, SC 29303.	August 30, 2011	450176
Tennessee:					
Tipton	City of Munford (11–04–1663P).	June 16, 2011; June 23, 2011; *The Leader*.	The Honorable Dwayne Cole, Mayor, City of Munford, 1397 Munford Avenue, Munford, TN 38058.	October 21, 2011	470422
Tipton	Unincorporated areas of Tipton County (11–04–1663P).	June 16, 2011; June 23, 2011; *The Leader*.	The Honorable Jeff Huffman, Tipton County Executive, 220 U.S. Route 51 North, Suite 2, Covington, TN 38019.	October 21, 2011	470340
Wyoming:					
Fremont	City of Lander (11–08–0099P).	September 11, 2011; September 18, 2011; *The Lander Journal*.	The Honorable Mick Wolfe, Mayor, City of Lander, 240 Lincoln Street, Lander, WY 82520.	January 16, 2012	560020

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 18, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–31271 Filed 12–5–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in Meters (MSL) Modified	Communities affected
Boone County, Indiana, and Incorporated Areas Docket No.: FEMA–B–1148			
Etter Ditch	Approximately 530 feet downstream of Wilson Road	+914	Town of Whitestown, Unincorporated Areas of Boone County.
	Just upstream of Indianapolis Road	+928	
Fishback Creek	Approximately 0.53 mile downstream of County Road 550 South.	+897	City of Lebanon, Town of Whitestown, Unincorporated Areas of Boone County.
	Approximately 0.61 mile upstream of County Road 400 East.	+949	
Green Ditch	At the confluence with Etter Ditch	+916	Town of Whitestown.
	Just upstream of South Cozy Lane	+922	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in Meters (MSL) Modified	Communities affected
Mann Ditch	At the confluence with Prairie Creek	+932	City of Lebanon, Unincorporated Areas of Boone County.
	Approximately 0.46 mile upstream of the confluence with Prairie Creek.	+933	
Prairie Creek	Approximately 1,320 feet downstream of 221st Street	+875	City of Lebanon, Unincorporated Areas of Boone County.
	Approximately 0.94 mile upstream of Indianapolis Road	+945	
White Lick Creek	Approximately 0.22 mile downstream of County Road 650 South.	+929	Town of Whitestown, Unincorporated Areas of Boone County.
	Approximately 0.53 mile upstream of State Road 267	+947	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Lebanon
Maps are available for inspection at the Municipal Building, 401 South Meridian Street Lebanon, IN 46052.

Town of Whitestown
Maps are available for inspection at the Town Hall, 3 South Main Street Whitestown, IN 46075.

Unincorporated Areas of Boone County
Maps are available for inspection at the Boone County Area Plan Commission, 116 West Washington Street Lebanon, IN 46052.

Lake County, Indiana, and Incorporated Areas
Docket No.: FEMA–B–1076

Dyer Ditch	Just upstream of 213th Street	+619	Town of Dyer, Town of Schererville, Unincorporated Areas of Lake County.
	Just upstream of 77th Avenue	+638	
Hart Ditch	At the confluence with the Little Calumet River	+596	Town of Dyer, Town of Munster.
	Approximately 1,650 feet upstream of Hart Street	+637	
Lake Michigan	Entire shoreline within community	+585	City of East Chicago, City of Gary, City of Hammond, City of Whiting
Main Beaver Dam Ditch	Just downstream of Broadway	+684	Town of Merrillville.
	Approximately 1,000 feet upstream of Broadway	+684	
	Approximately 1,600 feet downstream of 91st Avenue	+689	
	Just downstream of 91st Avenue	+689	
Main Beaver Dam Ditch	Approximately 730 feet west of Clark Road	+690	Town of Schererville
Main Beaver Dam Ditch South Tributary.	Approximately 425 feet downstream of U.S. Route 231	+694	Unincorporated Areas of Lake County.
	Just downstream of 113th Avenue	+695	
McConnel Ditch	Approximately 1,280 feet downstream of Morse Street	+674	Town of Lowell.
	Just downstream of Morse Street	+678	
Niles Ditch	Just upstream of 101st Avenue	+676	Town of Merrillville.
	Approximately 150 feet upstream of 101st Avenue	+676	
Seberger Ditch	Just upstream of East Main Street	+620	Town of Griffith, Town of Schererville.
	Approximately 200 feet upstream of Redar Drive	+633	
Spring Street Ditch	Approximately 0.5 mile east of Kennedy Avenue	+622	Town of Griffith.
	Just upstream of the railroad	+622	
Turkey Creek	Approximately 500 feet upstream of I–65	+614	Town of Merrillville, Town of Schererville, Unincorporated Areas of Lake County.
	Approximately 150 feet upstream of 85th Street	+670	
Unnamed Tributary (backwater effects from West Creek).	Just upstream of Conrail Railroad	+674	Unincorporated Areas of Lake County.
	Just downstream of Louisville and Nashville Railroad	+674	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in Meters (MSL) Modified	Communities affected

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of East Chicago
Maps are available for inspection at 4444 Railroad Avenue East Chicago, IN 46312.

City of Gary
Maps are available for inspection at 401 West Broadway, Gary, IN 46402.

City of Hammond
Maps are available for inspection at 5925 Calumet Avenue Hammond, IN 46322.

City of Whiting
Maps are available for inspection at 1443 119th Street Whiting, IN 46394.

Town of Dyer
Maps are available for inspection at 1 Town Square, Dyer, IN 46311.

Town of Griffith
Maps are available for inspection at 111 North Broad Street Griffith, IN 46319.

Town of Lowell
Maps are available for inspection at 501 East Main Street Lowell, IN 46356.

Town of Merrillville
Maps are available for inspection at 7820 Broadway, Merrillville, IN 46410.

Town of Munster
Maps are available for inspection at 1005 Ridge Road Munster, IN 46321.

Town of Schererville
Maps are available for inspection at 10 East Joliet Street Schererville, IN 46375.

Unincorporated Areas of Lake County
Maps are available for inspection at 2293 North Main Street Crown Point, IN 46307.

Holmes County, Mississippi, and Incorporated Areas
Docket No.: FEMA–B–1159

Yazoo River	Approximately 12 miles downstream of County Road 511	+121	Town of Cruger, Unincorporated Areas of Holmes County.
	Approximately 6.5 miles downstream of County Road 511	+123	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Cruger
Maps are available for inspection at the Town Hall, 225 Railroad Street Cruger, MS 38924.

Unincorporated Areas of Holmes County
Maps are available for inspection at the Holmes County Courthouse, 300 Yazoo Street Lexington, MS 39095.

Elk County, Pennsylvania (All Jurisdictions)
Docket No.: FEMA–B–1140

Alysworth Run	Approximately 1,192 feet upstream of West Main Street	+1397	Township of Ridgway.
	Approximately 75 feet downstream of Grant Road	+1420	
Clarion River	Approximately 935 feet upstream of the confluence with Alysworth Run.	+1374	Township of Ridgway.
	Approximately 1,193 feet downstream of Gillis Avenue	+1374	
Clarion River	Approximately 1,200 feet downstream of the confluence with Mason Creek.	+1384	Township of Ridgway.
	Approximately 0.56 mile upstream of the confluence with Mason Creek.	+1387	
Elk Creek	Approximately 1.18 miles upstream of the confluence with Mohan Run.	+1408	Township of Ridgway.
	Approximately 0.44 mile downstream of U.S. Route 219	+1414	
Elk Creek	Approximately 1,867 feet downstream of the confluence with Elk Creek Tributary 1.	+1473	Township of Ridgway.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in Meters (MSL) Modified	Communities affected
Little Toby Creek	Approximately 1,885 feet upstream of the confluence with Daguscahonda Run.	+1474	Township of Fox.
	Approximately 0.71 mile downstream of the bridge over Coal Hollow Road.	+1674	
	Approximately 0.62 mile downstream of the bridge over Coal Hollow Road.	+1692	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Township of Fox
Maps are available for inspection at the Fox Township Municipal Building, 116 Irishtown Road Kersey, PA 15846.

Township of Ridgway
Maps are available for inspection at the Township Municipal Building, 164 Ridgway Drive, Ridgway, PA 15853.

Franklin County, Pennsylvania (All Jurisdictions)
Docket No.: FEMA–B–1144

Back Creek	At the confluence with Conococheague Creek	+481	Township of Antrim, Township of Peters.
	Approximately 180 feet upstream of the confluence with Conococheague Creek.	+481	
Conodoguinet Creek	Approximately 500 feet downstream of Burnt Mill Road	+544	Township of Letterkenny, Township of Lurgan.
	Approximately 1.49 miles upstream of Tanyard Hill Road (State Route 433).	+603	
Middle Spring Creek	Approximately 20 feet upstream of Hot Point Avenue (Avon Drive).	+630	Township of Southampton.
	Approximately 80 feet upstream of Hot Point Avenue (Avon Drive).	+630	
Tributary to Falling Spring Branch.	At the confluence with Falling Spring Branch	+631	Township of Guilford.
	At the upstream inlet of the I-81 culvert	+631	
Unnamed Tributary to West Branch Antietam Creek.	Approximately 1,900 feet downstream of the Access Road Bridge.	+637	Township of Washington.
	Approximately 100 feet downstream of the Access Road Bridge.	+647	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Township of Antrim
Maps are available for inspection at the Antrim Township Municipal Building, 10655 Antrim Church Road Greencastle, PA 17225.

Township of Guilford
Maps are available for inspection at the Guilford Township Building, 115 Spring Valley Road Chambersburg, PA 17201.

Township of Letterkenny
Maps are available for inspection at the Letterkenny Township Building, 4924 Orrstown Road Orrstown, PA 17244.

Township of Lurgan
Maps are available for inspection at the Lurgan Township Building, 8650 McClays Mill Road Newburg, PA 17240.

Township of Peters
Maps are available for inspection at the Peters Township Building, 5342 Lemar Road Mercersburg, PA 17236.

Township of Southampton
Maps are available for inspection at the Township Building, 705 Municipal Drive, Southampton, PA 17257.

Township of Washington
Maps are available for inspection at the Washington Township Building, 13013 Welty Road Waynesboro, PA 17268.

Lawrence County, Pennsylvania (All Jurisdictions)
Docket No.: FEMA–B–1128

Beaver River	Approximately 0.49 mile downstream of the confluence with Wampum Run.	+763	Borough of New Beaver, Borough of Wampum.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in Meters (MSL) Modified	Communities affected
	Approximately 1 mile downstream of the confluence with Jenkins Run.	+767	
Beaver River	Approximately 400 feet downstream of the confluence with the Shenango River.	+776	Township of Taylor.
	Approximately 80 feet downstream of the confluence with the Shenango River.	+776	
Big Run Tributary 5	Approximately 0.45 mile downstream of Harlandsburg Road.	+1157	Township of Hickory.
	Approximately 1,362 feet upstream of the intersection of Harlandsburg Road and Cameron Road.	+1159	
Mahoning River	Approximately 0.69 mile downstream of the intersection of Washington Street and Winter Road.	+785	Township of Union.
	Approximately 0.68 mile downstream of the intersection of Washington Street and Winter Road.	+785	
Neshannock Creek	Approximately 1,500 feet downstream of the confluence with Lick Run.	+849	Township of Hickory.
	Approximately 1,230 feet upstream of the confluence with Lick Run.	+859	
Neshannock Creek	Approximately 0.45 mile upstream of the confluence with Neshannock Creek Tributary 5.	+924	Township of Wilmington.
	Approximately 0.47 mile downstream of the intersection of Highland Avenue and Neshannock Falls Road.	+925	
Neshannock Creek Tributary 3	Approximately 50 feet upstream of Lakewood-Neshannock Falls Road.	+901	Township of Hickory.
	Approximately 540 feet upstream of Lakewood-Neshannock Falls Road.	+901	
Shenango River	Approximately 800 feet downstream of the confluence with the Shenango River.	+777	Township of Taylor.
	Approximately 1,200 feet downstream of Mahoning Avenue.	+787	
Shenango River	Approximately 40 feet upstream of the confluence with Shenango River Tributary 2.	+804	Township of Mahoning, Township of Pulaski, Township of Union.
	Approximately 0.70 mile upstream of the confluence with Shenango River Tributary 5.	+809	
Slippery Rock Creek	Approximately 400 feet downstream of Portersville Road ..	+831	Township of Perry.
	Approximately 1,460 feet upstream of Van Gorder Mill Road.	+848	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Borough of New Beaver
Maps are available for inspection at the New Beaver Borough Office, 778 Wampum New Galilee Road New Galilee, PA 16141.

Borough of Wampum
Maps are available for inspection at the Borough Secretary's Office, 355 Main Street Wampum, PA 16157.

Township of Hickory
Maps are available for inspection at the Hickory Township Hall, 127 Eastbrook-Neshannock Falls Road New Castle, PA 16105.

Township of Mahoning
Maps are available for inspection at the Mahoning Township Municipal Building, 4538 West State Street Hillsville, PA 16132.

Township of Perry
Maps are available for inspection at the Perry Township Hall, 284 Reno Road Portersville, PA 16051.

Township of Pulaski
Maps are available for inspection at the Township Hall, 1172 State Route 208, Pulaski, PA 16117.

Township of Taylor
Maps are available for inspection at the Taylor Township Board of Supervisors Office, 218 Industrial Street West Pittsburg, PA 16160.

Township of Union
Maps are available for inspection at the Union Township Board of Supervisors Office, 1910 Wilson Drive, New Castle, PA 16101.

Township of Wilmington
Maps are available for inspection at the Wilmington Township Hall, 669 Wilson Mill Road New Castle, PA 16105.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 18, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–31276 Filed 12–5–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in Meters (MSL) Modified	Communities affected
Saline County, Illinois, and Incorporated Areas Docket No.: FEMA–B–1134			
Bankston Fork (backwater effects from Ohio River).	At the confluence with Middle Fork Saline River	+367	City of Harrisburg, Unincorporated Areas of Saline County.
	Approximately 1,150 feet upstream of St. Mary's Drive	+367	
Brier Creek	At the confluence with Middle Fork Saline River	+367	Unincorporated Areas of Saline County.
	Approximately 0.53 mile upstream of Illinois Route 34	+367	
Cockerel Branch (backwater effects from Ohio River).	Approximately 1.1 miles downstream of County Highway 13.	+367	Unincorporated Areas of Saline County.
	At Thaxton Road	+367	
Eldorado Tributary	At the confluence with Middle Fork Saline River	+367	Unincorporated Areas of Saline County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in Meters (MSL) Modified	Communities affected
	Approximately 1,545 feet downstream of Sutton Road	+367	
Middle Fork Saline River (backwater effects from Ohio River).	At the confluence with South Fork Saline River	+367	City of Harrisburg, Unincorporated Areas of Saline County, Village of Muddy.
	Approximately 2.4 miles upstream of Illinois Route 34	+367	
Saline River (backwater effects from Ohio River).	Approximately 3.5 miles downstream of Rocky Branch Road.	+367	Unincorporated Areas of Saline County.
	At the confluence of Middle Fork and South Fork Saline River.	+367	
South Fork Saline River (backwater effects from Ohio River).	At the confluence with Middle Fork Saline River	+367	Unincorporated Areas of Saline County.
	Approximately 2.0 miles downstream of Illinois Route 34 ..	+367	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Harrisburg
Maps are available for inspection at City Hall, 110 East Locust Street, Harrisburg, IL 62946.

Village of Muddy
Maps are available for inspection at the Village Hall, 60 Maple Street, Muddy, IL 62965.

Unincorporated Areas of Saline County
Maps are available for inspection at the Saline County Courthouse, 10 East Poplar Street, Harrisburg, IL 62946.

Calvert County, Maryland, and Incorporated Areas
Docket No.: FEMA–B–1178

Hall Creek	Approximately 1.2 miles downstream of Southern Maryland Boulevard.	+7	Unincorporated Areas of Calvert County.
	Approximately 285 feet upstream of Chesapeake Beach Road.	+67	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Calvert County
Maps are available for inspection at the Calvert County Services Plaza, 150 Main Street, Prince Frederick, MD 20678.

Ottawa County, Michigan (All Jurisdictions)
Docket No.: FEMA–B–1089

Alward Drain	At the confluence with Rush Creek	+615	Charter Township of Georgetown, City of Hudsonville.
	Approximately 80 feet upstream of 36th Avenue	+623	
Bareman Drain	At the confluence with County Drain No. 15 & 17	+615	Charter Township of Holland.
	Approximately 80 feet upstream of Quincy Street	+633	
Bark Creek	At the confluence with Bruces Bayou	+590	Township of Crockery.
	Approximately 0.6 mile downstream of Cleveland Street ...	+590	
Bass Creek	At the confluence with the Grand River	+595	Charter Township of Allendale.
	Approximately 0.5 mile upstream of Bass Drive	+595	
Bliss Creek Intercounty Drain ...	Approximately 975 feet downstream of Port Sheldon Street.	+608	Charter Township of Georgetown.
	At the confluence with Knight Intercounty Drain	+646	
Bliss Creek Intercounty Drain Diversion Channel.	At the downstream side of Stonehenge Drive	+628	Charter Township of Georgetown.
	At the divergence from Bliss Creek Intercounty Drain	+633	
Buttermilk Creek	Approximately 680 feet downstream of Oak Street	+618	City of Hudsonville, Charter Township of Jamestown.
	Approximately 155 feet upstream of Quincy Street	+685	
Castle Creek	At the confluence with the Grand River	+595	Charter Township of Polkton.
	Approximately 0.6 mile upstream of Leonard Street	+595	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in Meters (MSL) Modified	Communities affected
County Drain No. 15 & 17	At the confluence with County Drain No. 8, North Holland Drain, and County Drain No. 40.	+611	Charter Township of Holland.
	Approximately 1,520 feet upstream of Riley Street	+619	
County Drain No. 28	At the confluence with County Drain No. 40 and Windmill Creek.	+593	Charter Township of Holland.
	Approximately 125 feet upstream of James Street	+607	
County Drain No. 4 & 43	At the confluence with Noordeloos Creek	+597	Charter Township of Holland.
	Approximately 0.4 mile upstream of 104th Avenue	+597	
County Drain No. 40	At the confluence with County Drain No. 28 and Windmill Creek.	+593	Charter Township of Holland.
	At the confluence with County Drain No. 8, North Holland Drain, and County Drain No. 15 & 17.	+611	
County Drain No. 8 and North Holland Drain.	At the confluence with County Drain No. 15 & 17 and County Drain No. 40.	+611	Charter Township of Holland.
	Approximately 130 feet upstream of Quincy Street	+625	
Crockery Creek	At the confluence with the Grand River	+591	Township of Crockery.
	At the upstream side of Fitzgerald Street	+591	
DeWeerd Drain	At the confluence with Rush Creek	+610	Charter Township of Georgetown, City of Hudsonville, Charter Township of Jamestown.
	Approximately 570 feet upstream of I–196 North	+661	
Deer Creek	At the upstream side of I–96 West	+614	Charter Township of Polkton.
Deer Creek	At the confluence with the Grand River	+597	Charter Township of Polkton, Charter Township of Tallmadge.
	Approximately 1 mile upstream of Leonard Street	+597	
Deer Creek of Crockery	At the confluence with Bruces Bayou	+589	Township of Crockery.
	At the downstream side of Leonard Road	+589	
East Georgetown Shores Lake	Entire shoreline	+609	Charter Township of Georgetown.
Fort Village Creek	At the confluence with Crockery Creek	+591	Township of Crockery.
	Approximately 1,300 feet downstream of 104th Avenue	+591	
Grand River	Approximately 0.6 mile upstream of the confluence with Mill House Bayou.	+588	Charter Township of Allendale, Charter Township of Polkton, Township of Crockery, Township of Robinson, Charter Township of Tallmadge.
	Approximately 350 feet upstream of Lake Michigan Drive	+600	
Huizenga Intercounty Drain	At the confluence with Rush Creek	+606	Charter Township of Georgetown.
	At the downstream side of Kenowa Avenue Southwest	+616	
Knight Intercounty Drain	At the confluence with Bliss Creek Intercounty Drain	+646	Charter Township of Georgetown, Charter Township of Jamestown.
	At the downstream side of Kenowa Avenue Southwest	+651	
Little Robinson Bayou	At the confluence with the Grand River	+588	Township of Robinson.
	At the downstream side of 128th Avenue	+588	
Macatawa River/Black Creek of Zeeland Drain.	Approximately 0.8 mile upstream of River Avenue	+584	Charter Township of Holland, Charter Township of Zeeland, City of Holland.
	Approximately 400 feet upstream of Felch Street	+607	
Meadowbrook Drain	At the confluence with Bliss Creek Intercounty Drain	+616	Charter Township of Georgetown.
	Approximately 620 feet upstream of 8th Avenue	+618	
Miller I.C.	At the confluence with Bliss Creek Intercounty Drain and Knight Intercounty Drain.	+646	Charter Township of Georgetown, Charter Township of Jamestown.
	Approximately 600 feet downstream of Ransom Street Southwest.	+650	
Morning Dew Lake	Entire shoreline	+610	Charter Township of Holland.
Noordeloos Creek	At the confluence with Black Creek of Zeeland Drain	+597	City of Holland, City of Zeeland, Charter Township of Holland.
	At the downstream side of PawPaw Road	+600	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in Meters (MSL) Modified	Communities affected
Northwest Branch of Rush Creek.	At the upstream side of 40th Avenue	+615	Charter Township of Georgetown.
	At the downstream side of 48th Avenue	+635	
Ottawa Creek & Ext. Drain/Ottawa Creek/Curry Drain.	At the confluence with the Grand River	+599	Charter Township of Allendale.
	Approximately 125 feet downstream of 40th Avenue	+599	
Rush Creek	At the upstream side of Main Street	+606	Charter Township of Georgetown, City of Hudsonville.
	At the downstream side of 40th Avenue	+615	
South Branch	At the confluence with Black Creek of Zeeland Drain	+602	Charter Township of Zeeland.
	Approximately 0.6 mile downstream of Lizbeth Drive	+602	
Sterns Bayou and Sterns Creek	At the downstream corporate limits of the Township of Robinson.	+588	Township of Robinson.
	At the downstream side of Ferris Street	+588	
Traders Creek	At the confluence with the Grand River	+597	Charter Township of Allendale.
	Approximately 830 feet downstream of 60th Avenue	+597	
Trout Drain	At the confluence with DeWeerd Drain	+612	Charter Township of Georgetown, City of Hudsonville.
	Approximately 315 feet west of 22nd Avenue	+623	
Tulip Intercounty Drain	At the confluence with Black Creek of Zeeland Drain	+597	Charter Township of Holland.
	Approximately 0.4 mile upstream of Adams Street	+597	
Unnamed Tributary 1 to Buttermilk Creek.	At the confluence with Buttermilk Creek	+651	City of Hudsonville.
	Approximately 105 feet upstream of I–196 North	+670	
Unnamed Tributary 1 to Crockery Creek.	At the confluence with Crockery Creek	+591	Township of Crockery.
	Approximately 850 feet downstream of Leonard Street	+591	
Unnamed Tributary 1 to Grand River.	At the confluence with the Grand River	+594	Charter Township of Polkton.
	Approximately 1,900 feet upstream of the confluence with the Grand River.	+594	
Unnamed Tributary 2 to Buttermilk Creek.	At the confluence with Buttermilk Creek	+673	Charter Township of Jamestown.
	Approximately 100 feet downstream of Quincy Street	+702	
Unnamed Tributary 2 to Crockery Creek.	At the confluence with Crockery Creek	+591	Township of Crockery.
	At the downstream side of I–96 East	+591	
Unnamed Tributary 2 to Grand River.	At the confluence with the Grand River	+596	Charter Township of Polkton.
	Approximately 780 feet upstream of Leonard Street	+596	
Unnamed Tributary 3 to Crockery Creek.	At the confluence with Crockery Creek	+591	Township of Crockery.
	At the downstream side of 104th Avenue	+591	
Unnamed Tributary 3 to Grand River.	At the confluence with the Grand River	+596	Charter Township of Polkton.
	Approximately 930 feet upstream of Leonard Street	+596	
Unnamed Tributary 4 to Crockery Creek.	At the confluence with Crockery Creek	+591	Township of Crockery.
	Approximately 850 feet downstream of Fitzgerald Street	+591	
Unnamed Tributary 4 to Grand River.	At the confluence with the Grand River	+596	Charter Township of Polkton.
	Approximately 1,400 feet upstream of Leonard Street	+596	
Unnamed Tributary to Bark Creek.	At the confluence with Bark Creek	+590	Township of Crockery.
	At the downstream side of Leonard Road	+590	
Unnamed Tributary of Bruces Bayou.	At the confluence with Bruces Bayou	+589	Township of Crockery.
	Approximately 0.5 mile upstream of the confluence with Bruces Bayou.	+589	
Unnamed Tributary to Castle Creek.	At the confluence with Castle Creek	+595	Charter Township of Polkton.
	Approximately 1,200 feet upstream of the confluence with Castle Creek.	+595	
Vans Bypass	At the confluence with Bareman Drain	+618	Charter Township of Holland.
	At the divergence from County Drain No. 15 & 17	+619	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in Meters (MSL) Modified	Communities affected
West Georgetown Shores Lake	Entire shoreline	+609	Charter Township of Georgetown.
Windmill Creek	At the confluence with Macatawa River	+593	Charter Township of Holland.
	At the confluence with County Drain No. 28 and County Drain No. 40.	+593	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Charter Township of Allendale
Maps are available for inspection at 6676 Lake Michigan Drive, Allendale, MI 49401.

Charter Township of Georgetown
Maps are available for inspection at 1515 Baldwin Street, Jenison, MI 49429.

Charter Township of Holland
Maps are available for inspection at 353 North 120th Avenue, Holland, MI 49422.

Charter Township of Jamestown
Maps are available for inspection at 2380 Riley Street, Jamestown, MI 49427.

Charter Township of Polkton
Maps are available for inspection at 6900 Arthur Street West, Coopersville, MI 49404.

Charter Township of Tallmadge
Maps are available for inspection at O–1451 Leonard Street Northwest, Grand Rapids, MI 49534.

Charter Township of Zeeland
Maps are available for inspection at 6582 Byron Road, Zeeland, MI 49464.

City of Holland
Maps are available for inspection at 270 River Avenue, Holland, MI 49423.

City of Hudsonville
Maps are available for inspection at 3275 Central Boulevard, Hudsonville, MI 49426.

City of Zeeland
Maps are available for inspection at 21 South Elm Street, Zeeland, MI 49464.

Township of Crockery
Maps are available for inspection at 17431 112th Avenue, Nunica, MI 49448.

Township of Robinson
Maps are available for inspection at 12010 120th Avenue, Grand Haven, MI 49417.

Perry County, Mississippi, and Incorporated Areas
Docket No.: FEMA–B–1148

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in Meters (MSL) Modified	Communities affected
Leaf River	Approximately 0.6 mile downstream of State Highway 15	+89	Unincorporated Areas of Perry County.
	Approximately 0.5 mile upstream of State Highway 15	+91	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Perry County
Maps are available for inspection at the Perry County Courthouse, 103 1st Street, New Augusta, MS 39462.

Bayfield County, Wisconsin, and Incorporated Areas
Docket No.: FEMA–B–1153

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in Meters (MSL) Modified	Communities affected
Lake Superior	Entire shoreline within community	+605	City of Bayfield, City of Washburn, Red Cliff Band of Lake Superior Chippewa, Unincorporated Areas of Bayfield County.
Lower Eau Claire Lake	Entire shoreline within community	+1124	Unincorporated Areas of Bayfield County.
Middle Eau Claire Lake	Entire shoreline within community	+1128	Unincorporated Areas of Bayfield County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in Meters (MSL) Modified	Communities affected
Namekagon Lake	Entire shoreline within community	+1398	Unincorporated Areas of Bayfield County.
Upper Eau Claire Lake	Entire shoreline within community	+1137	Unincorporated Areas of Bayfield County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Bayfield
Maps are available for inspection at 125 South 1st Street, Bayfield, WI 54814.

City of Washburn
Maps are available for inspection at 119 Washington Avenue, Washburn, WI 54891.

Red Cliff Band of Lake Superior Chippewa
Maps are available for inspection at 88385 State Highway 13, Bayfield, WI 54814.

Unincorporated Areas of Bayfield County
Maps are available for inspection at 117 East 5th Street, Washburn, WI 54891.

Forest County, Wisconsin, and Incorporated Areas
Docket No.: FEMA–B–1155

Metonga Lake	Entire shoreline within community	+1599	Unincorporated Areas of Forest County.
Peshtigo Lake	Entire shoreline within community	+1591	Unincorporated Areas of Forest County.
Roberts Lake	Entire shoreline within community	+1594	Unincorporated Areas of Forest County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Forest County
Maps are available for inspection at 200 East Madison Avenue, Crandon, WI 54520.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 18, 2011.

Sandra K. Knight,

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

[FR Doc. 2011–31280 Filed 12–5–11; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 76, No. 234
Tuesday, December 6, 2011

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1259; Directorate Identifier 2011–NM–181–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

DATES: We must receive comments on this proposed AD by January 20, 2012.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone (206) 544–5000, extension 1; fax (206) 766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1259; Directorate Identifier 2011–NM–181–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of corrosion damage on the outer diameter chrome surface of the horizontal stabilizer pivot pins. Micro cracks in the chrome plating of the pivot pin, some of which extended into the base metal, were also reported. This condition, if not corrected, could result in a fractured horizontal stabilizer pivot pin, which may cause excessive horizontal stabilizer freeplay and structural damage significant enough to result in loss of control of the airplane.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 777–55A0018, dated July 27, 2011. The service information describes procedures for replacing the inner and outer pivot pins of the horizontal stabilizer with new or reworked pivot pins, including replacing the spacer with a new spacer or with one that has been determined to be without corrosion damage or other irregularities.

That service bulletin describes procedures for doing repetitive detailed inspections for cracks, corrosion damage, or other irregularities of the outer and inner pivot pins after their replacement, and doing corrective actions if necessary. That service bulletin also describes procedures for doing repetitive ultrasonic inspections for cracks of the outer pivot pins after their replacement, and doing corrective actions if necessary. Corrective actions include replacing any pivot pin having cracking, corrosion damage, or other irregularities, with a new or serviceable pivot pin.

The compliance time for replacing the inner and outer pivot pins is the later of: (1) Before the accumulation of 16,000 total flight cycles, or within 3,000 days after the issuance of the original certificate of airworthiness or the original export certificate (whichever occurs first); and (2) within 750 days

''after the original issue date of this service bulletin.'' The first post-replacement inspection is within 32,000 flight cycles or 6,000 days (whichever occurs first after the pin replacement). The repetitive inspection interval is 16,000 flight cycles or 3,000 days (whichever occurs first); or 12,000 flight cycles or 3,000 days (whichever occurs first); depending on airplane group.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 155 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

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

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

ON-CONDITION COSTS

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2011–1259; Directorate Identifier 2011–NM–181–AD.

(a) Comments Due Date

We must receive comments by January 20, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 777–55A0018, dated July 27, 2011.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of corrosion damage on the outer diameter chrome surface of the horizontal stabilizer pivot pins. Micro cracks in the chrome plating of the pivot pin, some of which extended into the base metal, were also reported. This condition, if not corrected, could result in a fractured horizontal stabilizer pivot pin, which may cause excessive horizontal stabilizer freeplay and

structural damage significant enough to result in loss of control of the airplane.

(f) Compliance

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

(g) Pivot Pin Replacement

At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–55A0018, dated July 27, 2011, except as required by paragraph (i)(2) of this AD, replace the pivot pins of the horizontal stabilizer with new or reworked pivot pins, including replacing the spacer with a new spacer or with one that has been determined to be without corrosion damage or other irregularities; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0018, dated July 27, 2011.

(h) Repetitive Inspections

At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–55A0018, dated July 27, 2011: Do detailed inspections for cracks, corrosion damage, or other irregularity of the outer and inner pivot pins; and an ultrasonic inspection for cracking of the outer pivot pins; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0018, dated July 27, 2011. Corrective actions must be done before further flight. Repeat the inspections at the applicable interval specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–55A0018, dated July 27, 2011, except as provided by paragraph (i)(1) of this AD.

Note 1: The Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0018, dated July 27, 2011, might refer to other procedures. When the words ''refer to'' are used and the operator has an accepted alternative procedure, the accepted alternative procedure can be used to comply with the AD. When the words ''in accordance with'' are included in the instruction, the procedure in the design approval holder document must be used to comply with the AD.

(i) Exceptions

The following exceptions to Boeing Alert Service Bulletin 777–55A0018, dated July 27, 2011, apply to this AD.

(1) Where the Repeat Interval column of tables 2 and 3 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–55A0018, dated July 27, 2011, specify a compliance time, this AD requires compliance within the specified compliance time after the most recent inspection.

(2) Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–55A0018, dated July 27, 2011, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time ''after the effective date of this AD.''

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(k) Related Information

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone (206) 544–5000, extension 1; fax (206) 766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Issued in Renton, Washington, on November 23, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–31312 Filed 12–5–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1285; Directorate Identifier 2010–SW–073–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Eurocopter Deutschland GmbH Model BO–105A, BO–105C, BO–105LS A–1, BO–105LS A–3, and BO–105S helicopters. This proposed AD would require inspecting certain main rotor blades for debonding of the erosion protective shell. If the erosion protective shell is debonded, you would be required to replace the main rotor blade with an airworthy main rotor blade. This proposed AD is prompted by the results of an inspection on a BO–105 helicopter where debonding was discovered on a main rotor blade erosion protective shell, and it was determined that the debonding was due to incorrect installation of the erosion protective shell. Subsequently, an incident occurred where a BO–105 helicopter lost its main rotor blade erosion protective shell during flight. The actions specified by this proposed AD are intended to detect debonding of the main rotor blade erosion protective shell which could lead to an unbalanced main rotor, high vibrations, damage to the tail boom or tail rotor, and loss of control of the helicopter.

DATES: Comments must be received on or before February 6, 2012.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

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

You may get the service information identified in this proposed AD from American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052, telephone (972) 641–0000 or (800) 232–0323, fax (972) 641–3775, or at *http://www.eurocopter.com/techpub*.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Manager, FAA, Rotorcraft Directorate, Safety Management Group, 2601 Meacham Blvd., Fort Worth, TX 76137, telephone (817) 222–5126, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the caption **ADDRESSES**. Include the Docket No. ''FAA–2011–1285, Directorate Identifier 2010–SW–073–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of the docket web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued Emergency AD No. 2010–0216–E, dated October 21, 2010 (corrected October 29, 2010), to correct an unsafe condition for Eurocopter Deutschland Model BO–105A, BO–105C, BO–105D, BO–105LS A–1, BO–105LS A–3, and BO–105S helicopters, all variants (except CB–5 and DBS–5, which are military models.) EASA advises that during an inspection on a BO–105 helicopter, debonding was found on the erosion protective shell of a main rotor blade, and it was determined that the debonding was caused by incorrect installation of the erosion protective shell. In addition, EASA states that an incident occurred where a second BO–105 helicopter lost its erosion protective shell during flight. EASA advises that this condition, if not detected, could result in loss of the main rotor blade erosion protective shell during flight, leading to an unbalanced main rotor and high vibrations, which could result in damage to the tail boom or tail rotor, loss of tail rotor control, and loss of control of the helicopter.

Related Service Information

Eurocopter Deutschland has issued Emergency Alert Service Bulletin No. BO105–10–124, dated July 14, 2010, for the Model BO105 helicopter, with a main rotor blade, part number (P/N) 105–15103, 105–15141, 105–15141V001, 105–15143, 105–15150, 105–15150V001, 105–15152, 105–81013, 105–87214, 1120–15101, or 1120–15103, where the main rotor blade erosion protective shell was replaced between September 2006 and March 2010. Eurocopter Deutschland also issued Emergency Alert Service Bulletin BO105LS–10–12 for the Model BO105LS A–3 helicopter, dated July 14, 2010, with a main rotor blade, part P/N 105–15141, where the main rotor blade erosion protective shell was replaced between September 2006 and March 2010. Both Emergency Alert Service Bulletins specified a one-time inspection of the main rotor blades within the next 50 flight hours to determine if debonding of the main rotor blade erosion protective shell has occurred. Both Service Bulletins exclude helicopters from this inspection if each main rotor blade was inspected at the last 600 flight hour inspection and no debonding was detected during the inspection.

In response to the incident where the helicopter lost its main rotor blade erosion protective shell during flight, Eurocopter Deutschland has issued Emergency Alert Service Bulletin No. BO105–10–124, Revision 1, dated October 18, 2010, and Emergency Alert Service Bulletin BO105LS–10–12, Revision 1, dated October 20, 2010. These Service Bulletins specify the same inspection requirements as the original Service Bulletins, but revise the inspection compliance time from 50 flight hours to 10 flight hours. EASA classified these Service Bulletins as mandatory, and issued EASA Emergency AD No. 2010–0216–E, dated October 21, 2010 (corrected October 29, 2010) to ensure the continued airworthiness of these helicopters.

FAA's Evaluation and Unsafe Condition Determination

These products have been approved by the aviation authority of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA, their technical representative, has notified us of the unsafe condition described in their AD. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs. This proposed AD would require a one-time inspection of each main rotor blade for debonding of the main rotor blade erosion protective shell within 50 hours time-in-service (TIS), for helicopters with a main rotor blade, P/N 105–15103, 105–15141, 105–15141V001, 105–15143, 105–15150, 105–15150V001, 105–15152, 105–81013, 105–87214, 1120–15101, or 1120–15103, where the main rotor blade erosion protective shell was replaced between September 2006 and March 2010. If debonding is detected during the inspection, before further flight, you would be required to replace the main rotor blade with an airworthy main rotor blade.

Differences Between This Proposed AD and the EASA AD

The differences between this proposed AD and the EASA AD are:

- This proposed AD uses the term ''hours time-in-service'' to describe compliance times, and the EASA AD uses ''flight hours.''
- The EASA AD allows compliance within ''10 flight hours, or 4 flight cycles, or 4 weeks, whichever occurs first,'' and this proposed AD would require compliance within 50 hours TIS.
- The EASA AD allows you to replace the main rotor blade erosion protective shell if debonding is detected, and this proposed AD would require you to replace the main rotor blade with an airworthy main rotor blade if debonding is detected.
- The EASA AD is applicable to the Model BO–105D helicopter, and this proposed AD does not include this model because it does not have a type-certificate in the U.S.

Costs of Compliance

We estimate that this proposed AD would affect 97 helicopters of U.S. registry. We estimate that it would take about 1.0 work-hour per helicopter to do the inspection, at an average labor rate of $85 per work hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $8,245, or $85 per product. If debonding is found, we estimate that it would take about 2 work-hours to replace the main rotor blade, and required parts would cost $114,182, for a cost of $114,352. We have no way of determining how many operators would incur these costs.

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska to the extent that a regulatory distinction is required; and

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD. See the AD docket to examine the economic evaluation.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Eurocopter Deutschland GMBH: Docket No. FAA–2011–1285; Directorate Identifier 2010–SW–073–AD.

Applicability: Model BO–105A, BO–105C, BO–105LS A–1, BO–105LS A–3, and BO–105S helicopters, all serial numbers, with a main rotor blade, part number (P/N) 105–15103, 105–15141, 105–15141V001, 105–15143, 105–15150, 105–15150V001, 105–15152, 105–81013, 105–87214, 1120–15101, or 1120–15103; where the main rotor blade erosion protective shell was replaced between September 2006 and March 2010; certificated in any category.

Compliance: Required within 50 hours time-in-service (TIS) after the effective date of this AD, unless accomplished previously.

To detect debonding of the main rotor blade erosion protective shell, which could lead to an unbalanced main rotor, high vibration, damage to the tail boom or tail rotor, and loss of control of the helicopter, accomplish the following:

(a) Inspect the main rotor blade for debonding of the erosion protective shell. If debonding is detected during the inspection, before further flight, replace the main rotor blade with an airworthy main rotor blade.

Note 1: Eurocopter Deutschland GmbH Emergency Alert Service Bulletin No. BO105–10–124, Revision 1, dated October 18, 2010, and No. BO105LS–10–12, Revision 1, dated October 20, 2010, which are not incorporated by reference, contain additional information about the subject of this AD.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Regulations and Policy Group, FAA, *ATTN:* Jim Grigg, Manager, 2601 Meacham Blvd., Fort Worth, Texas 76137; *telephone:* (817) 222–5122; *fax:* (817) 222–5126, for information about previously approved alternative methods of compliance.

(c) The Joint Aircraft System/Component Code is 6210: Main Rotor Blades.

Note 2: The subject of this AD is addressed in European Aviation Safety Agency AD 2010–0216–E, dated October 21, 2010 (corrected October 29, 2010).

Issued in Fort Worth, Texas, on November 29, 2011.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2011–31254 Filed 12–5–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1193; Airspace Docket No. 11–ANM–14]

Proposed Modification of Area Navigation Route T–288; WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify low altitude area navigation (RNAV) route T–288 by extending the route westward from the Rapid City, SD, VORTAC to the Gillette, WY, VOR/DME. The proposed extension would enhance efficiency and safety of the National Airspace System (NAS) by supplementing the existing VOR Federal airway structure in that area.

DATES: Comments must be received on or before January 20, 2012.

ADDRESSES: Send comments on this proposal to the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; *telephone:* (202) 366–9826. You must identify FAA Docket No. FAA–2011–1193 and Airspace Docket No. 11–ANM–14 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–1193 and Airspace Docket No. 11–ANM–14) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2011–1193 and Airspace Docket No. 11–ANM–14.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov,* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Federal Aviation Administration, 1601 Lind Ave. SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to modify RNAV route T–288 by adding a new segment between the Rapid City, SD VORTAC and the Gillette, WY VOR/DME. The modification would enhance the efficiency and safety of the NAS by supplementing the existing VOR Federal airway structure and providing alternative routing in the event of navigation aid (NAVAID) outages. The minimum IFR altitude in the area varies between 7,000 feet MSL and 9,300 feet MSL; however, the radar coverage in that area is not reliable below 12,000 feet MSL to 13,000 feet MSL. When NAVAID outages occur, due to the existing route and NAVAID structure, it is difficult to route aircraft between the Gillette VOR/DME and the Rapid City VORTAC. In this situation, aircraft flying at lower altitudes must climb up to be within radar coverage in order to get a more direct route to/from the VOR/DME and VORTAC. This is especially important during winter months because pilots encountering icing conditions at the higher altitudes need to descend, but are then lost from radar coverage. The proposed T–288 modification would alleviate this situation as well as enhance the NAS efficiency by adding an RNAV route option.

Low altitude RNAV routes are published in paragraph 6011 of FAA Order 7400.9V, dated August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document would be published subsequently in the Order.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it expands RNAV route coverage to enhance the safe and efficient flow of traffic in the western United States.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a and 311b. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–288 Gillette, WY (GCC) to Wolbach, NE (OBH) [Amended]

Gillette, WY (GCC)	VOR/DME	(Lat. 44°20′52″ N., long. 105°32′37″ W.)
KARAS,	INT	(Lat. 44°16′23″ N., long. 104°18′50″ W.)
Rapid City, SD (RAP)	VORTAC	(Lat. 43°58′34″ N., long. 103°00′44″ W)
WNDED, SD	WP	(Lat. 43°19′14″ N., long. 101°32′19″ W.)
Valentine, NE (VTN)	NDB	(Lat. 42°51′42″ N., long. 100°32′59″ W.)
Ainsworth, NE (ANW)	VOR/DME	(Lat. 42°34′09″ N., long. 99°59′23″ W.)
FESNT, NE	WP	(Lat. 42°03′57″ N., long. 99°17′18″ W.)
Wolbach, NE (OBH)	VORTAC	(Lat. 41°22′33″ N., long. 98°21′13″ W.)

* * * * *

Issued in Washington, DC on November 29, 2011.

Gary A. Norek,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2011–31223 Filed 12–5–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742 and 774

[Docket No. 111020646–1645–01]

RIN 0694–AF41

Revisions to the Export Administration Regulations (EAR): Control of Gas Turbine Engines and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: The Bureau of Industry and Security publishes this proposed rule that describes how military gas turbine engines and related articles that the President determines no longer warrant control under Category VI, VII, or VIII of the United States Munitions List (USML) would be controlled under the Commerce Control List (CCL) in new Export Control Classification Numbers (ECCNs) 9A619, 9B619, 9C619, 9D619 and 9E619. In addition, this proposed rule would control military trainer aircraft turbo prop engines and related items, which are currently controlled under ECCN 9A018.a.2 or .a.3, 9D018 or 9E018, under new ECCN 9A619, 9D619 or 9E619.

This rule is one of a planned series of proposed rules that are part of the Administration's Export Control Reform Initiative under which various types of articles presently controlled on the USML under the International Traffic in Arms Regulations (ITAR) would, instead, be controlled on the CCL in accordance with the requirements of the Export Administration Regulations (EAR), if and after the President determines that such articles no longer warrant control on the USML. This proposed rule is being published in conjunction with a proposed rule from the Department of State, Directorate of Defense Trade Controls that would consolidate in USML Category XIX the military gas turbine engines and related articles that would remain on the USML.

DATES: Comments must be received by January 20, 2012.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. The identification number for this rulemaking is BIS–2011–0042.
- *By email directly to: publiccomments@bis.doc.gov*. Include RIN 0694–AF41 in the subject line.
- *By mail or delivery to:* Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694–AF41.

FOR FURTHER INFORMATION CONTACT: Gene Christiansen, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, U.S. Department of Commerce, *Telephone:* (202) 482–2984, *Email: Gene.Christiansen@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2011, as part of the Administration's ongoing Export Control Reform Initiative, the Bureau of Industry and Security (BIS) published a proposed rule (76 FR 41958) (''the July 15 proposed rule'') that set forth a framework for how articles the President determines, in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)), would no longer warrant control on the United States Munitions List (USML) and, instead, would be controlled on the Commerce Control List (CCL). The July 15 proposed rule also contained a proposal by BIS describing how military vehicles and related articles in USML Category VII that no longer warrant control under the USML would be controlled on the CCL.

On November 7, 2011 (76 FR 68675), BIS published a proposed rule describing how aircraft and related items determined by the President to no longer warrant control under the USML would be controlled on the CCL. In that proposed rule, BIS also made several changes and additions to the framework proposed in the July 15 proposed rule.

BIS plans to publish additional proposed rules describing how surface vessels and related articles (currently controlled under USML Category VI) and submersibles, submarines, and related articles (currently controlled by USML Category VI or XX) that the President determines no longer warrant control on the USML would be controlled on the CCL.

BIS also plans to publish a proposed rule describing how the new controls described in this and similar notices would be implemented, such as through the use of ''grandfather'' clauses and additional exceptions. The goal of such provisions would be to give exporters sufficient time to implement the final versions of such changes and to avoid, to the extent possible, situations where transactions would require licenses from both the State Department and the Commerce Department.

Following the structure of the July 15 and November 7 proposed rules, which describe the ''export control reform initiative framework'' for controlling on the CCL articles that the President determines no longer warrant control on the USML, this proposed rule describes BIS's proposal for how another group of items—gas turbine engines and related articles for military vessels, vehicles, and aircraft that are controlled by USML Categories VI, VII, and VIII, respectively—would be controlled on the CCL. The changes described in this proposed rule and the State Department's proposed amendment to the USML, which would move those items that would be retained on the USML into Category XIX (currently reserved), are based on a review of Categories VI, VII, and VIII by the Defense Department, which worked with the Departments of State and Commerce in preparing the proposed amendments. The review was focused on identifying the types of military gas turbine engines and related articles now controlled by these USML categories that are either: (i) Inherently military and otherwise warrant control on the USML, or (ii) if they are a type common to civil applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States, and are almost exclusively available from the United States. If an article satisfies either or both of those criteria, the article would remain on the USML. If an article does not satisfy either criterion, but is nonetheless a type of article that is, as a result of differences in form and fit, ''specially designed'' for military applications, then it is identified in one of the new ECCNs in this proposed rule. Finally, if an article does not satisfy either of the two criteria and is not found to be ''specially designed'' for military applications, the article is not affected by this rule because such items already are not on the USML. The licensing policies and other EAR-specific controls for such items that are also described in this proposed rule would enhance our national security by: (i) Allowing for greater interoperability with our NATO, and other, allies while maintaining and expanding robust controls that, in some instances, would include prohibitions on exports or reexports destined for other countries or intended for proscribed end-users and end-uses; (ii) enhancing our defense industrial base by, for example, reducing the current incentives for foreign companies to design out or avoid U.S.-origin ITAR-controlled content, particularly with respect to generic, unspecified parts and components; and (iii) permitting the U.S. Government to focus its resources on controlling, monitoring, investigating, analyzing, and, if need be, prohibiting exports and reexports of more significant items to destinations, end users, and end uses of greater concern than our NATO allies and other multi-regime partners.

Pursuant to section 38(f) of the AECA, the President shall review the USML ''to determine what items, if any, no longer warrant export controls under'' the AECA. The President must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The report must ''describe the nature of any controls to be imposed on that item under any other provision of law.'' 22 U.S.C. 2778(f)(1). This proposed rule describes how certain military gas turbine engines and related articles in USML Categories VI, VII, and VIII would be controlled by the EAR and identified on the CCL, if the President determines that the articles no longer warrant control on the USML.

In the July 15 proposed rule, BIS proposed creating a series of new ECCNs to control items that: (i) Would be moved from the USML to the CCL or (ii) are listed on the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies Munitions List (Wassenaar Arrangement Munitions List or WAML) and are already controlled elsewhere on the CCL. The proposed rule referred to this series as the ''600 series'' because the third character in each of the new ECCNs would be a ''6.'' The first two characters of the 600 series ECCNs serve the same function as described for any other ECCN in § 738.2 of the EAR. The first character is a digit in the range 0 through 9 that identifies the Category on the CCL in which the ECCN is located. The second character is a letter in the range A through E that identifies the product group within a CCL Category. In the 600 series, the third character is the number 6. With few exceptions, the final two characters identify the WAML category that covers items that are the same or similar to items in a particular 600 series ECCN.

This proposed rule contains an exception to the general approach of tracking the numbering structure of the WAML. BIS believes that it will be easier for industry to identify and comply with controls on USML gas turbine engines and related items if they are combined into one category, regardless of the end item for which the engines are designed or modified. The suffix ''019'' was used in the proposed ECCNs to track the new Category XIX that would be used to control gas turbine engines that would remain on the USML. The Administration, however, encourages the public to comment about whether it would be easier and more convenient for industry if the controls on gas turbine engines remained in the categories of the end items into which the engines are installed. Thus, for example, BIS is soliciting public comments on whether it would be preferable to have gas turbine engines for 600 series-controlled military aircraft in the same ECCN 9A610 as such aircraft, or in new ECCN 9A619, which is specific to gas turbine engines. Similarly, the State Department, in its proposed rule, asks comments on whether it would be preferable for controls on USML aircraft engines to remain in USML Category VIII(b) or for such engines to be placed in a new USML Category XIX.

BIS will publish additional **Federal Register** notices containing proposed amendments to the CCL that will describe proposed controls for additional categories of articles the President determines no longer warrant control under the USML. The State Department will publish, concurrently, proposed amendments to the USML that correspond to the BIS notices. BIS will also publish proposed rules to further align the CCL with the WAML and the Missile Technology Control Regime Equipment, Software and Technology Annex.

Modifications to Provisions in the July 15 and November 7 Proposed Rules

In addition to the proposals mentioned above, this proposed rule would make the following modifications to the July 15 proposed rule:

- Addition of new Category 9 (600 series) items to proposed Supplement No. 4 to Part 740; and
- Addition of the new Category 9 (600 series) ECCNs to § 742.6(a)(1).

These modifications are described in the section ''Scope of this Proposed Rule.''

Similarly, BIS will consider comments on the July 15 proposals only for the specific paragraph, note, and ECCNs referenced above, and only within the context of this proposed rule's modifications to them.

Scope of This Proposed Rule

This proposed rule would create five new 600 series ECCNs in CCL Category 9—9A619, 9B619, 9C619, 9D619, and 9E619—that would control military gas turbine engines and related articles that the President determines no longer warrant control under USML Category

VI, VII, or VIII. Consistent with the regulatory construct identified in the July 15 proposed rule, this rule also would move military trainer aircraft turbo prop engines and related items currently classified under ECCN 9A018.a.2 or .a.3, 9D018, or 9E018 to new ECCN 9A619, 9D619, or 9E619. As part of the proposed changes, these three 018 ECCNs would cross-reference the new classifications in the 600 series. As noted in the July 15 proposed rule, moving items from 018 ECCNs to the appropriate 600 series ECCNs would consolidate WAML and formerly USML items into one series of ECCNs.

The proposed changes are discussed in more detail, below.

New Category 9 (600 Series) ECCNs

Certain military gas turbine engines and related articles that the President determines no longer warrant control in USML Category VI, VII, or VIII would be controlled under proposed new ECCNs 9A619, 9B619, 9C619, 9D619, and 9E619.

Paragraphs .a through .d of ECCN 9A619 would control, respectively: (i) Gas turbine engines ''specially designed'' for military use that would not be controlled under proposed USML Category XIX; (ii) digital engine controls (*e.g.* Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)) ''specially designed'' for gas turbine engines in ECCN 9A619; (iii) hot section components and related cooled components ''specially designed'' for gas turbine engines in ECCN 9A619; and (iv) engine monitoring systems for gas turbine engines and components in ECCN 9A619. All such items would be ''components,'' as that term is defined in the July 15 proposed rule, because they are items that are useful only when used in conjunction with an ''end item.'' The definition distinguishes between two types of ''components'': ''major components'' and ''minor components.'' A ''major component'' includes any assembled element which forms a portion of an ''end item'' without which the end item is inoperable. A ''minor component'' includes any assembled element of a ''major component.''

Paragraphs .e through .w would be reserved for possible future use. Paragraph .x would consist of ''parts,'' ''components,'' ''accessories and attachments'' (including certain unfinished products that have reached a stage in manufacturing where they are clearly identifiable as commodities controlled by paragraph .x) that are ''specially designed'' for a commodity in ECCN 9A619 (other than ECCN 9A619.c) or a defense article in proposed USML Category XIX and not elsewhere specified in the CCL or on the USML. Paragraph .y would consist of eight specific types of commodities that, if ''specially designed'' for a commodity subject to control in ECCN 9A619 or a defense article in proposed USML Category XIX, warrant less strict controls because they have little or no military significance. Commodities listed in paragraph .y would be subject to antiterrorism (AT Column 1) controls, which currently impose a license requirement for five countries. A license also would be required, in accordance with the July 15 proposed rule, if commodities listed in paragraph .y were destined to the People's Republic of China for a military end use as described in § 744.21 of the EAR.

Although including all military gas turbine engines transferred from the USML, or from an existing 018 ECCN, in a single 600 series ECCN (*i.e.,* ECCN 9A619) would deviate slightly from the WAML numbering approach, BIS believes that it would be more efficient to list all 600 series controls for engines and related items in one ECCN. New ECCN 9A619 would correspond to a new USML Category XIX that the State Department is proposing, which would control USML-controlled engines and related articles. When BIS publishes this rule in final form, BIS will add cross references to proposed new ECCN 9A619 to the new military ground vehicle ECCN (*i.e.,* ECCN 0A606) described in its July 15 proposed rule and to the new military aircraft ECCN (*i.e.,* ECCN 9A610) described in its November 7 proposed rule. Subsequent rules in this series (*e.g.,* the rules that would address military surface vessels, submersibles and related articles) would contain cross references to new ECCN 9A610, as appropriate. BIS encourages the submission of comments on its proposal to consolidate all military gas turbine engines that would be transferred from the USML to the CCL into a single ECCN (ECCN 9A619), as opposed to listing such engines in separate ECCNs that would control military vehicles, vessels (both surface and submersible), and aircraft, respectively, transferred from the USML to the CCL. Similarly, the State Department, in its proposed rule, asks for comments on whether it would be preferable for controls on USML aircraft engines to remain in USML Category VIII(b) or for such engines to be placed in a new USML Category XIX.

ECCN 9B619.a would control test, inspection, and production ''equipment'' ''specially designed'' for the ''development,'' ''production,'' repair, overhaul or refurbishment of military gas turbine engines and related commodities enumerated in ECCN 9A619 (except for items in 9A619.y) or in USML Category XIX, and ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' therefor. ECCN 9B619.b would control equipment, cells, or stands ''specially designed'' for testing, analysis and fault isolation of engines, systems, ''parts,'' ''components,'' ''accessories and attachments'' specified in ECCN 9A619 or in Category XIX on the USML. ECCN 9B619.y would control test, inspection and production ''equipment'' ''specially designed'' for the ''development'' or ''production'' of military gas turbine engines and related commodities in ECCN 9A619 (except for 9A619.y) or in USML Category XIX and ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' therefor, as follows: bearing puller (see ECCN 9B619.y.1). Paragraphs .c through .x and paragraphs .y.2 through y.98 would be reserved for possible future use.

ECCN 9C619.a would control materials ''specially designed'' for military gas turbine engines and related commodities enumerated in ECCN 9A619 (except 9A619.y) that are not specified elsewhere in the CCL, such as in Category 1, or on the USML. Paragraphs .b through .x of ECCN 9C619 would be reserved for possible future use. USML subcategory XIII(f) would continue to control structural materials ''specifically designed, developed, configured, modified, or adapted for defense articles.'' The State Department plans to publish a proposal that would make USML Category XIII(f) a positive list of controlled structural materials. BIS plans to then publish corresponding amendments to its controls on materials ''specially designed'' for articles in the relevant 600 series ECCN and corresponding USML category.

ECCN 9D619.a would control ''software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by ECCN 9A619 (except 9A619.y), 9B619 (except 9B619.y), or 9C619 (except 9C619.y). Paragraphs .b through .x of ECCN 9D619 would be reserved for possible future use. ECCN 9D619.y would control specific ''software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by ECCN 9A619, 9B619, or 9C619, as follows: specific ''software'' ''specially designed'' for the ''development,'' ''production,'' operation or maintenance of commodities controlled by ECCN 9A619.y, 9B619.y, or 9C619.y (see ECCN

9D619.y.1). ECCN 9D619 also would contain a note indicating that it controls ''software,'' not specified elsewhere on the CCL, that is ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities enumerated in ECCN 9A619, 9B619, or 9C619, even if such ''software'' is also related to an article on the USML, as specified in USML Category XIX(g).

ECCN 9E619.a would control ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of military gas turbine engines and related items controlled by ECCN 9A619 (except 9A619.y), 9B619 (except 9B619.y), 9C619 (except 9C619.y), or 9D619 (except 9D619.y). Paragraphs .b through .x of ECCN 9E619 would be reserved for possible future use. ECCN 9E619.y would control specific ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of military gas turbine engines and related items controlled by ECCN 9A619, 9B619, 9C619, or 9D619, as follows: specific ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of items controlled by 9A619.y, 9B619.y, 9C619.y, or 9D619.y (see ECCN 9E619.y.1). ECCN 9E619 also would contain a note indicating that it controls ''technology,'' not specified elsewhere on the CCL, that is ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of items enumerated in ECCN 9A619, 9B619, 9C619, or 9D619, even if such ''technology'' is also related to an article on the USML, as specified in Category XIX(g).

In addition, ECCNs 9A619, 9B619, 9C619, 9D619, and 9E619 would each contain a special paragraph designated ''.y.99.'' Paragraph .y.99 would control any item that meets all of following criteria: (i) The item is not listed on the CCL; (ii) the item was previously determined to be subject to the EAR in an applicable commodity jurisdiction determination issued by the U.S. Department of State; and (iii) the item would otherwise be controlled under one of these Category 9 (600 series) ECCNs because, for example, the item was ''specially designed'' for a military use. Items in these .y.99 paragraphs would be subject to antiterrorism controls.

This proposed rule also would move military trainer aircraft turbo prop engines and parts and components therefor currently controlled under ECCN 9A018.a.2 or .a.3 to new 600 series ECCN 9A619. In addition, related software and technology currently controlled under ECCNs 9D018 and 9E018 would be moved to new 600 series ECCNs 9D619 and 9E619, respectively. Other items currently controlled under ECCN 9A018 (except ground transport vehicles controlled under ECCN 9A018.b) would be moved to new 600 series ECCN 9A610 by the military aircraft proposed rule that BIS published on November 7, 2011. The July 15 proposed rule published by BIS would move ground transport vehicles currently controlled under ECCN 9A018.b to new 600 series ECCN 0A606. In conjunction with the establishment of the new ECCN 9X619 entries, and consistent with the July 15 proposed rule's statement that 018 entries would remain in the CCL for a time, but only for cross-reference purposes, this rule would amend ECCNs 9A018, 9D018, and 9E018 to remove all language except cross references to the new 600 series ECCNs that cover the items currently in those 018 ECCNs. ECCN 9A018 would refer to ECCN 0A606 for ground transport vehicles (for items currently controlled under ECCN 9A018.b), to ECCN 9A610 for aircraft related commodities (*i.e.,* for items currently controlled under ECCN 9A018.a.1, .a.3, .c, .d, .e, and .f), and to ECCN 9A619 gas turbine aircraft engines (for military trainer aircraft turbo prop engines and parts and components therefore currently controlled under ECCN 9A018.a.2 or .a.3). Similarly, ECCN 9D018 would refer to new ECCNs 0D606, 9D610, and 9D619 for related software, and ECCN 9E018 would refer to ECCNs 0E606, 9E610, and 9E619 for related technology.

License Exception Restrictions (STA and GOV)

Certain software and technology related to parts and components covered by .x items paragraphs of 600 series ECCNs warrant more restrictive license exception applicability than other software and technology currently on the CCL. The November 7 proposed rule published by BIS would create a new Supplement No. 4 to part 740 (600 Series Items Subject to Limits Regarding License Exceptions GOV and STA) that would identify 600 series items that may not be exported, reexported, or transferred (in-country) pursuant to License Exceptions STA (§ 740.20 of the EAR) or GOV (§ 740.11 of the EAR). The supplement would be structured to identify by CCL category the items for which license exception applicability is limited.

This proposed rule would include in new Supplement No. 4 to part 740 nine types of parts and components that would be classified under new ECCN 9A619.x and would state that License Exception STA (§ 740.20 of the EAR) may not be used to export, reexport, or transfer (in-country) any software classified under ECCN 9D619 or technology classified under ECCN 9E619—other than ''build-to-print technology''—for the production or development of any types of the listed ECCN 9A619.x parts and components. Further, the supplement would state that License Exception GOV, other than the paragraphs that authorize shipments to U.S. government agencies for official use or U.S. government personnel for personal use or official use (§ 740.11(b)(2)(i) and (b)(2)(ii) of the EAR), is not available for the export or reexport of software and technology (other than ''build-to-print technology'') for the production or development of the ECCN 9A619.x parts and components listed in the supplement. Similar restrictions would apply to 9D619 software and 9E619 technology for seven additional types of parts and components classified under new ECCN 9A619.x; however, the scope of these restrictions would also apply to any affected ''build-to-print'' technology controlled under ECCN 9E619.

In this regard, note that the November 7 proposed rule published by BIS would add a new definition for ''build-to-print technology'' to § 772.1 that would define the term as it would be used in new Supplement No. 4 to part 740. Furthermore, the November 7 proposed rule would amend the License Exception STA provisions by adding a new note to § 740.20(c)(1) and revising § 740.2(a)(13) to clarify License Exception STA eligibility for end items and all other 600 series items. In the July 15 proposed rule, the export of a 600 series item is eligible for License Exception STA if, at the time of export, reexport or transfer (in-country), the item is destined for ultimate end use by the armed forces, police, paramilitary, law enforcement, customs and border protection, correctional, fire, or search and rescue agencies of a government in one of the STA–36 countries. The November 7 proposed rule would make 600 series items eligible for License Exception STA for such uses and also when exported, reexported, or transferred for the production or development of an item for ultimate end use by an STA–36 country government agency, by the United States

Government, or by a person in the United States.

Corresponding Amendments

As discussed in further detail below, the July 15 proposed rule stated that one reason for control for items classified in the 600 series is Regional Stability (specifically, RS Column 1). Items classified under proposed ECCN 9A619, other than ECCN 9A619.y items, as well as related technology and software classified under ECCNs 9D619 and 9E619, would be controlled for this reason, among others. Correspondingly, this proposed rule would revise § 742.6 of the EAR to apply the RS Column 1 licensing policy to commodities classified under ECCN 9A619, 9B619, 9C619 (except paragraphs .y of those ECCNs), and to related software and technology classified under ECCNs 9D619 and 9E619. Note that the proposed rule on military aircraft and related items that BIS published on November 7, 2011, would amend the RS Column 1 licensing policy to impose a general policy of denial for ''600 series'' items if the destination is subject to a United States arms embargo.

Relationship to the July 15 Proposed Rule and Other Rules in This Series of Proposed Rules

As referenced above, the purpose of the July 15 proposed rule is to establish within the EAR the framework for controlling on the CCL articles that the President determines no longer warrant control on the USML. To facilitate that goal, the July 15 proposed rule contains definitions and concepts that are meant to be applied across Categories. However, as BIS undertakes rulemakings to move specific types of articles from the USML to the CCL, if and after the President determines that such articles no longer warrant control under the USML, there may be unforeseen issues or complications that require BIS to reexamine those definitions and concepts. The comment period for the July 15 proposed rule closed on September 13, 2011. In the November 7 proposed rule, BIS proposed several changes to those definitions and concepts. The comment period for the November 7 proposed rule will close on December 22, 2011.

To the extent that this rule's proposals affect any provision in the July 15 proposed rule or the July 15 proposed rule's provisions affect this proposed rule, BIS will consider comments on those provisions so long as they are within the context of the changes proposed in this rule. For example, BIS will consider comments on how the movement of military gas turbine engines and related items from the USML to the CCL affects a definition, restriction, or provision that was contained in the July 15 proposed rule. BIS will also consider comments on the impact of a definition of a term in the July 15 proposed rule when that term is used in this proposed rule. BIS will not consider comments of a general nature regarding the July 15 proposed rule that are submitted in response to this rulemaking. BIS will follow a similar approach to comments received concerning the other proposed USML to CCL rules published in this series.

BIS believes that the following provisions of the July 15 proposed rule and the November 7 proposed rule on aircraft and related items are among those that could affect the items covered by this proposed rule:

- *De minimis* provisions in § 734.4;
- Restrictions on use of license exceptions in §§ 740.2, 740.10, 740.11, and 740.20;
- Change to national security licensing policy in § 742.4;
- Addition of 600 series items to Supplement No. 2 to Part 744—List of Items Subject to the Military End-Use Requirement of § 744.21; and
- Definitions of terms in § 772.1.

BIS believes that the following provisions of this proposed rule are among those that could affect the provisions of the July 15 and November 7 proposed rules:

- Additional 600 series items identified in proposed Supplement No. 4 to part 740; and
- Additional 600 series items identified in the RS Column licensing policy described in § 742.6.

Effects of This Proposed Rule

BIS believes that the principal effect of this rule will be to provide greater flexibility for exports and reexports to NATO member countries and other multiple-regime-member countries of items the President determines no longer warrant control on the United States Munitions List. This greater flexibility will be in the form of: Application of the EAR's *de minimis* threshold principle for items constituting less than a *de minimis* amount of controlled U.S.-origin content in foreign made items; availability of license exceptions, particularly License Exceptions RPL and STA; elimination of the requirements for manufacturing license agreements and technical assistance agreements in connection with exports of technology; and a reduction in, or elimination of, exporter and manufacturer registration requirements and associated registration fees. Some of these specific effects are discussed in more detail below.

De Minimis

Section 734.3 of the EAR provides, *inter alia,* that under certain conditions items made outside the United States that incorporate items subject to the EAR are not subject to the EAR if they do not exceed a ''*de minimis*'' percentage of controlled U.S.-origin content. Depending on the destination, the *de minimis* percentage can be either 10 percent or 25 percent. If the July 15 proposed rule's amendments at § 734.4 of the EAR are adopted, the new ECCNs 9A619, 9B619, 9C619, 9D619 and 9E619 proposed in this rule would be subject to the *de minimis* provisions set forth in the July 15 proposed rule, because they would be ''600 series'' ECCNs. Foreign-made items incorporating items controlled under the new ECCNs would become eligible for *de minimis* treatment at the 10 percent level (*i.e.,* a foreign-made item is not subject to the EAR, for *de minimis* purposes, if the value of its U.S.-origin controlled content does not exceed 10 percent of foreign-made item's value). The AECA does not permit the ITAR to have a *de minimis* treatment for these USML-listed items, regardless of the significance or insignificance of the U.S.-origin content or the percentage of U.S.-origin content in the foreign-made item (*i.e.,* USML-listed items remain subject to the ITAR when they are incorporated abroad into a foreign-made item, regardless of either of these factors). In addition, foreign-made items that incorporate *any* items that are currently classified under an 018 ECCN and that are moved to a new 600 series ECCN would be subject to the EAR if those foreign-made items contained more than 10 percent U.S.-origin controlled content, regardless of the destination and regardless of the proportion of the U.S.-origin controlled content accounted for by the former 018 ECCN items.

Based on the July 15 rule's proposals, foreign-made items that contain controlled U.S.-origin content classified under non-600 series ECCNs, as well as 600 series ECCNs, would potentially have to be evaluated in two stages to determine whether they would qualify for *de minimis* treatment. First, the value of the 600 series ECCN content would have to be calculated. If the value of the 600 series ECCN content exceeds 10 percent of the value of the foreign-made item, the item would not qualify for *de minimis* treatment and would be subject to the EAR. However, if the value of the 600 series ECCN content does not exceed 10 percent of the value

of the foreign-made item, then the value of all of the controlled U.S. origin content (including both non-600 series and 600 series ECCN content) would have to be calculated to determine whether the foreign-made item's total U.S. origin controlled content exceeds the *de minimis* percentage (either 10 percent or 25 percent) applicable to the country of destination. BIS is reviewing comments the public submitted with respect to this proposal and plans to publish another proposed rule that addresses these comments and other related issues.

Use of License Exceptions

The July 15 proposed rule would impose certain limits for 600 series items moving from existing 018 controls on the CCL. BIS believes that, even with the July 15 and November 7 proposed restrictions on the use of license exceptions for 600 series items, the restrictions on those items currently on the USML would be reduced, particularly with respect to exports to NATO members and multiple-regime member countries, if those items are moved from the USML to proposed ECCN 9A619. BIS also believes that, in practice, the movement of items from 018 ECCNs to the 600 series ECCNs would have little effect on license exception availability for those items because existing restrictions or the terms of the license exceptions themselves already preclude most transactions that would be precluded by the July 15 and November 7 proposed amendments to § 740.2 of the EAR. However, BIS is aware of two situations (the use of License Exceptions GOV and STA) in which the movement of items from an 018 ECCN to a new 600 series ECCN could, in practice, impose greater limits on the use of license exceptions than currently is the case.

First, the July 15 proposed rule would limit the use of License Exception GOV for 600 series commodities to situations in which the United States Government is the consignee and end user or to situations in which the consignee or end user is the government of a country listed in § 740.20(c)(1). Currently, commodities classified under an 018 ECCN may be exported under any provision of License Exception GOV to any destination authorized by that provision if all of the conditions of that provision are met and nothing else in the EAR precludes such shipment.

Second, the July 15 proposed rule would (i) Limit the use of License Exception STA for ''end items'' in 600 series ECCNs to those end items for which a specific request for License Exception STA eligibility (filed in conjunction with a license application) has been approved and (ii) require that the end item be for ultimate end use by a foreign government agency of a type specified in the July 15 proposed rule. In this regard, note that, for the purpose of this proposed rule, military gas turbine engines and related items enumerated in proposed ECCN 9A619 are ''components,'' rather than ''end items.'' The July 15 proposed rule also would limit exports of 600 series parts, components, accessories, and attachments under License Exception STA for ultimate end use by the same set of end users. Neither restriction currently applies to the use of License Exception STA for commodities classified under an 018 ECCN. In addition, the July 15 proposed rule would limit the shipment of 600 series ECCN items under License Exception STA to destinations listed in § 740.20(c)(1). Currently, commodities classified under an 018 ECCN may be shipped under License Exception STA to destinations listed in § 740.20(c)(1) or (c)(2).

Making U.S. Export Controls More Consistent With the Wassenaar Arrangement Munitions List Controls

The Administration has stated, since the beginning of the Export Control Reform Initiative, that the reforms will be consistent with the obligations of the United States to the multilateral export control regimes. Accordingly, the Administration will, in this and subsequent proposed rules, exercise its national discretion to implement, clarify, and, to the extent feasible, align its controls with those of the regimes. Although including all military gas turbine engines transferred from the USML, or from an existing 018 ECCN, in a single 600 series ECCN (*i.e.,* ECCN 9A619) would deviate slightly from the WAML numbering approach, BIS believes that it would be more efficient to list all 600 series controls for engines and related items in one ECCN. If, however, the commenters disagree and would prefer that controls on engines be in the same USML, or CCL, Category as the ''end-item'' (such as an aircraft, vehicle, or vessel) for which they were designed or modified, BIS would consider any comments submitted to that effect, along with any comments submitted in favor of consolidating all 600 series controls for gas turbine engines and related items in a single CCL Category. In addition, proposed ECCN 9A619 would correspond to a new USML Category XIX that the State Department would propose, which would control USML-controlled engines and related articles. The proposed ECCN 9A619 tracks, to the extent possible, the wording of the WAML pertaining to military gas turbine engines and related items not subject to the ITAR. It also implements in 9A619.x the controls in WAML category 16 for forgings, castings, and other unfinished products; in 9B619.a the controls in WAML category 18 for production equipment; in 9D619 the applicable controls in WAML category 21 for software; and in 9E619 the applicable controls in WAML category 22 for technology.

Other Effects

Pursuant to the framework identified in the July 15 proposed rule, commodities classified under ECCN 9A619 (other than ECCN 9A619.y), along with related test inspection and production equipment, materials, software, and technology classified under ECCN 9B619, 9C619, 9D619 or 9E619 (except items classified under the .y paragraphs of these ECCNs), would be subject to the licensing policies that apply to items controlled for national security reasons, as described in § 742.4(b)(1)—specifically, NS Column 1 controls. All commodities in ECCN 9A619 (other than those identified in 9A619.y, which are controlled for AT Column 1 anti-terrorism reasons only and may also be subject to the prohibitions described in Part 744), along with related test, inspection and production equipment, materials, software and technology classified under ECCN 9B619, 9C619, 9D619 or 9E619 (except items classified under the .y paragraphs of these ECCNs), would be subject to the regional stability licensing policies set forth in § 742.6(a)(1)—specifically, RS Column 1.

The July 15 proposed rule would change § 742.4 to apply a general policy of denial to 600 series items for destinations that are subject to a United States arms embargo. That policy would apply to all items controlled for national security (NS) reasons under this proposed rule. The November 7 proposed rule would expand that general policy of denial to include 600 series items subject to the licensing policies that apply to items controlled for regional stability reasons, as described in § 742.6(b)(1)—specifically, RS Column 1. While this change might seem redundant for the items affected by this proposed rule, it ensures that a general denial policy would apply to any 600 series items that are controlled for missile technology (MT) and regional stability (RS) reasons, but not for national security (NS) reasons (as would be the case for certain items affected by the aircraft rule).

Jurisdictional and Classification Status of Items Subject to Previous Commodity Jurisdiction Determinations

The Administration recognizes that some items that would fall within the scope of the proposed new ECCNs will have been subject to commodity jurisdiction (CJ) determinations issued by the United States Department of State. The State Department will have either determined that the item was subject to the jurisdiction of the ITAR or that it was not. (See 22 CFR 120.3 and 120.4). Under this proposed rule, items that the State Department determined to be not subject to the ITAR and that are not described on the CCL would be subject to the AT-only controls of the ''.y99'' paragraph of a 600 series ECCN if they would otherwise be within the scope of the ECCN. Thus, for example, ECCN 9A619.x would control any part, component, accessory, or attachment not specifically identified in the USML or elsewhere in the ECCN if it was ''specially designed'' for a gas turbine engine controlled by either ECCN 9A619 or USML Category XIX. However, any part, component, accessory or attachment that was determined by commodity jurisdiction determination not to have been subject to the ITAR and is (as defined) ''specially designed'' for a gas turbine engine controlled under ECCN 9A619 or USML Category XIX would be controlled under 9A619.y.99 if it is not identified elsewhere on the CCL. If the item was identified or, as a matter of law or the result of a subsequent commodity classification (''CCATS'') determination by Commerce, controlled by another legacy ECCN, such as 9A991.c, that ECCN would continue to apply to the item. This general approach will, pending public comment, be repeated in subsequent proposed rules pertaining to other categories of items.

If, however, the State Department had made a commodity jurisdiction determination that a particular item was subject to the jurisdiction of ITAR but that item is not described on the final, implemented version of a revised USML category, a new commodity jurisdiction determination would not be required unless there is doubt about the application of the new USML category to the item. (See 22 CFR 120.4). Thus, unless there are doubts about the jurisdictional status of a particular item, exporters and reexporters would be entitled to rely on the revised USML categories when making jurisdictional determinations, notwithstanding past commodity jurisdiction determinations that, under the previous version of the USML, the item was ITAR controlled.

Finally, if the State Department had made a commodity jurisdiction determination that a particular article was subject to the jurisdiction of the ITAR and that article remains in the revised USML, then the article would remain subject to the jurisdiction of the ITAR.

Section-by-Section Description of the Proposed Changes

- *Supplement No. 4 to Part 740*—Additional new Category 9 (600 series) ECCNs listed.
- *Section 742.6*—ECCNs 9A619, 9B619, 9C619, 9D619 and 9E619 are added to § 742.6(a)(1) to impose an RS Column 1 license requirement and licensing policy, including a general policy of denial in Section 742.6(b)(1) for applications to export or reexport ''600 series'' items to destinations that are subject to a United States arms embargo.
- *Supplement No. 1 to part 774*—Adds ECCNs 9A619, 9B619, 9C619, 9D619 and 9E619.

Request for Comments

BIS seeks comments on this proposed rule. BIS will consider all comments received on or before January 20, 2012. All comments (including any personally identifying information or information for which a claim of confidentially is asserted either in those comments or their transmittal emails) will be made available for public inspection and copying. Parties who wish to comment anonymously may do so by submitting their comments via *http://www.Regulations.gov,* leaving the fields that would identify the commenter blank and including no identifying information in the comment itself.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Regulatory Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This proposed rule would affect two approved collections: Simplified Network Application Processing + System (control number 0694–0088), which includes, among other things, license applications, and License Exceptions and Exclusions (0694–0137).

As stated in the proposed rules published at 76 FR 41958 (July 15, 2011) and 76 FR 68675 (November 7, 2011), BIS believes that the combined effect of all rules to be published adding items to EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the number of license applications to be submitted to BIS by approximately 16,000 annually, resulting in an increase in burden hours of 5,067 (16,000 transactions at 17 minutes each) under control number 0694–0088.

Some items formerly on the USML would become eligible for License Exception STA under this rule. Other such items may become eligible for License Exception STA upon approval of a request submitted in conjunction with a license application. As stated in the July 15 and November 7 proposed rules, BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be published adding items to EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the burden associated with control number 0694–0137 by about 23,858 hours (20,450 transactions @ 1 hour and 10 minutes each).

BIS expects that this increase in burden would be more than offset by a reduction in burden hours associated with approved collections related to the ITAR. This proposed rule addresses controls on military gas turbine engines

and related parts, components, production equipment, materials, software, and technology. The largest impact of the proposed rule would be with respect to exporters of parts and components because, under the proposed rule, most U.S. and foreign military gas turbine engines currently in service would continue to be subject to the ITAR. Because, with few exceptions, the ITAR allows exemptions from license requirements only for exports to Canada, most exports to integrators for U.S. government equipment and most exports of routine maintenance parts and components for our NATO and other close allies require State Department authorization. In addition, the exports necessary to produce parts and components for defense articles in the inventories of the United States and its NATO and other close allies require State Department authorizations. Under the EAR, as proposed, a small number of low level parts would not require a license to most destinations. Most other parts, components, accessories, and attachments would become eligible for export to NATO and other close allies under License Exception STA. Use of License Exception STA imposes a paperwork and compliance burden because, for example, exporters must furnish information about the item being exported to the consignee and obtain from the consignee an acknowledgement and commitment to comply with the EAR. It is, however, the Administration's understanding that complying with the requirements of STA is likely to be less burdensome than applying for licenses. For example, under License Exception STA, a single consignee statement can apply to an unlimited number of products, need not have an expiration date and need not be submitted to the government in advance for approval. Suppliers with regular customers can tailor a single statement and assurance to match their business relationship rather than applying repeatedly for licenses with every purchase order to supply allied and, in some cases, U.S. forces with routine replacement parts and components.

Even in situations in which a license would be required under the EAR, the burden likely will be reduced compared to the license requirement of the ITAR. In particular, license applications for exports of technology controlled by ECCN 9E619 are likely to be less complex and burdensome than the authorizations required to export ITAR-controlled technology, *i.e.,* Manufacturing License Agreements and Technical Assistance Agreements.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, BIS has not prepared a regulatory flexibility analysis. A summary of the factual basis for the certification is provided below.

Number of Small Entities

The Bureau of Industry and Security (BIS) does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number.

Economic Impact

This proposed rule is part of the Administration's Export Control Reform Initiative. Under that initiative, the United States Munitions List (22 CFR part 121) (USML) would be revised to be a ''positive'' list, *i.e.,* a list that does not use generic, catch-all controls on any part, component, accessory, attachment, or end item that was in any way specifically modified for a defense article, regardless of the article's military or intelligence significance or non-military applications. At the same time, articles that are determined to no longer warrant control on the USML would become controlled on the Commerce Control List (CCL). Such items, along with certain military items that currently are on the CCL, would be identified in specific Export Control Classification Numbers (ECCNs) known as the ''600 series'' ECCNs. In addition, some items currently on the Commerce Control List would move from existing ECCNs to the new 600 series ECCNs. In practice, the greatest impact of this rule on small entities would likely be reduced administrative costs and reduced delay for exports of items that are now on the USML but would become subject to the EAR. This rule focuses on military gas turbine engines and related articles currently controlled under USML Categories VI, VII, and VIII. Most operational military gas turbine engines currently in active inventory would remain on the USML. However, parts and components, which are more likely to be produced by small businesses than are complete engines, would in many cases become subject to the EAR. In addition, officials of the Department of State have informed BIS that license applications for such parts and components are a high percentage of the license applications for USML articles review by that department. Changing the jurisdictional status of USML items would reduce the burden on small entities (and other entities as well) through: (i) Elimination of some license requirements, (ii) greater availability of license exceptions, (iii) simpler license application procedures, and (iv) reduced, or eliminated, registration fees.

In addition, parts and components controlled under the ITAR remain under ITAR control when incorporated into foreign-made items, regardless of the significance or insignificance of the item. This discourages foreign buyers from incorporating such U.S. content. The availability of *de minimis* treatment under the EAR may reduce the incentive for foreign manufacturers to refrain from purchasing U.S.-origin parts and components.

Eight types of parts and components, identified in ECCN 9A619.y, would be designated immediately as parts and components that, even if specially designed for a military use, have little or no military significance. These parts and components, which under the ITAR require a license to nearly all destinations, would, under the EAR, require a license to only five destinations and, if destined for a military end use, to the People's Republic of China.

Many exports and reexports of the USML articles that would be placed on the CCL by this rule, particularly parts and components, would become eligible for license exceptions that apply to shipments to United States Government agencies, shipments valued at less than $1,500, parts and components being exported for use as replacement parts, temporary exports, and License

Exception Strategic Trade Authorization (STA), reducing the number of licenses that exporters of these items would need. License Exceptions under the EAR would allow suppliers to send routine replacement parts and low level parts to NATO and other close allies and export control regime partners for use by those governments and for use by contractors building equipment for those governments or for the United States government without having to obtain export licenses. Under License Exception STA, the exporter would need to furnish information about the item being exported to the consignee and obtain a statement from the consignee that, among other things, would commit the consignee to comply with the EAR and other applicable U.S. laws. Because such statements and obligations can apply to an unlimited number of transactions and have no expiration date, they would impose a net reduction in burden on transactions that the government routinely approves through the license application process that the License Exception STA statements would replace.

Even for exports and reexports for which a license would be required, the process would be simpler and less costly under the EAR. When a USML article is moved to the CCL, the number of destinations for which a license is required would remain unchanged. However, the burden on the license applicant would decrease because the licensing procedure for CCL items is simpler and more flexible that the license procedure for UMSL articles.

Under the USML licensing procedure, an applicant must include a purchase order or contract with its application. There is no such requirement under the CCL licensing procedure. This difference gives the CCL applicant at least two advantages. First, the applicant has a way of determining whether the U.S. government will authorize the transaction before it enters into potentially lengthy, complex and expensive sales presentations or contract negotiations. Under the USML procedure, the applicant must caveat all sales presentations with a reference to the need for government approval and is more likely to engage in substantial effort and expense only to find that the government will reject the application. Second, a CCL license applicant need not limit its application to the quantity or value of one purchase order or contract. It may apply for a license to cover all of its expected exports or reexports to a specified consignee over the life of a license (normally two years, but maybe longer if circumstances warrant a longer period), thus reducing the total number of licenses for which the applicant must apply.

In addition, many applicants exporting or reexporting items that this rule would transfer from the USML to the CCL would realize cost savings through the elimination of some or all registration fees currently assessed under the USML's licensing procedure. Currently, USML applicants must pay to use the USML licensing procedure even if they never actually are authorized to export. Registration fees for manufacturers and exporters of articles on the USML start at $2,500 per year, increase to $2,750 for organizations applying for one to ten licenses per year and further increases to $2,750 plus $250 per license application (subject to a maximum of three percent of total application value) for those who need to apply for more than ten licenses per year. There are no registration or application processing fees for applications to export items listed on the CCL. Once the ITAR-controlled items that are the subject to this rulemaking become subject to the EAR, entities currently applying for licenses from the Department of State would find their registration fees reduced if the number of ITAR licenses those entities need declines. If an entity's entire product line is moved to the CCL, its ITAR registration and registration fee requirement would be eliminated entirely.

De minimis treatment under the EAR would become available for all items that this rule would transfer from the USML to the CCL. Items subject to the ITAR remain subject to the ITAR when they are incorporated abroad into a foreign-made product, regardless of the percentage of U.S content in that foreign made product. Foreign-made products incorporating items that this rule would move to the CCL would be subject to the EAR only if their total controlled U.S.-origin content exceeds 10 percent. Because including small amounts of U.S.-origin content would not subject foreign-made products to the EAR, foreign manufacturers would have less incentive to refrain from purchasing such U.S.-origin parts and components, a development that potentially would mean greater sales for U.S. suppliers, including small entities.

For items currently on the CCL that would be moved from existing ECCNs to the new 600 series, license exception availability would be narrowed somewhat and the applicable *de minimis* threshold for foreign-made products containing those items would in some cases be reduced from 25 percent to 10 percent. However, BIS believes that increased burden imposed by those actions will be offset substantially by the reduction in burden attributable to the moving of items from the USML to CCL and the compliance benefits associated with the consolidation of all WAML items subject to the EAR in one series of ECCNs.

Conclusion

BIS is unable to determine the precise number of small entities that would be affected by this rule. Based on the facts and conclusions set forth above, BIS believes that any burdens imposed by this rule would be offset by a reduction in the number of items that would require a license, increased opportunities for use of license exceptions for exports to certain countries, simpler export license applications, reduced or eliminated registration fees and application of a *de minimis* threshold for foreign-made items incorporating U.S.-origin parts and components, which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content. For these reasons, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 740, 742, and 774 of the Export Administration Regulations (15 CFR parts 740–774) are proposed to be amended as follows:

15 CFR PART 740—[AMENDED]

1. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

2. Part 740 is amended by adding a Supplement No. 4 to read as follows:

Supplement No. 4 to Part 740—600 Series Items Subject to Limits Regarding License Exceptions GOV and STA

This supplement lists certain parts and components that are classified under the .x paragraphs of ''600 series'' ECCNs and imposes limitations on the use of License Exceptions GOV (§ 740.11 of the EAR) and STA (§ 740.20 of the EAR) with respect to exports, reexports, and transfers (in-country) of ''development'' and ''production'' software or technology related to those parts and components. The restrictions and the parts and components are listed by Commerce Control List category.

(a) *Restrictions applicable to Category 9 (ECCNs 9D610 and 9E610).* License Exception STA may not be used to export, reexport, or transfer (in-country) ECCN 9D610 ''software'' or ECCN 9E610 ''technology'' (other than ''build-to-print technology'') for the ''development'' or ''production'' of any of the types of ''parts'' or ''components'' listed below. In addition, License Exception GOV may not be used to export or reexport ECCN 9D610 ''software'' or ECCN 9E610 ''technology'' (other than ''build-to-print technology'') for the ''development'' or ''production'' of any of the types of ''parts'' or ''components'' listed below, except with respect to exports, reexports, and transfers (in-country) to U.S. government agencies and personnel identified in § 740.11(b)(2)(i) and (ii).

(1) Static structural members;

(2) Exterior skins, removable fairings, non-removable fairings, radomes, access doors and panels, and in-flight opening doors;

(3) Control surfaces, leading edges, trailing edges, and leading edge flap seals;

(4) Leading edge flap actuation system commodities (*i.e.,* power drive units, rotary geared actuators, torque tubes, asymmetry brakes, position sensors, and angle gearboxes) ''specially designed'' for fighter, attack, or bomber aircraft controlled in USML Category VIII;

(5) Engine inlets and ducting;

(6) Fatigue life monitoring systems ''specially designed'' to relate actual usage to the analytical or design spectrum and to compute amount of fatigue life ''specially designed'' for aircraft controlled by either USML subcategory VIII(a) or ECCN 9A610.a, except for Military Commercial Derivative Aircraft;

(7) Landing gear, and ''parts'' and ''components'' ''specially designed'' therefor, ''specially designed'' for use in aircraft weighing more than 21,000 pounds controlled by either USML subcategory VIII(a) or ECCN 9A610.a, except for Military Commercial Derivative Aircraft;

(8) Conformal fuel tanks and ''parts'' and ''components'' ''specially designed'' therefor;

(9) Electrical ''equipment,'' ''parts,'' and ''components'' ''specially designed'' for electro-magnetic interference (EMI)—*i.e.,* conducted emissions, radiated emissions, conducted susceptibility and radiated susceptibility—protection of aircraft that conform to the requirements of MIL–STD–461;

(10) HOTAS (Hand-on Throttle and Stick) controls, HOCAS (Hands on Collective and Stick), Active Inceptor Systems (*i.e.,* a combination of Active Side Stick Control Assembly, Active Throttle Quadrant Assembly, and Inceptor Control Unit), rudder pedal assemblies for digital flight control systems, and parts and components ''specially designed'' therefor;

(11) Integrated Vehicle Health Management Systems (IVHMS), Condition Based Maintenance (CBM) Systems, and Flight Data Monitoring (FDM) systems;

(12) Equipment ''specially designed'' for system prognostic and health management of aircraft;

(13) Active Vibration Control Systems;

(14) Fuel Cells ''specially designed'' for use in UAV or Lighter-than-Air-Vehicles; or

(15) Self-sealing fuel bladders ''specially designed'' to pass a .50 caliber or larger gunfire test (MIL–DTL–5578, MIL–DTL–27422).

(b) *Restrictions applicable to CCL Category 9 (ECCNs 9D619 and 9E619).*

(1) *Restrictions applicable to 9D619 and 9E619, other than to ''build-to-print technology.''* License Exception STA may not be used to export, reexport, or transfer (in-country) ECCN 9D619 ''software'' or ECCN 9E619 ''technology'' (other than ''build-to-print technology'') for the ''development'' or ''production'' of any of the types of ''parts'' or ''components'' listed below. In addition, License Exception GOV may not be used to export or reexport ECCN 9D619 ''software'' or ECCN 9E619 ''technology'' (other than ''build-to-print technology'') for the ''development'' or ''production'' of any of the types of ''parts'' or ''components'' listed below, except with respect to exports, reexports, and transfers (in-country) to U.S. government agencies and personnel identified in § 740.11(b)(2)(i) and (b)(2)(ii).

(i) Front, turbine center, and exhaust frames;

(ii) Low pressure compressor (*i.e.,* fan) ''components'' and ''parts'' as follows: nose cones and casings;

(iii) High pressure compressor ''components'' and ''parts'' as follows: casings;

(iv) Combustor ''components'' and ''parts'' as follows: casings, fuel nozzles, swirlers, swirler cups, deswirlers, valve injectors, and igniters;

(v) High pressure turbine ''components'' and ''parts'' as follows: casings;

(vi) Low pressure turbine ''components'' and ''parts'' as follows: casings;

(vii) Augmentor ''components'' and ''parts'' as follows: casings, flame holders, spray bars, pilot burners, augmentor fuel controls, flaps (external, convergent, and divergent), guide and syncronization rings, and flame detectors and sensors;

(viii) Mechanical ''components'' and ''parts'' as follows: fuel metering units and fuel pump metering units, valves (fuel throttle, main metering, oil flow management), heat exchangers (air/air, fuel/air, fuel/oil), debris monitoring (inlet and exhaust), seals (carbon, labyrinth, brush, balance piston, and ''knife-edge''), permanent magnetic alternator and generator, eddy current sensors; or

(ix) Torquemeter assembly (*i.e.,* housing, shaft, reference shaft, and sleeve).

(2) *Restrictions applicable to Category 9D619 and 9E619, including ''build-to-print technology.''* License Exception STA may not be used to export, reexport, or transfer (in-country) ECCN 9D619 ''software'' or ECCN 9E619 ''technology'' for the ''development'' or ''production'' of any of the types of ''parts'' or ''components'' listed below. In addition, License Exception GOV may not be used to export or reexport ECCN 9D619 ''software'' or ECCN 9E619 ''technology'' for the ''development'' or ''production'' of any of the types of ''parts'' or ''components'' listed below, except with respect to exports, reexports, and transfers (in-country) to U.S. government agencies and personnel identified in § 740.11(b)(2)(i) and (b)(2)(ii).

(i) Low pressure compressor (*i.e.,* fan) ''components'' and ''parts'' as follows: blades, vanes, spools, shrouds, blisks, shafts and disks;

(ii) High pressure compressor ''components'' and ''parts'' as follows: blades, vanes, spools, shrouds, blisks, shafts, disks, and impellers;

(iii) Combustor ''components'' and ''parts'' as follows: diffusers, liners, chambers, cowlings, domes and shells;

(iv) High pressure turbine ''components'' and ''parts'' as follows: shafts and disks, blades, vanes, nozzles, shrouds;

(v) Low pressure turbine ''components'' and ''parts'' as follows: shafts and disks, blades, vanes, nozzles, shrouds;

(vi) Digital engine controls (*e.g.,* Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)) ''specially designed'' for gas turbine engines controlled in this ECCN; or

(vii) Engine monitoring systems (*i.e.,* prognostics, diagnostics, and health) ''specially designed'' for gas turbine engines and components controlled in this ECCN.

15 CFR PART 742—[AMENDED]

3. The authority citation for 15 CFR part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011): Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

4. Section 742.6 is amended by revising paragraph (a)(1) to read as follows:

§ 742.6 Regional stability.

(a) * * *

(1) *RS Column 1 License Requirements in General.* As indicated in the CCL and in RS column 1 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the

EAR), a license is required to all destinations, except Canada, for items described on the CCL under ECCNs 0A521; 0A606 (except 0A606.b and. y); 0B521; 0B606 (except 0B606.y); 0C521; 0C606 (except 0C606.y); 0D521; 0D606 (except 0D606.y); 0E521; 0E606 (except 0E606.y); 6A002.a.1, a.2, a.3, .c, or .e; 6A003.b.3, and b.4.a; 6A008.j.1; 6A998.b; 6D001 (only ''software'' for the ''development'' or ''production'' of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D002 (only ''software'' for the ''use'' of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D003.c; 6D991 (only ''software'' for the ''development,'' ''production,'' or ''use'' of equipment classified under 6A002.e or 6A998.b); 6E001 (only ''technology'' for ''development'' of items in 6A002.a.1, a.2, a.3 (except 6A002.a.3.d.2.a and 6A002.a.3.e for lead selenide focal plane arrays), and .c or .e, 6A003.b.3 and b.4, or 6A008.j.1); 6E002 (only ''technology'' for ''production'' of items in 6A002.a.1, a.2, a.3, .c, or .e, 6A003.b.3 or b.4, or 6A008.j.1); 6E991 (only ''technology'' for the ''development,'' ''production,'' or ''use'' of equipment classified under 6A998.b); 6D994; 7A994 (only QRS11–00100–100/101 and QRS11–0050–443/569 Micromachined Angular Rate Sensors); 7D001 (only ''software'' for ''development'' or ''production'' of items in 7A001, 7A002, or 7A003); 7E001 (only ''technology'' for the ''development'' of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E002 (only ''technology'' for the ''production'' of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E101 (only ''technology'' for the ''use'' of inertial navigation systems, inertial equipment, and specially designed components for civil aircraft); 9A610 (except 9A610.y); 9A619 (except 9A619.y); 9B610 (except 9B610.y); 9B619 (except 9B619.y); 9C610 (except 9C610.y); 9C619 (except 9C619.y); 9D610 (except software for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 9A610.y, 9B610.y, or 9C610.y); 9D619 (except software for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 9A619.y, 9B619.y, or 9C619.y); 9E610 (except ''technology'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 9A610.y, 9B610.y, or 9C610.y); and 9E619 (except ''technology'' for the ''development,'' ''production'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 9A619.y, 9B619.y, or 9C619.y).

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PART 774—[AMENDED]

5. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, ECCN 9A018 is revised to read as follows:

Supplement No. 1 to Part 774—the Commerce Control List

* * * * *

9A018 Equipment on the Wassenaar Arrangement Munitions List.

No items currently are in this ECCN. See ECCN 0A606.b.4 for the ground transport vehicles and unarmed all-wheel drive vehicles that, immediately prior to [Insert effective date of final rule that moves these vehicles], were classified under 9A018.b. See ECCN 9A610 for the aircraft, refuelers, ground equipment, parachute, harnesses, instrument flight trainers and parts and accessories and attachments for the forgoing that, immediately prior to [Insert effective date of final rule that moves these items], were classified under 9A018.a.1, .a.3, .c, .d, .e, or .f. See ECCN 9A619 for military trainer aircraft turbo prop engines and parts and components therefor that, immediately prior to [Insert effective date of final rule that moves these aircraft engines], were classified under ECCN 9A018.a.2 or .a.3.

7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, add a new ECCN 9A619 between ECCNs 9A120 and 9A980 to read as follows:

Supplement No. 1 to Part 774—the Commerce Control List

* * * * *

9A619 Military gas turbine engines and related commodities.

License Requirements

Reason for Control: NS, RS, AT.

Control(s)	Country chart
NS applies to entire entry except 9A619.y.	NS Column 1.
RS applies to entire entry except 9A619.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.

License Exceptions

LVS: $1,500.
GBS: N/A.
CIV: N/A.
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in ECCN 9A619.

List of Items Controlled

Unit: End items in number; parts, components, accessories and attachments in $ value.
Related Controls: (1) Military gas turbine engines and related articles that are enumerated in USML Category XIX, and technical data (including software) directly related thereto, are subject to the jurisdiction of the International Traffic in Arms Regulations (ITAR). (2) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.
Related Definitions: N/A.
Items:

a. ''Military Gas Turbine Engines'' ''specially designed'' for a military use that are not controlled in USML Category XIX, paragraphs (a), (b) or (d).

Note: For purposes of ECCN 9A619.a, the term ''military gas turbine engines'' means gas turbine engines ''specially designed'' for ''end items'' enumerated in USML Category VI, VII, or VIII or on the CCL under ECCN 9A610, ECCN 0A606, or the 600-series ECCN that would control vessels transferred from the USML to Category 8 of the CCL by a proposed rule that BIS plans to publish.

b. Digital engine controls (*e.g.,* Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)) ''specially designed'' for gas turbine engines controlled in this ECCN 9A619.

c. Hot Section components (*i.e.,* combustors, turbine blades, vanes, nozzles, disks and shrouds) and related cooled components (*i.e.,* cooled low pressure turbine blades, vanes, disks; cooled augmenters; and cooled nozzles) ''specially designed'' for gas turbine engines controlled in this ECCN 9A619. The cowl, diffuser, dome, chamber and liners for the combustors are also controlled by this paragraph .c.

Note: Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by material composition, geometry, or function as commodities controlled by ECCN 9A619.c are controlled by ECCN 9A619.c.

d. Engine monitoring systems (*i.e.,* prognostics, diagnostics, and health) ''specially designed'' for gas turbine engines and components controlled in this ECCN 9A619.

e. through w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories and attachments'' that are ''specially designed'' for a commodity controlled by this ECCN 9A619 (other than ECCN 9A619.c) or a defense article enumerated in USML Category XIX and not specified elsewhere in the CCL or on the USML.

Note 1: Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by material composition, geometry, or function as commodities controlled by ECCN 9A619.x are controlled by ECCN 9A619.x.

Note 2: ''Parts,'' ''components,'' ''accessories and attachments'' specified in USML subcategory XIX(f) are subject to the controls of that paragraph. ''Parts,'' ''components,'' ''accessories and attachments'' specified in ECCN 9A619.y are subject to the controls of that paragraph.

y. Specific ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' for a commodity subject to control in this ECCN 9A619 or for a defense article in USML Category XIX and not elsewhere specified on the USML or in the CCL, and other aircraft commodities, as follows:

y.1. Oil tank and reservoirs;

y.2. Oil lines and tubes;

y.3. Fuel lines and hoses;

y.4. Fuel and oil filters;

y.5. V–Band, cushion, ''broomstick,'' hinged, and loop clamps;

y.6. Shims;

y.7. Identification plates;

y.8. Air, fuel, and oil manifolds

y.9. to y.98 [RESERVED]

y.99. Commodities not identified on the CCL that (i) Have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in this ECCN 9A619.

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, add a new ECCN 9B619 between ECCNs 9B117 and 9B990 to read as follows:

9B619 Test, inspection, and production ''equipment'' and related commodities ''specially designed'' for the ''development'' or ''production'' of commodities enumerated in ECCN 9A619 or USML Category XIX.

License Requirements

Reason for Control: NS, RS, AT.

Control(s)	Country chart
NS applies to entire entry except 9B619.y.	NS Column 1.
RS applies to entire entry except 9B619.y.	RS Column 1.
AT applies to entire entry.	AT Column 1.

License Exceptions

LVS: $1,500.

GBS: N/A.

CIV: N/A.

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in ECCN 9B619.

List of Items Controlled

Unit: N/A.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. Test, inspection, and production ''equipment'' ''specially designed'' for the ''production,'' ''development,'' repair, overhaul, or refurbishment of commodities enumerated in ECCN 9A619 (except for 9A619.y) or in USML Category XIX, and ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' therefor.

b. Equipment, cells, or stands ''specially designed'' for testing, analysis and fault isolation of engines, systems, components, parts, accessories and attachments specified in ECCN 9A619 on the CCL or in Category XIX on the USML.

c. through x. [RESERVED]

y. Specific test, inspection, and production ''equipment'' ''specially designed'' for the ''production'' or ''development'' of commodities enumerated in ECCN 9A619 (except for 9A619.y) or USML Category XIX and ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' therefor, as follows:

y.1. Bearing puller.

y.2. through y.98 [RESERVED]

y.99. Commodities not identified on the CCL that (i) Have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in this ECCN 9B619.

9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, add a new ECCN 9C619 immediately following ECCN 9C110 to read as follows:

9C619 MATERIALS ''SPECIALLY DESIGNED'' FOR COMMODITIES CONTROLLED BY 9A619 NOT ELSEWHERE SPECIFIED IN THE CCL OR ON THE USML.

License Requirements

Reason for Control: NS, RS, AT.

Control(s)	Country chart
NS applies to entire entry except 9C619.y.	NS Column 1.
RS applies to entire entry except 9C619.y.	RS Column 1.
AT applies to entire entry ..	AT Column 1.

License Exceptions

LVS: $1,500.

GBS: N/A.

CIV: N/A.

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in ECCN 9C619.

List of Items Controlled

Unit: N/A

Related Controls: (1) See USML subcategory XIII(f) for controls on structural materials specifically designed, developed, configured, modified, or adapted for defense articles, such as USML Category XIX engines. (2) See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.

Related Definitions: N/A

Items:

a. Materials ''specially designed'' for commodities enumerated in ECCN 9A619 (except for 9A619.y) not elsewhere specified in the CCL or on the USML.

Note 1: Materials enumerated elsewhere in the CCL, such as in a CCL Category 1 ECCN, are controlled pursuant to the controls of the applicable ECCN.

Note 2: Materials ''specially designed'' for both an engine enumerated in USML Category XIX and an engine enumerated in ECCN 9A619 are subject to the controls of this ECCN 9C619.

b. to .x. [RESERVED]

y. Specific materials ''specially designed'' for commodities enumerated in ECCN 9A619 (except for 9A619.y), and ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' therefor, as follows:

y.1. through y.98 [RESERVED]

y.99. Materials not identified on the CCL that (i) have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in this ECCN 9C619.

10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, ECCN 9D018 is revised to read as follows:

9D018 ''Software'' for the ''use'' of equipment controlled by 9A018.

No items currently are in this ECCN. See ECCN 0D606 for software related to ground transport vehicles and unarmed all-wheel drive vehicles that, immediately prior to [Insert effective date of final rule that moves these vehicles], were classified under 9A018.b. See ECCN 9D610 for software related to aircraft, refuelers, ground equipment, parachute, harnesses, instrument flight trainers and parts and accessories and attachments for the forgoing that, immediately prior to [Insert effective date of final rule that moves these items], were classified under 9A018.a.1, .a.3, .c, .d, .e, or .f. See ECCN 9D619 for software related to military trainer aircraft turbo prop engines and parts and components therefor that, immediately prior to [Insert effective date of final rule that moves these aircraft engines], were classified under ECCN 9A018.a.2 or .a.3.

11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, add a new ECCN 9D619 between ECCN 9D105 and 9D990 to read as follows:

9D619 Software ''specially designed'' for the ''development,'' ''production,''

operation or maintenance of military gas turbine engines and related commodities controlled by 9A619, equipment controlled by 9B619, or materials controlled by 9C619.

License Requirements

Reason for Control: NS, RS, AT.

Control(s)	Country chart
NS applies to entire entry except for software ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 9A619.y, 9B619.y, or 9C619.y.	NS Column 1.
RS applies to entire entry except for software ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 9A619.y, 9B619.y, or 9C619.y.	RS Column 1.
AT applies to entire entry	AT Column 1.

License Exceptions

CIV: N/A.

TSR: N/A.

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any software in ECCN 9D619.

License Exceptions Note: Supplement No. 4 to part 740 of the EAR precludes the use of License Exception GOV (other than those provisions authorizing exports and reexports to personnel and agencies for the U.S. government) and License Exception STA with respect to ''development'' and ''production'' ''software'' for specific types of ''parts'' and ''components'' controlled by ECCN 9A619.x. and identified in the Supplement.

List of Items Controlled

Unit: $ value.

Related Controls: (1) Software directly related to articles enumerated in USML Category XIX is subject to the control of USML paragraph XIX(g). (2) See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.

Related Definitions: N/A.

Items:

Note: ''Software'' described in this ECCN 9D619 that is not specified elsewhere on the CCL is controlled by this ECCN, even if it is also related to an article controlled on the USML, as specified in Category XIX(g).

a. ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by ECCN 9A619 (except 9A619.y), ECCN 9B619 (except 9B619.y), or ECCN 9C619 (except 9C619.y).

b. to x. [RESERVED]

y. Specific ''software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities enumerated in ECCN 9A619, 9B619, or 9C619, as follows:

y.1. Specific ''software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities enumerated in ECCN 9A619.y, 9B619.y, or 9C619.y.

y.2. through y.98 [RESERVED]

y.99. Software not identified on the CCL that (i) Has been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in this ECCN 9D619.

12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, ECCN 9E018 is revised to read as follows:

9E018 ''Technology'' for the ''development,'' ''production,'' or ''use'' of equipment controlled by 9A018.

No items currently are in this ECCN. See ECCN 0E606 for technology related to ground transport vehicles and unarmed all-wheel drive vehicles that, immediately prior to [Insert effective date of final rule that moves these vehicles], were classified under 9A018.b. See ECCN 9E610 for technology related to aircraft, refuelers, ground equipment, parachute, harnesses, instrument flight trainers and parts and accessories and attachments for the forgoing that, immediately prior to [Insert effective date of final rule that moves these items], were classified under 9A018.a.1, .a.3, .c, .d, .e, or .f. See ECCN 9E619 for technology related to military trainer aircraft turbo prop engines and parts and components therefor that, immediately prior to [Insert effective date of final rule that moves these aircraft engines], were classified under ECCN 9A018.a.2 or .a.3.

13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, add a new ECCN 9E619 between ECCN 9E102 and 9E990 to read as follows:

9E619 ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of military gas turbine engines and related commodities controlled by 9A619, equipment controlled by 9B619, materials controlled by 9C619, or software controlled by 9D619.

License Requirements

Reason for Control: NS, RS, AT.

Control(s)	Country chart
NS applies to entire entry except ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 9A619.y, 9B619.y, or 9C619.y.	NS Column 1.
RS applies to entire entry except ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 9A619.y, 9B619.y, or 9C619.y.	RS Column 1.
AT applies to entire entry	AT Column 1.

License Exceptions

CIV: N/A.

TSR: N/A.

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any technology in ECCN 9E619.

License Exceptions Note: Supplement No. 4 to part 740 of the EAR limits the use of License Exception GOV (other than those provisions authorizing exports and reexports to personnel and agencies for the U.S. government) and License Exception STA with respect to ''development'' and ''production'' ''technology'' (other than ''build to print technology'') for specific types of ''parts'' and ''components'' controlled by ECCN 9A619.x. and identified in the Supplement. In addition, Supplement No. 4 to part 740 precludes the use of License Exception GOV (other than those provisions authorizing exports and reexports to personnel and agencies for the U.S. government) or License Exception STA with respect to ''development'' and ''production'' ''technology'' (including ''build to print technology'' and hot section ''technology'') for certain types of ''parts'' and ''components'' controlled by ECCN 9A619.x, as specified in the Supplement.

List of Items Controlled

Unit: $ value.

Related Controls: (1) Technical data directly related to articles enumerated in USML Category XIX are subject to the control of USML Category XIX(g). (2) See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items. (3) Technology described in ECCN 9E003 is controlled by that ECCN.

Related Definitions: N/A.

Items:

Note: ''Technology'' described in this ECCN 9E619 that is not specified elsewhere

on the CCL is controlled by this ECCN, even if it is also related to an article controlled on the USML, as specified in Category XIX(g).

a. ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of items controlled by ECCN 9A619 (except 9A619.y), ECCN 9B619 (except 9B619.y), ECCN 9C619 (except 9C619.y), or ECCN 9D619 (except 9D619.y).

b. through x. [RESERVED]

y. Specific ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 9A619, 9B619, or 9C619, or ''software'' controlled by ECCN 9D619, as follows:

y.1. Specific ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by 9A619.y, 9B619.y, or 9C619.y, or ''software'' controlled by ECCN 9D619.y.

y.2. through y.98 [RESERVED]

y.99. ''Technology'' not identified on the CCL that (i) Has been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in this ECCN 9E619.

Dated: November 28, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742, 770 and 774

[Docket No. 110310188–1621–02]

RIN 0694–AF17

Revisions to the Export Administration Regulations (EAR): Control of Military Vehicles and Related Items That the President Determines No Longer Warrant Control on the United States Munitions List

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: The Bureau of Industry and Security publishes a third proposed rule that describes how articles the President determines no longer warrant control under Category VII (military vehicles and related articles) of the United States Munitions List (USML) would be controlled under the Commerce Control List (CCL). This proposed rule would re-propose, with certain changes, five new Export Control Classification Numbers (ECCNs) on the Commerce Control List (CCL) that were proposed in a proposed rule published on July 15, 2011 (76 FR 41958). The revised ECCNs in this proposed rule are the result of continued deliberations of the Bureau of Industry and Security, the Department of Defense and the Department of State and recommendations of commenters on the July 15 proposed rule. This proposed rule is being published in conjunction with a proposed rule by the Department of State, Directorate of Defense Trade Controls to remove from Category VII of the USML (22 CFR 121.1, Category VII) articles that the President determines no longer warrant control on the USML.

DATES: Comments must be received by January 20, 2012.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. The identification number for this rulemaking is BIS–2011–0040.
- *By email directly to: publiccomments@bis.doc.gov*. Include RIN 0694–AF17 in the subject line.
- *By mail or delivery to:* Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694–AF17.

FOR FURTHER INFORMATION CONTACT: Gene Christiansen, Office of National Security and Technology Transfer Controls, 202 482 2984, *gene.christiansen@bis.doc.gov*.

SUPPLEMENTARY INFORMATON:

Background

On July 15, 2011, as part of the Administration's ongoing Export Control Reform Initiative, the Bureau of Industry and Security (BIS) published a proposed rule (76 FR 41958) that set forth a framework for how articles the President determines, in accordance with section 38(f) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(f)), would no longer warrant control on the United States Munitions List (USML) would be controlled on the Commerce Control List (CCL). In that proposed rule, BIS also described its proposal for how military vehicles and related articles in USML Category VII that no longer warrant controls under the USML would be controlled on the CCL. On November 7, 2011, BIS published a proposed rule (76 FR 68675)) that sets forth how aircraft and related items the President determines to no longer warrant control on the USML would be controlled on the CCL (herein, the aircraft proposed rule). In that proposed rule, BIS made several changes and additions to the framework proposed in the July 15 proposed rule. Following the structure of the July 15 proposed rule, as modified by the rule published on November 7, this proposed rule describes BIS's revised proposal for how various military vehicles and related articles that are controlled by USML Category VII would be controlled on the CCL.

The changes described in this proposed rule and the State Department's proposed amendment to Category VII of the USML are based on a review of Category VII by the Defense Department, which worked with the Departments of State and Commerce in preparing the proposed amendments. The review was focused on identifying the types of articles that are now controlled by USML Category VII that either (i) Are inherently military and otherwise warrant control on the USML, or (ii) if of a type common to civil vehicles, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States and that are almost exclusively available from the United States. For articles that satisfy one or both of those criteria, the review resulted in the article's remaining on the USML. An article that did not satisfy either standard but was nonetheless a type of article that is, as a result of differences in form and fit, ''specially designed'' for military applications, would be identified in the new ECCNs proposed in this notice.

The license requirements and other EAR-specific controls for such items also described in this notice would enhance national security by (i) Allowing for greater interoperability with our NATO and other allies while still maintaining and expanding robust controls and, in some cases, prohibitions on exports or reexports to other countries and for proscribed end users and end uses; (ii) enhancing our defense industrial base by, for example, reducing the current incentives for foreign companies to design out or avoid U.S.-origin ITAR-controlled content, particularly with respect to generic, unspecified parts and components; and (iii) permitting the U.S. Government to focus its resources on controlling, monitoring, investigating, analyzing, and, if need be, prohibiting exports and reexports of more significant items to destinations, end uses, and end users of greater concern than our NATO allies and other multi-regime partners.

Pursuant to section 38(f) of the AECA, the President shall review the USML ''to determine what items, if any, no longer warrant export controls under'' the

AECA. The President must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The report must ''describe the nature of any controls to be imposed on that item under any other provision of law.'' 22 U.S.C. 2778(f)(1). This proposed rule describes how certain military vehicles and related articles in USML Category VII would be controlled by the EAR and its CCL if the President determines that the articles no longer warrant control on the USML.

In the July 15 proposed rule, BIS proposed creating a series of new ECCNs to control articles that would be moved from the USML to the CCL or that are Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies Munitions List (WAML) items already controlled elsewhere on the CCL. The proposed rule referred to this series as the ''600 series'' because the third character in each of the new ECCNs would be a ''6.'' The first two characters of the 600 series ECCNs serve the same function as any other ECCN as described in § 738.2 of the EAR. The first character is a digit in the range 0 through 9 that identifies the Category on the CCL in which the ECCN is located. The second character is a letter in the range A through E that identifies the product group within a CCL Category. In the 600 series, the third character is the number 6. With few exceptions, the final two characters identify the WAML category that covers items that are the same or similar to items in a particular 600 series ECCN.

The July 15 proposed rule specifically proposed creating five new ''600 series'' ECCNs (0A606, 0B606, 0C606, 0D606 and 0E606). This proposed rule re-proposes, with certain changes, those ECCNs based on review of the public comments on the July 15 proposed rule and on further deliberations by BIS, the Department of Defense and the Department of State.

BIS will publish additional **Federal Register** notices containing proposed amendments to the CCL that will describe proposed controls for additional categories of articles the President determines no longer warrant control under the USML. The State Department will publish concurrently proposed amendments to the USML that correspond to the BIS notices. BIS will also publish proposed rules to further align the CCL with the WAML and the Missile Technology Control Regime Equipment, Software and Technology Annex.

Comments Regarding ECCNs 0A606, 0B606, 0C606, 0D606 and 0E606 in the July 15 Proposed Rule

The comment period for the July 15 proposed rule ended on September 13, 2011. Some of the comments that BIS received concerned exclusively the text of the proposed new ECCN 0A606, 0B606, 0C606, 0D606 and 0E606. BIS has adopted some of the recommendations in those comments and incorporated them into this proposed rule. BIS will continue to consider some of those comments and will make a decision whether or not to adopt their recommendations in any final rule concerning those new ECCNs.

Comment 1

Two commenters recommended removing the modifier ''non-combat'' from the description of military support vehicles in 0A606.b.5 so that any combat vehicles that are not described in the USML will not inadvertently become EAR99. One commenter offered the additional rationale that that the distinction between combat and non-combat military vehicles is not always clear. Some vehicles such as tow trucks and ambulances may have armor and be used in combat zones.

Response

BIS has not adopted this recommendation exactly as proposed, but has modified proposed ECCN 0A606 in a way that it believes would address the concerns of these commenters. As modified, ECCN 0A606 would apply explicitly to military vehicles not listed in Category VII of the USML. BIS believes that the explicit requirement that a military vehicles not be on the USML in order to be classified under 0A606 reduces the likelihood that a reader would conclude that vehicles not classified under 0A606 are EAR99. The modified ECCN 0A606 also does not use the phrase ''non-combat,'' which eliminates the need to make decisions as to whether a particular military vehicle is also a combat vehicle.

Comment 2

These same commenters in Comment 1 recommending adding the phrase ''not on the USML'' to 0A606.x and .y because, absent such a statement, unwary readers might conclude that parts and components not elsewhere in paragraphs .x or .y are EAR99 when they might in fact be listed on the ITAR. Another commenter noted that exclusions in some of the items listed in paragraph .y might lead readers to conclude that the excluded item is EAR99. This commenter also recommended language making clear that items in paragraph .y are not those that are not listed on the ITAR.

Response

BIS agrees and has included the phrase ''not elsewhere specified on the USML or CCL'' in both paragraphs .x and .y.

Comment 3

Two commenters recommended listing the ECCN paragraphs to which a control applies (or does not apply) in the ''Control(s)'' column within an ECCN rather than in the ''Country Chart'' column.

Response

The structure that these commenters recommended is already used throughout the CCL. BIS has used it for this proposed rule and expects to use for other proposed rules relating to control of items that the President determines no longer warrant control on the United States Munitions List.

Comment 4

One commenter noted that a number of parts and components currently controlled by 9A018 would, under the proposed text of ECCN 0A606 and the proposed definition of ''specially designed,'' move to new ECCN 0A606.x, which would make them ineligible for License Exception LVS because proposed ECCN 0A606 allows that license exception for 0A606.a, .b and .c only. This commenter also stated that the new definition of specially designed would require it to obtain licenses for exports to Country Group B countries.

Response

BIS acknowledges that this is an unintentional consequence of ECCN 0A606 and has revised this ECCN to make License Exception LVS, which allows limited value shipments to Country Group B, available for all commodities classified under proposed ECCN 0A606 including those currently found in ECCN 9A018. BIS notes that License Exception GBS, which authorizes shipments to Country Group B without value limits, currently is not available for commodities classified under ECCN 9A018. Thus the movement of items from ECCN 9A018 to 0A606 does not affect eligibility for exports under License Exception GBS.

Comment 5

One commenter recommended that regional stability controls not apply to ECCN 0A606.a. The commenter noted that the items that would be classified under that proposed paragraph currently are classified under 0A018.a

and not subject to any regional stability reason for control. The commenter stated that it is not aware of any compelling reason for a change in policy for these items.

Response

BIS acknowledges that some commodities currently classified under 0A018.a (therefore not subject to a regional stability reason for control) and other commodities currently classified under 9A018.b (therefore subject to the regional stability column 2 reason for control) would, under the July 15 rule, be classified under ECCN 0A606 and therefore would be subject to the regional stability column 1 (RS 1) reason for control. However, BIS believes that the impact of this change on the public would be both reasonable and justified in light of the nature of the commodities that would be affected, and is not proposing any changes to ECCN 0A606 as proposed in the July 15 rule.

Currently ECCN 0A018.a and 9A018.b are subject to the national security column 1 (NS 1) reason for control. Both the NS1 and RS 1 reasons for control impose a license requirement for all destinations other than Canada. However, licensing policy for the two reasons are different. The national security licensing policy is focused on risk of diversion to Country Group D:1 destinations. The RS 1 licensing policy is focused on preventing enhancement of military capabilities that would alter or destabilize a region's stability contrary to the interests of the United States. All commodities that would be subject to the RS 1 reason for control in proposed ECCN 0A606 are inherently military and, therefore, any export of these items can be expected to enhance some country's military capability. Because of this inherently military nature, BIS believes that application of the more comprehensive RS 1 licensing policy in addition to the more traditional NS 1 licensing policy is justified.

Comment 6

One commenter recommended that 0A606.x be limited to specific ''parts,'' ''components,'' ''accessories and attachments'' that are ''specially designed'' for a commodity subject to control in this ECCN or a defense article in USML Category VII that has military application with no civil equivalent. That commenter provided an illustrative list of items that, in its opinion, have military application with no civil equivalent. That list consisted of:

- Weapon systems (including mounting. targeting. and stabilization systems);
- Sensor systems (other than collision avoidance or parking sensors systems); and
- Communication systems (other than communication systems designed to work with civil communication systems).

This commenter also recommended that paragraph .y be made into an illustrative list of items that have little or no military significance or no civil equivalent and that the list in paragraph .y should include only items with military significance. Items with no military significance should be EAR99.

Response

The purpose of the controls in a .y paragraph is to create a specific, clear, and exclusive list of parts and components that are so militarily insignificant that they do not warrant NS1 or RS1 controls, even if those parts or components are ''specially designed'' for a defense article on the USML or for an item in another paragraph of the ECCN that includes that .y paragraph. Turning such a list into an illustrative list would create significant doubts among exporters and government officials regarding precisely which items were subject to its controls. Thus, BIS did not accept this recommendation.

Comment 7

One commenter recommended that paragraph .x be either a positive list of parts and components that are militarily significant or a list of the characteristics that make a part militarily significant.

Response

As described in the State Department's proposed rule amending USML Category VII (which is being published simultaneously with this proposed rule), paragraph (g) for Category VII, which has historically contained a catch-all control for all parts, components, accessories, or attachments ''specifically designed or modified'' in any way for a defense article in Category VII, would be replaced by a positive list of parts, components, accessories, and attachments that would be controlled by the proposed revised paragraph VII(g). Thus, this proposed amendment is consistent with the Administration's goal of creating, to the extent possible, positive lists of controlled items—*i.e.,* controlling items without using broad, design-intent based catch-all controls over generic types of items such as ''parts'' and ''components.'' However, another Administration objective is to make sure that items ''specially designed'' for defense articles that are now USML controlled items but that would not be USML controlled items after any proposed jurisdictional changes not fall out of export controls completely. This is why the proposed .x controls in each of the new 600 series ECCNs control all parts, components, accessories, and attachments ''specially designed'' for a defense article in the corresponding USML category or that ECCN. Thus, BIS rejected this recommendation.

Comment 8

Three commenters proposed function tests for identifying items to be included in 0A606 paragraph .y as follows:

The same commenter in Comment 7 recommended that if paragraph .x cannot to be made into a positive list, certain items should be added to paragraph .y. These items are common (in function) to items widely used in civilian vehicles. They include gauges such as speedometers; instrument panels/clusters; vehicle/engine sensors; vehicle engine monitoring sensors and displays such as check engine lights and their associated sensors; electronic braking systems; multiplexing systems to limit vehicle wiring; tire pressure monitoring systems; and data relating to tires (not including run-flats). Although these items might have to be modified for a particular military vehicle, such modifications typically relate fit and are similar to the types of modifications that are made for civilian vehicles.

This commenter also stated that the proposed rule did not set forth any criteria by which BIS selected items for paragraph .y and the selection was arbitrary. The commenter noted five possible characteristics that the BIS proposed 0A606.y items appeared to have in common. Those characteristics are: (1) The items are widely used in civilian and military vehicles alike; (2) without these products, many military and civilian vehicles could not function at all; (3) they do not include offensive weaponry, armor, threat detection systems, or military command, control, and communications systems; (4) they do not include items that control or monitor offensive weaponry, armor, threat detection systems, or military command control and communications systems; and (5) they are available from foreign sources in many locations around the world. The commenter stated that it thinks such would be good criteria for limiting the reason for control to antiterrorism.

This commenter also suggested that BIS's selection of items for paragraph .y appears to equate complexity and the age of a technology with military significance. The commenter pointed out that no electronic parts are in

paragraph .y. This commenter also noted that multilateral regimes do not require that the United States control non-significant parts and the end-use and end-user license requirements provide adequate control for parts that have no military significance.

One commenter asked why 0A606.y did not include exhaust pipes. This commenter stated that exhaust pipes consist mainly of metal tubing that is bent to fit a particular model of vehicle. As such, they appear to be classified under 0A606.x. However, exhaust pipes serve the function of keeping poisonous gases away from the passenger compartment on both civilian and military vehicles.

One commenter recommended that wheels be added to 0A606.y, stating that wheels have no more military significance than bearings, axles and blackout lights, all of which were in 0A606.y of the proposed rule.

Response

These commenters are, in effect, proposing a function test for inclusion in paragraph 0A606.y, *i.e.,* items that differ only in form or fit from items that perform a function that is common to both military and civilian vehicles but that must be adapted in form or fit to a military vehicle should be controlled at no more than the antiterrorism reason for control. BIS believes that this recommendation is relevant to all ECCNs that would become part of this phase of the Export Control Reform Initiative. BIS will continue to review the concept underlying this recommendation and encourages further comment on appropriate criteria for determining which items classified under 600 series ECCNs should be limited to the AT reason for control. BIS will also continue to review the specific items proposed for inclusion in 0A606.y by these commenters. BIS also notes that, at least in some instances, exhaust systems for military vehicles perform additional functions than those typically performed by civilian vehicle exhaust systems. Some military exhaust systems are designed and built to facilitate deep water fording or to reduce emission of thermal radiation, thereby making the vehicle less detectable by opposing forces. Thus, exhaust systems are not *per se* items that, even if specially designed for a military application would have little or no military significance.

Comment 9

One commenter stated that bearings should be EAR99 rather than 0A606.y. This same commenter also stated that gears have about the same level of military significance as bearings and that gears should be in 0A606.y

Response

Bearings that are not otherwise identified in the CCL, such as in ECCN 2A001, and that are not ''specially designed'' for a military vehicle controlled on the USML or CCL would be EAR99 bearings. The fact that there are significant controls on some types of bearings in the CCL indicates that bearings are not *per se* the types of items that would have little or no military significance even if specially designed for a military end item. With respect to ''gears,'' BIS proposed excluding from controls in its definition of ''specially designed'' single unassembled parts that are commonly used in civil applications. As indicated above, BIS is reviewing the public comments on this aspect of the proposed definition and will address this point in a second proposed rule pertaining to the definition of specially designed.

Comment 10

One commenter questioned why blackout lights were included in proposed ECCN 0A606.y, which applies to items of little or no military significance and also in proposed Interpretation 8, which, among other things, identifies features that give a vehicle military characteristics.

Response

This proposed rule would amend proposed 0A606.y to remove blackout lights and would remove Interpretation 8 in its entirety. Controls on blackout lights are currently the subject of deliberations by the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual Use Goods and Technologies. Changing controls on blackout lights at this time would be premature. Therefore this proposed rule would not include blackout lights in paragraph .y of ECCN 0A606. Blackout lights that are specially designed parts, components, accessories or attachments for a commodity enumerated in ECCN 0A606 (other than 0A606.b) or a defense article enumerated in USML Category VII classified under ECCN 0A606.x unless specified elsewhere on the CCL or the USML.

Comment 11

Some commenters recommended that a paragraph .y (or a note) be included in ECCNs 0B606, 0C606, 0D606 and 0E606 to cover test, inspection and production equipment; materials; software; and technology that applies to commodities in 0A606.y

Response

BIS agrees with this comment. This proposed rule would apply this limitation to proposed ECCNs 0B606, 0C606, 0D606 and 0E606.

Comment 12

Two commenters noted that software for the development, production or use of 0A606.y commodity item should be controlled at the AT level.

Response

BIS agrees with this comment and proposes to apply AT controls for development, production, operation or maintenance software.

Comment 13

One commenter recommended that to promote the adaption of commercial products for use in U.S. military vehicles, the Department of Commerce should limit the controls on form, fit and function data that is necessary to provide military insignificant items for military vehicles to the antiterrorism reason for control only unless that information relates to certain sensitive items. Specifically this commenter recommended adding a note to ECCN 0A606 providing that: ''The form, fit, and function information necessary to design, modify, adapt, and configure parts and components listed in ECCN 0A606.y as having little or no military significance is controlled only for AT reasons. To the extent the form, fit, and function information relates to vehicle weapons; armor; threat detection systems; or military command, control, and communications systems, that information is controlled to the extent and in the same manner as 'technology' or 'technical data' concerning such item is controlled by the EAR or ITAR, respectively.''

Response

This comment, although directed at 0A606, applies to all the 600 series ECCNs that would be created in the Export Control Reform Initiative. BIS is not making the recommended changes at this time but will continue to consider the recommendation and may propose changes, if warranted. BIS encourages additional comments on this issue.

Specific Changes Proposed by This Rule

Removal of Interpretation 8

This rule would remove § 770.2(h) *Interpretation 8: Ground vehicles.* BIS believes that the text that this rule proposes for ECCN 0A606 when read with the proposed State Department revisions to Category VII of the USML

are sufficiently precise to make Interpretation 8 unnecessary.

Changes to Proposed ECCNs 0A606, 0B606, 0C606, 0D606 and 0E606

Following the pattern announced in the July 15 proposed rule, each of the five ECCNs noted above would contain a new paragraph designated ''.y.99'' to cover items that would otherwise fall within the scope of one of the ECCNs because, for example, they were ''specially designed'' for a military use, but which (i) Had been previously determined by the Department of State to be subject to the EAR and (ii) were not listed on the CCL. Items in these .y.99 paragraphs would be subject to antiterrorism controls.

Again, following the pattern announced in the aircraft proposed rule, the United Nations reason for control would be removed from the ''License Requirements'' section of each of the five ECCNs listed above. The policy of denying applications for licenses to export or reexport 600 series items to destinations that are subject to a United Nations arms embargo would be implemented in connection with the national security reason for control (proposed by the July 15 proposed rule) and with the regional stability reason for control (proposed by the aircraft proposed rule). Because the EAR as proposed relies on the national security and regional stability reasons for control to implement United Nations arms embargoes with respect to 600 series items on the CCL, a reference to the United Nations in these ECCNs has no legal effect and is likely to engender public confusion by suggesting the existence of a separate United Nations arms embargo licensing requirements and licensing policy section in the EAR. Such a section does not exist.

The references to other 600 series items in the same CCL category and product group would be removed from the ''Related Controls'' paragraphs of each of the five ECCNs noted above to conform to the practice prevailing throughout the CCL. Using the five product groups to describe items that differ in function but that are related to other items in the same CCL category has been an organizing principle of the EAR since at least 1966. Related Controls paragraphs alert readers to items that are similar to the items in a given ECCN but that are subject to the export control jurisdiction of another agency or appear in a different ECCN.

The words under the ''Controls'' and ''Country Chart'' columns in the ''Reasons for Control'' paragraph of each ECCN would be revised to conform to the pattern prevailing throughout the CCL wherein the ECCN paragraphs to which a control apply are listed the ''Controls'' column rather than in the ''Country Chart'' column as was the case in the July 15 proposed rule. This change is stylistic only, and would not affect any license requirements.

Changes to Proposed ECCN 0A606

This rule proposes a new version of ECCN 0A606 that differs in a number of respects from the proposed ECCN 0A606 in the July 15 proposed rule. Those differences and the reasons therefor are as follows.

The heading would be revised from ''Ground Vehicles, 'Parts' and 'Components' as follows'' to ''Ground vehicles and related commodities, as follows (See List of Items Controlled)'' to reflect the fact that some of the items listed in the entry are accessories, attachments, forgings, castings and other unfinished products that are not, as defined, ''parts'' or ''components'' of the ground vehicles that would be classified under proposed ECCN 0A606.

This proposed rule would add a new sentence to the STA paragraph in the License Exception section to explicitly state that items in 0A606.x are not subject to the requirement for a determination as described in § 740.20(g) before being exported or reexported under License Exception STA. Such determinations are not needed because item in paragraph .x are, by definition, parts and components and are not ''end items.'' BIS regards this proposal as an additional statement of a principle set forth in the July 15 proposed rule and is not a substantive change.

The EAR Country Chart Column designators in the License Requirements section would apply national security (NS column 2), regional stability (RS column 2) to 0A606.b, certain unarmed all-wheel drive off-road vehicles derived from civilian vehicles that provide ballistic protection to level III (National Institute of Justice standard 0108.01, September 1985) or better and parts and components that provide such protection. As proposed in the July 15 proposed rule, all other paragraphs of this ECCN, except paragraph .y, would be subject to the NS column 1 and RS column 1 reason for control, and the entire ECCN would be subject to the anti-terrorism reason for control. Applying NS column 2 and RS column 2 reasons for control to the armored off-road vehicles in 0A606.b would allow armored SUVs that are used for personal protection to be exported to most NATO member countries along with Australia, Japan and New Zealand without a license. Any risk that such vehicles exported to such destinations would be employed in a military use inimical to the United States or its allies is minimal.

As revised, proposed new ECCN 0A606 would include deep water fording kits ''specially designed'' for ground vehicles controlled by 0A606.a or USML Category VII, and self-launching bridge components not enumerated in USML Category VII(g) ''specially designed'' for deployment by ground vehicles enumerated in USML Category VII or 0A606. Such items are specifically identified in WAML Category 6. Because a goal of the effort of the reform effort is to more clearly align the U.S. Government's controls with the controls of the multilateral regimes, these controls are specifically listed in the new 0A606.

This proposed rule would add a note to paragraph .x providing that forgings, castings and certain other unfinished products that have reached a stage in manufacture where they are clearly identifiable as commodities controlled by 0A606.x are controlled by that paragraph. Adding this note serves to better align the controls over 600 series military articles with the controls in the WAML, which controls in its Category 16 such forgings and castings. This proposed note also would better align the requirements of ECCN 0A606 with the controls on forgings and castings now in the ITAR (22 CFR 121.10). BIS encourages comments on whether the proposed controls on forgings and castings in the new 0A606.x are clear.

Also, the proposed new ECCN would not include in paragraph .y blackout lights, which were included in paragraph .y of the July 15 proposed rule because the subject of appropriate controls over blackout lights is a topic under consideration by the Wassenaar Arrangements on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. Blackout lights that are specially designed parts, components, accessories or attachments for a commodity enumerated in ECCN 0A606 (other than 0A606.b) or a defense article enumerated in USML Category VII classified under ECCN 0A606.x unless specified elsewhere on the CCL or the USML.

Finally, the proposed new ECCN 0A606 would not include military vehicle gas turbine engines because controls on gas turbine engines and related items for military aircraft, ships, and vehicles are addressed in another proposed rule which, would create a proposed ECCN 9A619. Although this numbering deviates slightly from the WAML numbering approach, BIS believes that it would be more efficient

to list all 600 series controls for gas turbine engines and related items in one ECCN. The anticipated new ECCN will correspond to a new USML Category XIX that the State Department would propose creating to control USML-controlled gas turbine engines and related articles.

Changes to Proposed ECCN 0B606

This rule proposes a new version of ECCN 0B606 that differs in a number of respects from the ECCN 0B606 in the July 15 proposed rule.

The heading would be changed from ''Test, inspection, and production 'equipment' and related commodities 'specially designed' for the 'development' or 'production' of commodities enumerated in ECCN 0A606'' to ''Test, inspection, and production 'equipment' and related commodities 'specially designed' for the 'development' or 'production' of commodities enumerated in ECCN 0A606 or USML Category VII (See List of Items Controlled).'' This text more accurately reflects the scope of this proposed ECCN.

The four specific commodities that were listed in paragraphs .a, .b .c and .d in the July 15 proposed rule: (i) Armor plate drilling machines, other than radial drilling machines, (ii) armor plate planing machines, (iii) armor plate quenching presses; and (iv) tank turret bearing grinding machines are included as a note to paragraph .a in this proposed rule. Paragraph .a, as a whole, would apply more broadly in this proposed rule to test, inspection, and production ''equipment'' ''specially designed'' for the ''production'' or ''development'' of commodities enumerated in ECCN 0A606 (except for 0A606.y) or in USML Category VII, and ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' therefor. Paragraph .b would apply more broadly in this proposed rule to environmental test facilities ''specially designed'' for the certification, qualification, or testing of commodities enumerated in ECCN 0A606 (except for 0A606.b or 0A606.y) or in USML Category VII, and ''equipment'' ''specially designed'' therefor. This specifically identifies as controlled in U.S. export control law such items, which are identified in WAML Category 18.

Paragraphs .c through .x would be reserved for future use.

Changes to Proposed ECCN 0C606

The ''Items'' paragraph in the ''List of Items Controlled'' section would be in the form of a list rather than just a reference to the ECCN heading as was the case in the July 15 proposed rule. Paragraph .a of that list would enumerate materials ''specially designed'' for the ''development'' or ''production'' of commodities enumerated in ECCN 0A606 (other than 0A606.b or 0A606.y) or USML Category VII, not elsewhere specified in the USML or the CCL. Two notes following paragraph .a would make clear that materials enumerated elsewhere on the CCL are subject to the controls of the CCL in which they are enumerated and materials specially designed for vehicles enumerated in ECCN 0A606 or in USML Category VII are subject to ECCN 0C606 unless such materials are identified in USML Category VII(g).

Changes to Proposed ECCN 0D606

The term ''use'' would be replaced with the term ''operation and maintenance'' because the latter more accurately describes the software functions of concern.

Changes to Proposed ECCN 0E606

The term ''use'' would be replaced with the term ''operation, installation, maintenance, repair or overhaul'' because the latter is a more accurate description of the technology of concern.

Request for Comments

All comments must be in writing and submitted via one or more of the methods listed under the **ADDRESSES** caption to this notice. All comments (including any personal identifiable information) will be available for public inspection and copying. Anyone wishing to comment anonymously may do so by submitting their comment via regulations.gov and leaving the fields for information that would identify the commenter for identifying information blank.

Relationship to the July 15 Proposed Rule and the Aircraft Proposed Rule

As referenced above, the purpose of the July 15 proposed rule was to set up the framework to support the transfer of items from the USML to the CCL. To facilitate that goal, the July 15 proposed rule contained definitions and concepts that were meant to be applied across Categories. However, as BIS undertakes rulemakings to move specific categories of items from the USML to the CCL, there may be unforeseen issues or complications that may require BIS to reexamine those definitions and concepts. The comment period for the July 15 proposed rule closed on September 13, 2011. In the aircraft proposed rule, BIS proposed several changes to those definitions and concepts. The comment period for the aircraft proposed rule will close on December 22, 2011.

To the extent that this rule's proposals affect any provision in either of those proposed rules or any provision in either of those proposed rules affect this proposed rule, BIS will consider comments on those provisions so long as they are in the context of the changes proposed in this rule.

BIS believes that the following aspects of the July 15 proposed rule and the aircraft proposed rule are among those that could affect this proposed rule:

- *De minimis* provisions in § 734.4;
- Definitions of terms in § 772.1;
- Restrictions on use of license exceptions in §§ 740.2, 740.10, 740.11, and 740.20 (including restrictions proposed by the November 7, 2011, proposed rule that would apply to items outside the scope of that rule);
- Change to national security licensing policy in § 742.4;
- Requirement to request authorization to use License Exception STA for end items in 600 series ECCNs and procedures for submitting such requests in §§ 740.2, 740.20, 748.8 and Supp. No. 2 to part 748;
- Licensing policy in § 742.4(b)(1)(ii);
- Addition of 600 series items to Supplement No. 2 to Part 744—List of Items Subject to the Military End-Use Requirement of § 744.21; and
- Addition of U.S. arms embargo policy regarding 600 series items set forth in § 742.4(b)(1)(ii) (national security) of the July 15 proposed rule to § 742.6(b)(1) (regional stability) of this proposed rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

Regulatory Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity).

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This proposed rule would affect two approved collections: Simplified Network Application Processing + System (control number 0694–0088), which includes, among other things, license applications, and License Exceptions and Exclusions (0694–0137).

As stated in the proposed rule published at 76 FR 41958 (July 15, 2011), BIS believes that the combined effect of all rules to be published adding items to EAR that are being removed from the ITAR as part of the administration's Export Control Reform Initiative will increase the number of license applications to be submitted to BIS by approximately 16,000 annually, resulting in an increase in burden hours of 5,067 (16,000 transactions at 17 minutes each) under control number 0694–0088.

Some items formerly on the USML will become eligible for License Exception STA under this rule. Other such items may become eligible for License Exception STA upon approval of a request submitted in conjunction with a license application. As stated in the July 15 proposed rule, BIS believes that the increased use of License Exception STA resulting from combined effect of all rules to be published adding items to EAR that are being removed from the ITAR as part of the administration's Export Control Reform Initiative will increase the burden associated with control number 0694–0137 by about 23,858 hours (20,450 transactions @1 hour and 10 minutes each).

BIS expects that this increase in burden would be more than offset by a reduction in burden hours associated with approved collections related to the ITAR. This proposed rule addresses controls on military vehicles and related parts, components, production equipment, materials, software, and technology. The largest impact of the proposed rule would be with respect to exporters of parts and components because, under the proposed rule, most U.S. and foreign military vehicles currently in service would continue to be subject to the ITAR. Because, with few exceptions, the ITAR allows exemptions from license requirements only for exports to Canada, most exports to integrators for U.S. government equipment and most exports of routine maintenance parts and components for our NATO and other close allies require State Department authorization. In addition, the exports necessary to produce parts and components for defense articles in the inventories of the United States and its NATO and other close allies require State Department authorizations. Under the EAR, as proposed, a small number of low level parts would not require a license to most destinations. Most other parts, components, accessories, and attachments would become eligible for export to NATO and other close allies under License Exception STA. Use of License Exception STA imposes a paperwork and compliance burden because, for example, exporters must furnish information about the item being exported to the consignee and obtain from the consignee and acknowledgement and commitment to comply with the EAR. It is, however, the Administration's understanding that complying with the burdens of STA is likely to be less burdensome than applying for licenses. For example, under License Exception STA, a single consignee statement can apply to an unlimited number of products, need not have an expiration date, and need not be submitted to the government in advance for approval. Suppliers with regular customers can tailor a single statement and assurance to match their business relationship rather than applying repeatedly for licenses with every purchase order to supply allied and, in some cases, U.S. forces with routine replacement parts and components.

Even in situations in which a license would be required under the EAR, the burden is likely to be reduced compared to the license requirement of the ITAR. In particular, license applications for exports of technology controlled by ECCN 0E606 are likely to be less complex and burdensome than the authorizations required to export ITAR-controlled technology, *i.e.,* Manufacturing License Agreements and Technical Assistance Agreements.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulations, Department of Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration, certifying that proposed rule published on July 15, 2011, will not have a significant impact on a substantial number of small entities.

This proposed rule re-proposes with certain changes, 5 ECCNs that were proposed in the July 15, 2011 rule. The changes proposed in this rule do not impact the original certification. Consequently, BIS has not prepared a regulatory flexibility analysis. A summary of the factual basis for the certification, which also takes into consideration the changes to the five proposed ECCNs in this rule, is provided below.

Number of Small Entities

The Bureau of Industry and Security (BIS) does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number.

Economic Impact

This proposed rule is part of the Administration's Export Control Reform Initiative. Under that initiative, the United States Munitions List (22 CFR part 121) (USML) would be revised to be a ''positive'' list, *i.e.,* a list that does not use generic, catch-all controls on any part, component, accessory, attachment, or end item that was in any way specifically modified for a defense article, regardless of the article's military or intelligence significance or non-military applications. At the same time, articles that are determined to no longer warrant control on the USML would become controlled on the

Commerce Control List (CCL). Such items, along with certain military items that currently are on the CCL, will be identified in specific Export Control Classification Numbers (ECCNs) known as the ''600 series'' ECCNs. In addition, some items currently on the Commerce Control List would move from existing ECCNs to the new 600 series ECCNs. In practice, the greatest impact of this rule on small entities would likely be reduced administrative costs and reduced delay for exports of items that are now on the USML but would become subject to the EAR. This rule focuses on Category VII articles, which are tanks and military vehicles and related parts, components, production equipment, software, and technology. Most operational tanks and military vehicles currently in active inventory would remain on the USML. However, parts and components, which are more likely to be produced by small businesses than are complete vehicles, would in many cases become subject to the EAR. In addition, officials of the Department of State have informed BIS that license applications for such parts and components are a high percentage of the license applications for USML articles review by that department.

Changing the jurisdictional status of Category VII items would reduce the burden on small entities (and other entities as well) through elimination of some license requirements, greater availability of license exceptions, simpler license application procedures, and reduced (or eliminated) registration fees.

In addition, parts and components controlled under the ITAR remain under ITAR control when incorporated into foreign-made items, regardless of the significance or insignificance of the item, discouraging foreign buyers from incorporating such U.S. content. The availability of *de minimis* treatment under the EAR may reduce the incentive for foreign manufacturers to avoid purchasing U.S.-origin parts and components.

Fourteen types of parts and components, identified in ECCN 0A606.y, would be designated immediately as parts and components that, even if specially designed for a military use, have little or no military significance. These parts and components, which under the ITAR require a license to nearly all destinations, would, under the EAR, require a license to only five destinations and, if destined for a military end use, the People's Republic of China.

Many exports and reexports of Category VII articles that would be placed on the CCL by this rule, particularly parts and components, would become eligible for license exceptions that apply to shipments to United States Government agencies, shipments valued at less than $1,500, parts and components being exported for use as replacement parts, temporary exports, and License Exception Strategic Trade Authorization (STA), reducing the number of licenses that exporters of these items would need. License Exceptions under the EAR would allow suppliers to send routine replacement parts and low level parts to NATO and other close allies and export control regime partners for use by those governments and for use by contractors building equipment for those governments or for the United States government without having to obtain export licenses. Under License Exception STA, the exporter would need to furnish information about the item being exported to the consignee and obtain a statement from the consignee that, among other things, would commit the consignee to comply with the EAR and other applicable U.S. laws. Because such statements and obligations can apply to an unlimited number of transactions and have no expiration date, they would impose a net reduction in burden on transactions that the government routinely approves through the license application process that the License Exception STA statements would replace.

Even for exports and reexports in which a license would be required, the process would be simpler and less costly under the EAR. When a USML Category VII article is moved to the CCL, the number of destinations for which a license is required would remain unchanged. However, the burden on the license applicant would decrease because the licensing procedure for CCL items is simpler and more flexible that the license procedure for USML articles.

Under the USML licensing procedure, an applicant must include a purchase order or contract with its application. There is no such requirement under the CCL licensing procedure. This difference gives the CCL applicant at least two advantages. First, the applicant has a way of determining whether the U.S. government will authorize the transaction before it enters into potentially lengthy, complex and expensive sales presentations or contract negotiations. Under the USML procedure, the applicant will need to caveat all sales presentations with a reference to the need for government approval and is more likely to have to engage in substantial effort and expense only to find that the government will reject the application. Second, a CCL license applicant need not limit its application to the quantity or value of one purchase order or contract. It may apply for a license to cover all of its expected exports or reexports to a particular consignee over the life of a license (normally two years, but may be longer if circumstances warrant a longer period), reducing the total number of licenses for which the applicant must apply.

In addition, many applicants exporting or reexporting items that this rule would transfer from the USML to the CCL would realize cost savings through the elimination of some or all registration fees currently assessed under the USML's licensing procedure. Currently, USML applicants must pay to use the USML licensing procedure even if they never actually are authorized to export. Registration fees for manufacturers and exporters of articles on the USML start at $2,500 per year, increase to $2,750 for organizations applying for one to ten licenses per year and further increases to $2,750 plus $250 per license application (subject to a maximum of three percent of total application value) for those who need to apply for more than ten licenses per year. There are no registration or application processing fees for applications to export items listed on the CCL. Once the Category VII items that are the subject to this rulemaking are moved from the USML to the CCL, entities currently applying for licenses from the Department of State would find their registration fees reduced if the number of USML licenses those entities need declines. If an entity's entire product line is moved to the CCL, then its ITAR registration and registration fee requirement would be eliminated.

De minimis treatment under the EAR would become available for all items that this rule would transfer from the USML to the CCL. Items subject to the ITAR remain subject to the ITAR when they are incorporated abroad into a foreign-made product regardless of the percentage of U.S. content in that foreign made product. Foreign-made products that incorporate items that this rule would move to the CCL would be subject to the EAR only if their total controlled U.S.-origin content exceeded 10 percent. Because including small amounts of U.S.-origin content would not subject foreign-made products to the EAR, foreign manufacturers would have less incentive to avoid such U.S.-origin parts and components, a development that potentially would mean greater sales for U.S. suppliers, including small entities.

For items currently on the CCL that would be moved from existing ECCNs to the new 600 series, license exception availability would be narrowed somewhat and the applicable *de minimis* threshold for foreign-made products containing those items would in some cases be reduced from 25 percent to 10 percent. However, BIS believes that increased burden imposed by those actions will be offset substantially by the reduction in burden attributable to the moving of items from the USML to CCL and the compliance benefits associated with the consolidation of all WAML items subject to the EAR in one series of ECCNs.

Conclusion

BIS is unable to determine the precise number of small entities that would be affected by this rule. Based on the facts and conclusions set forth above, BIS believes that any burdens imposed by this rule would be offset by the a reduction in the number of items that would require a license, increased opportunities for use of license exceptions for exports to certain countries, simpler export license applications, reduced or eliminated registration fees, and application of a *de minimis* threshold for foreign-made items incorporating U.S.-origin parts and components, which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content. For these reasons, the Chief Counsel for Regulations of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

List of Subjects

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 770

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Export Administration Regulations (15 CFR parts 730–774) are proposed to be amended as follows:

15 CFR PART 742—[AMENDED]

1. The authority citation paragraph for part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

2. Section 742.6 is amended by revising paragraphs (a)(1) and (a)(4)(i) to read as follows:

§ 742.6 Regional stability.

(a) * * *

(1) *RS Column 1 License Requirements in General.* As indicated in the CCL and in RS column 1 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to all destinations, except Canada, for items described on the CCL under ECCNs 0A521; 0A606 (except 0A606.b and .y); 0B521; 0B606 (except 0B606.y); 0C521; 0C606 (except 0C606.y); 0D521; 0D606 (except 0D606.y); 0E521; 0E606 (except 0E606.y); 6A002.a.1, a.2, a.3, .c, or .e; 6A003.b.3, and b.4.a; 6A008.j.1; 6A998.b; 6D001 (only ''software'' for the ''development'' or ''production'' of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D002 (only ''software'' for the ''use'' of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D003.c; 6D991 (only ''software'' for the ''development,'' ''production,'' or ''use'' of equipment classified under 6A002.e or 6A998.b); 6E001 (only ''technology'' for ''development'' of items in 6A002.a.1, a.2, a.3 (except 6A002.a.3.d.2.a and 6A002.a.3.e for lead selenide focal plane arrays), and .c or .e, 6A003.b.3 and b.4, or 6A008.j.1); 6E002 (only ''technology'' for ''production'' of items in 6A002.a.1, a.2, a.3, .c, or .e, 6A003.b.3 or b.4, or 6A008.j.1); 6E991 (only ''technology'' for the ''development,'' ''production,'' or ''use'' of equipment classified under 6A998.b); 6D994; 7A994 (only QRS11–00100–100/101 and QRS11–0050–443/569 Micromachined Angular Rate Sensors); 7D001 (only ''software'' for ''development'' or ''production'' of items in 7A001, 7A002, or 7A003); 7E001 (only ''technology'' for the ''development'' of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E002 (only ''technology'' for the ''production'' of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E101 (only ''technology'' for the ''use'' of inertial navigation systems, inertial equipment, and specially designed components for civil aircraft); 9A610 (except 9A610.y); 9A619; 9B610 (except 9B610.y); 9B619 (except 9B619.y); 9C610 (except 9C610.y); 9C619 (except 9C619,y); 9D610 (except software for the development,'' ''production,'' operation or maintenance of commodities controlled by 9A610.y, 9B610.y, or 9C610.y); 9D619 (except software for the ''development,'' ''production,'' operation or maintenance of commodities controlled by 9A619.y, 9B619.y, or 9C619.y); 9E610 (except ''technology'' for the ''development,'' ''production'' operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by ECCN 9A610.y, 9B610.y, or 9C610.y) and 9E619 (except ''technology'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul of refurbishment of commodities controlled by ECCN 9A619.y, 9B619.y, or 9C619.y).

* * *

(4) * * *

(i) License Requirements Applicable to Most RS Column 2 Items. As indicated in the CCL and in RS Column 2 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to any destination except Australia, Japan, New Zealand, and countries in the North Atlantic Treaty Organization (NATO) for items described on the CCL under ECCNs 0A918, 0E918, 1A004.d, 1D003 (software to enable equipment to perform the functions of equipment controlled by 1A004.d), 1E001 (technology for the development, production, or use of 1A004.d), 2A983, 2A984, 2D983, 2D984, 2E983, 2E984, 0A606.b, 8A918, and for military vehicles and certain commodities (specially designed) used to manufacture military equipment, described on the CCL in ECCNs 0A018.c, 1B018.a, and 2B018.

* * * * *

15 CFR PART 770—[AMENDED]

3. The authority citation paragraph for part 770 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

Section 770.2 [Amended]

4. Section 770.2 is amended by removing and reserving paragraph (h).

PART 774—[AMENDED]

5. The authority citation paragraph for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

6. In Supplement No. 1 to part 774, Category 0, add Export Control Classification Number 0A606 between Export Control Classification Numbers 0A018 and 0A918 to read as follows:

0A606 Ground vehicles and related commodities, as follows (See List of Items Controlled):

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire, entry except 0A606.b and .y.	NS Column 1
NS applies to 0A606.b.	NS Column 2
RS applies to entire entry, except 0A606.b and .y.	RS Column 1
RS applies to 0A606.b.	RS Column 2
AT applies to entire entry.	AT Column 1

License Exceptions

LVS: $1500

GBS: N/A

CIV: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 0A606. Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may not be used for any ''end item'' in 0A606, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for ''600 series'' end items). See § 740.20(g) for the procedures to follow if you wish to request new STA eligibility for ''end items'' under this ECCN 0A606 as part of an export, reexport, or in-country (transfer) license application. ''End items'' under this entry that have already been determined to be eligible for License Exception STA are listed in Supplement No. 4 to part 774 and on the BIS Web site at *http://www.bis.doc.gov* * * *.

Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may be used to export, reexport, or transfer (in-country) commodities that are not ''end items,'' such as those controlled by 0A606.x, without the need for a determination described in § 740.20(g).

List of Items Controlled

Unit: Equipment in number; ''parts,'' ''components,'' ''accessories and attachments'' in $ value

Related Controls: (1) Ground vehicles and related articles, technical data (including software) and services described in 22 CFR part 121, Category VII, Ground Vehicles and Related Articles, are subject to the jurisdiction of the International Traffic in Arms Regulations. (2) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.

Related Definitions: N/A

Items:

a. Ground vehicles, whether manned or unmanned, ''specially designed'' for a military use and not enumerated in USML Category VII.

Note: For purposes of paragraph .a, ''ground vehicles'' include (i) Tanks and armored vehicles manufactured prior to 1956 that do not contain a functional weapon or a weapon capable of becoming functional through repair; (ii) military railway trains except those that are armed or are ''specially designed'' to launch missiles; (iii) unarmored military recovery and other support vehicles; (iv) unarmored, unarmed vehicles with mounts or hard points for firearms of .50 caliber or less; and (iv) trailers ''specially designed'' for use with other ground vehicles enumerated in USML Category VII or ECCN 0A606.a, and not separately enumerated in USML Category VII.

b. Other Ground Vehicles and Related Commodities, as follows:

b.1. Unarmed all-wheel drive vehicles capable of off-road use that are derived from civilian vehicles that have been modified or fitted with materials or components other than reactive or electromagnetic armor to provide ballistic protection to level III (National Institute of Justice standard 0108.01, September 1985) or better.

b.2. ''Parts'' and ''components'' that provide ballistic protection to level III (National Institute of Justice standard 0108.01, September 1985) or better ''specially designed'' for ground vehicles controlled by 0A606.b.1.

Note 1: Ground vehicles otherwise controlled by 0A606.b.1 that contain reactive or electromagnetic armor are subject to the controls of USML Category VII.

Note 2: ECCN 0A606.b.1 does not control civilian vehicles ''specially designed'' for transporting money or valuables.

Note 3: ''Unarmed'' means not having installed weapons, installed mountings for weapons, or special reinforcements for mounts for weapons.

c. Air-cooled diesel engines and engine blocks for armored vehicles that weigh more than 40 tons.

d. Fully automatic continuously variable transmissions for tracked combat vehicles.

e. Deep water fording kits ''specially designed'' for ground vehicles controlled by ECCN 0A606.a or USML Category VII.

f. Self-launching bridge components not enumerated in USML Category VII(g) ''specially designed'' for deployment by ground vehicles enumerated in USML Category VII or this ECCN.

g. through w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories and attachments'' that are ''specially designed'' for a commodity enumerated in ECCN 0A606 (other than 0A606.b) or a defense article enumerated in USML Category VII and not elsewhere specified on the USML or the CCL.

Note 1: Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacture where they are clearly identifiable by material composition, geometry, or function as commodities controlled by ECCN 0A606.x are controlled by ECCN 0A606.x.

Note 2: ''Parts,'' ''components,'' ''accessories and attachments'' enumerated in USML paragraph VII(g) are subject to the controls of that paragraph. ''Parts,'' ''components,'' ''accessories and attachments'' enumerated in ECCN 0A606.y are subject to the controls of that paragraph.

y. Specific ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' for a commodity enumerated in this ECCN (other than ECCN 0A606.b) or for a defense article in USML Category VII and not elsewhere specified on the USML or the CCL, as follows:

y.1. Brake system components (*e.g.,* discs, rotors, shoes, drums, springs, cylinders, lines, and hoses);

y.2. Alternators and generators;

y.3. Axles;

y.4. Batteries;

y.5. Bearings (*e.g.,* ball, roller, wheel);

y.6. Cables, cable assembles, and connectors;

y.7. Cooling system hoses;

y.8. Hydraulic, fuel, oil, and air filters, other than those controlled by ECCN 1A004;

y.9. Gaskets and o-rings;

y.10. Hydraulic system hoses, fittings, couplings, adapters, and valves;

y.11. Latches and hinges;

y.12. Lighting systems, fuses, and components;

y.13. Pneumatic hoses, fittings, adapters, couplings, and valves;

y.14. Seats, seat assemblies, seat supports, and harnesses;

y.15 Tires, except run flat ; and

y.16 Windows, except those for armored vehicles.

y.17. to .98. [RESERVED]

y.99. Commodities that would otherwise be controlled elsewhere in ECCN 0A606 but that (i) Have been determined to be ''subject to the EAR'' in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) are not elsewhere identified on the CCL.

7. In Supplement No. 1 to part 774, Category 0, add Export Control Classification Number 0B606 between Export Control Classification Numbers 0B006 and 0B986 to read as follows:

0B606 Test, inspection, and production ''equipment'' and related commodities, not enumerated on the USML, ''specially designed'' for the ''development'' or ''production'' of commodities enumerated in ECCN 0A606 or USML Category VII (See List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to 0B606, except 0B606.y.	NS Column 1
RS applies to 0B606, except 0B606.y.	RS Column 1
AT applies to entire entry.	AT Column 1

License Exceptions

LVS: $1,500
GBS: N/A
CIV: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 0B606.

List of Items Controlled

Unit: N/A
Related Controls: (1) Ground vehicles and related articles, technical data (including software) and services described in 22 CFR part 121, Category VII, Ground Vehicles and Related Articles, are subject to the jurisdiction of the International Traffic in Arms Regulations. (2) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.
Related Definitions: N/A
Items:

a. Test, inspection, and production ''equipment'' ''specially designed'' for the ''production'' or ''development'' of commodities enumerated in ECCN 0A606 (except for 0A606.y) or in USML Category VII, and ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' therefor.

Note 1: ECCN 0B606 includes (i) Armor plate drilling machines, other than radial drilling machines, (ii) armor plate planing machines, (iii) armor plate quenching presses; and (iv) tank turret bearing grinding machines.

b. Environmental test facilities ''specially designed'' for the certification, qualification, or testing of commodities enumerated in ECCN 0A606 (except for 0A606.b or 0A606.y) or in USML Category VII, and ''equipment'' ''specially designed'' therefor.

c. through x. [RESERVED]

y. Specific test, inspection, and production ''equipment'' ''specially designed'' for the ''production'' or ''development'' of commodities enumerated in ECCN 0A606 (except for 0A606.y) or in USML Category VII, and ''parts,'' ''components,'' ''accessories and attachments'' ''specially designed'' therefor, as follows:

y.1. through y.98 [RESERVED]

y.99. Commodities that would otherwise be controlled elsewhere by ECCN 0B606, but that (i) have been determined to be subject to the EAR in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) are not elsewhere identified on the CCL.

8. In Supplement No. 1 to part 774, Category 0, add Export Control Classification Number 0C606 between Export Control Classification Numbers 0C201 and the product group header that reads ''D. Software''

0C606 Materials ''specially designed'' for commodities controlled by ECCN 0A606 not elsewhere specified in the USML or the CCL (See List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire entry, except 0C606.y.	NS Column 1
RS applies to entire entry, except 0C606.y.	RS Column 1
AT applies to entire entry.	AT Column 1

License Exceptions

LVS: $1,500
GBS: N/A
CIV: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 0C606.

List of Items Controlled

Unit: N/A
Related Controls: (1) Materials specifically designed, modified, adapted, or configured for military vehicles and related articles controlled in USML Category VII are controlled in USML paragraph XIII(f). (2) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.
Related Definitions: N/A
Items:

a. Materials ''specially designed'' for the ''development'' or ''production'' of commodities enumerated in ECCN 0A606 (other than 0A606.b or 0A606.y) or USML Category VII, not elsewhere specified in the USML or the CCL.

Note 1: Materials enumerated elsewhere in the CCL, such as in a CCL Category 1 ECCN, are controlled pursuant to controls of the applicable ECCN.

Note 2: Materials ''specially designed'' for both ground vehicles enumerated in USML Category VII and ground vehicles enumerated in ECCN 0A606 are subject to the controls of this ECCN unless identified in USML Category VII(g) as being subject to the controls of that paragraph.

b. through .w. [RESERVED]

y. Specific materials ''specially designed'' for the ''production'' or ''development'' of commodities enumerated in ECCN 0A606 (except for 0A606.y), as follows:

y.1. through y.98 [RESERVED]

y.99. Materials that would otherwise be controlled elsewhere in ECCN 0C606 but that (i) have been determined to be subject to the EAR in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) are not otherwise identified elsewhere on the CCL.

9. In Supplement No. 1 to part 774, Category 0, add Export Control Classification Number 0D606 between Export Control Classification Numbers 0D001 and 0D999 to read as follows:

0D606 ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of ground vehicles and related commodities controlled by 0A606, 0B606, or 0C606.

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire entry, except 0D606.y.	NS Column 1
RS applies to entire entry, except 0D606.y.	RS Column 1
AT applies to entire entry.	AT Column 1

License Exceptions

CIV: N/A
TSR: N/A
STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any software in 0D606.

List of Items Controlled

Unit: N/A
Related Controls: Software directly related to articles enumerated in USML Category VII are subject to the controls of USML paragraph VII(h). See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.
Related Definitions: N/A
Items:

a. ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by ECCN 0A606 (except for ECCNs 0A606.b or 0A606.y).

b. to w. [RESERVED]

y. Specific ''software'' ''specially designed'' for the ''production,'' ''development,'' operation or maintenance of commodities enumerated in ECCN 0A606, 0B606, or 0C606, as follows:

y.1. Specific ''software'' ''specially designed'' for the ''production,'' ''development,'' operation or maintenance of commodities enumerated in ECCNs 9A610.y, 9B610.y, or 9C610.y.

y.2 through y.98 [RESERVED]

y.99. Software that would otherwise be controlled elsewhere by ECCN 0D606 but

that (i) Has been determined to be subject to the EAR in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) is not otherwise identified elsewhere on the CCL.

10. In Supplement No. 1 to part 774, Category 0, add Export Control Classification Number 0E606 between Export Control Classification Numbers 0E018 and 0E918 to read as follows:

0E606 Technology ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, or overhaul, of ground vehicles and related commodities in 0A606, 0B606, 0C606, or 0D606.

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire entry, except 0E606.y.	NS Column 1
RS applies to entire entry, except 0E606.y.	RS Column 1
AT applies to entire entry.	AT Column 1

License Exceptions

CIV: N/A

TSR: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any technology in 0D606.

List of Items Controlled

Unit: N/A

Related Controls: Technical data directly related to articles enumerated in USML Category VII are subject to the controls of USML paragraph VII(h). See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than 10% U.S.-origin ''600 series'' items.

Related Definitions: N/A

Items:

a. ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, or overhaul, of commodities enumerated in ECCN 0A606 (except for ECCNs 0A606.b or 0A606.y).

b. through w. [RESERVED]

y. Specific ''technology'' ''required'' for the ''production,'' ''development,'' operation, installation, maintenance, repair, or overhaul, of commodities enumerated in ECCN 0A606.y., 0B606.y, or 0C606.y, as follows:

y.1. Specific ''technology'' ''required'' for the ''production,'' ''development,'' operation, installation, maintenance, repair or overhaul of commodities enumerated in ECCN 9A610.y, 9B610.y, 9C610.y, or 9D610.y.

y.2. through y.98 [RESERVED]

y.99. ''Technology'' that would otherwise be controlled elsewhere by ECCN 0E606 but that (i) Has been determined to be subject to the EAR in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) is not otherwise identified elsewhere on the CCL.

Dated: November 28, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2011–30976 Filed 12–5–11; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1140

[Docket No. FDA–2011–N–0467]

RIN 0910–AG43

Non-Face-to-Face Sale and Distribution of Tobacco Products and Advertising, Promotion, and Marketing of Tobacco Products; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period until January 19, 2012, for an advance notice of proposed rulemaking (ANPRM) that was published in the **Federal Register** of September 9, 2011 (76 FR 55835). In that document, FDA requested comments, data, research, or other information related to non-face-to-face sale and distribution of tobacco products; the advertising, promotion, and marketing of such products; and the advertising of tobacco products via the Internet, email, direct mail, telephone, smart phones, and other communication technologies that can be directed to specific recipients. The Agency is extending the comment period in response to a request to give interested parties additional time to comment.

DATES: Submit either electronic or written comments by January 19, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2011–N–0467 and/or RIN number 0910–AG43, 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.

Written Submissions

Submit written submissions in the following ways:

- *FAX:* (301) 827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2011–N–0467 and Regulatory Information Number (RIN 0910–AG43) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beth Buckler, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, (877) 287–1373, *beth.buckler@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 9, 2011 (76 FR 55835), FDA issued an ANPRM to obtain information related to the regulation of non-face-to-face sale and distribution of tobacco products and the advertising, promotion, and marketing of tobacco products. FDA took this action as part of its implementation of the Family Smoking Prevention and Tobacco Control Act (Pub. L. 111–31, 123 Stat. 1776). FDA requested comments, data, research, or other information related to non-face-to-face sale and distribution of tobacco products; the advertising, promotion, and marketing of such products; and the advertising of tobacco products via the Internet, email, direct mail, telephone, smart phones, and other communication technologies that can be directed to specific recipients. FDA intends to use the information submitted in response to the ANPRM to inform its regulation of the sale and distribution of tobacco products through a non-face-to-face exchange and the advertising, promotion, and marketing of tobacco products. FDA provided a 90-day comment period (*i.e.,* until December 8, 2011) for the ANPRM.

FDA has received a request to extend the comment period. The request stated that additional time is needed to coordinate factual information and policy positions with a large number of States on several of the questions in the ANPRM. The request noted that their comments will be more thorough and of more assistance to FDA if more time is available to develop them.

FDA has considered the request and is extending the comment period an additional 6 weeks, until January 19, 2012. We believe that the additional time will provide interested parties sufficient time to submit comments on the ANPRM.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this ANPRM. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 1, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–31225 Filed 12–5–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF STATE

22 CFR Part 121

RIN 1400–AC98

[Public Notice 7703]

Amendment to the International Traffic in Arms Regulations: Establishment of U.S. Munitions List Category XIX for Gas Turbine Engines

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: As part of the President's Export Control Reform effort, the Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) to establish Category XIX of the U.S. Munitions List (USML) to describe gas turbine engines and associated equipment warranting control on the USML.

DATES: The Department of State will accept comments on this proposed rule until January 20, 2012.

ADDRESSES: Interested parties may submit comments within 45 days of the date of publication by one of the following methods:

- *Email: DDTCResponseTeam@state.gov* with the subject line, ''ITAR Amendments—Category XIX, Gas Turbine Engines.''
- *Internet:* At *www.regulations.gov*, search for this notice by using this rule's RIN (1400–AC98).

Comments received after that date will be considered if feasible, but consideration cannot be assured. We will make all comments (including any personally identifying information or information for which a claim of confidentiality is asserted in those comments or their transmittal emails) available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls Web site at *www.pmddtc.state.gov*. Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov,* leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via *www.regulations.gov* are immediately available for public inspection.

FOR FURTHER INFORMATION CONTACT: Director Charles B. Shotwell, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663–2792 or Fax (202) 261–8199; Email *DDTCResponseTeam@state.gov*. *Attn:* Regulatory Change, USML Category XIX.

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The items subject to the jurisdiction of the ITAR, *i.e.,* ''defense articles,'' are identified on the ITAR's U.S. Munitions List (USML) (22 CFR 121.1). With few exceptions, items not subject to the export control jurisdiction of the ITAR are subject to the jurisdiction of the Export Administration Regulations (''EAR,'' 15 CFR parts 730–774, which includes the Commerce Control List in part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. Both the ITAR and the EAR impose license requirements on exports and reexports. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR.

Export Control Reform Update

The Departments of State and Commerce described in their respective Advance Notices of Proposed Rulemaking (ANPRM) in December 2010 the Administration's plan to make the USML and the CCL positive, tiered, and aligned so that eventually they can be combined into a single control list (see ''Commerce Control List: Revising Descriptions of Items and Foreign Availability,'' 75 FR 76664 (December 9, 2010) and ''Revision to the United States Munitions List,'' 75 FR 76935 (December 10, 2010)). The notices also called for the establishment of a ''bright line'' between the USML and the CCL to reduce government and industry uncertainty regarding export jurisdiction by clarifying whether particular items are subject to the jurisdiction of the ITAR or the EAR. While these remain the Administration's ultimate Export Control Reform objectives, their concurrent implementation would be problematic in the near term. In order to more quickly reach the national security objectives of greater interoperability with our allies, enhancing our defense industrial base, and permitting the U.S. Government to focus its resources on controlling and monitoring the export and reexport of more significant items to destinations, end uses, and end users of greater concern than our NATO and other multi-regime partners, the Administration has decided, as an interim step, to propose and implement revisions to both the USML and the CCL that are more positive, but not yet tiered.

Specifically, based in part on a review of the comments received in response to the December 2010 notices, the Administration has determined that fundamentally altering the structure of the USML by tiering and aligning them on a category-by-category basis would significantly disrupt the export control compliance systems and procedures of exporters and reexporters. For example, until the entire USML was revised and became final, some USML categories would follow the legacy numbering and control structures while the newly revised categories would follow a completely different numbering structure. In order to allow for the national security benefits to flow from re-aligning the jurisdictional status of defense articles that no longer warrant control on the USML on a category-by-category basis while minimizing the impact on exporters' internal control and jurisdictional and classification marking systems, the Administration plans to proceed with building positive lists now and afterward return to structural changes.

Establishment of Category XIX for Gas Turbine Engines and Associated Equipment

This proposed rule establishes USML Category XIX to cover gas turbine engines and associated equipment currently covered in Categories VI, VII, and VIII. The USML identifies engine subcategories in all three of these categories, but there has been confusion concerning the controls in Category VI (which currently lists only ''naval nuclear propulsion plants,'' leading exporters to question whether other types of propulsion systems are controlled as ''components'' in Category VI(f)), Category VII (which controls both diesel and gas turbine engines under the same general term ''engines'' in Category VII(f)), and Category VIII (which controls ''military aircraft engines'' but not reciprocating engines). The intent of this change is to make clear that gas turbine engines for surface vessels, vehicles, and aircraft that meet certain objective parameters are controlled on the USML.

The most significant aspect of this more positive, but not yet tiered, proposed USML category is that it does not contain controls on all generic parts, components, accessories, and attachments that are in any way specifically designed or modified for a defense article, regardless of their significance to maintaining a military advantage for the United States. Rather, it contains a list of specific types of parts, components, accessories, and attachments that continue to warrant control on the USML. All other parts, components, accessories, and attachments will become subject to the new 600 series controls in the CCL to be published separately by the Department of Commerce. The Administration has also proposed revisions to the jurisdictional status of certain militarily less significant end items that do not warrant USML control, but the primary impact of this proposed rule will be with respect to current USML controls on parts, components, accessories, and attachments that no longer warrant USML control.

Definition for Specially Designed

Although one of the goals of the export control reform initiative is to describe USML controls without using design intent criteria, a few of the controls in the proposed revision nonetheless use the term ''specially designed.'' It is, therefore, necessary for the Department to define the term. Two proposed definitions have been published to date.

The Department first provided a draft definition for ''specially designed'' in the December 2010 ANPRM (75 FR 76935) and noted the term would be used minimally in the USML, and then only to remain consistent with the Wassenaar Arrangement or other multilateral regime obligation or when no other reasonable option exists to describe the control without using the term. The draft definition provided at that time is as follows: ''For the purposes of this Subchapter, the term ''specially designed'' means that the end-item, equipment, accessory, attachment, system, component, or part (see ITAR § 121.8) has properties that (i) Distinguish it for certain predetermined purposes, (ii) are directly related to the functioning of a defense article, and (iii) are used exclusively or predominantly in or with a defense article identified on the USML.''

The Department of Commerce subsequently published on July 15, 2011, for public comment the Administration's proposed definition of ''specially designed'' that would be common to the CCL and the USML. The public provided more than 40 comments on that proposed definition on or before the September 13 deadline for comments. The Departments of State, Commerce, and Defense are now reviewing those comments and related issues, and the Departments of State and Commerce plan to publish for public comment another proposed rule on a definition of ''specially designed'' that would be common to the USML and the CCL. In the interim, and for the purpose of evaluation of this proposed rule, reviewers should use the definition provided in the December ANPRM.

Request for Comments

As the U.S. Government works through the proposed revisions to the USML, some solutions have been adopted that were determined to be the best of available options. With the thought that multiple perspectives would be beneficial to the USML revision process, the Department welcomes the assistance of users of the lists and requests input on the following:

(1) A key goal of this rulemaking is to ensure the USML and the CCL together control all the items that meet Wassenaar Arrangement commitments embodied in the Munitions List. To that end, the public is asked to identify any potential lack of coverage brought about by the proposed rules for engines for vessels of war, military vehicles, and military aircraft contained in this notice and the new ECCNs published separately by the Department of Commerce when reviewed together.

(2) The assumption behind the creation of a single category for items that are part of systems controlled in several categories is that the consolidation of these items sharing essentially the same technology will clarify which engines and related items are controlled, will simplify the regulations as a whole, and will lead to more effective controls over engines with national security concerns. We ask the public to specifically address this assumption, and to provide its opinion on whether the creation of a new category, as opposed to retaining controls in various categories, would be easier for users of the list.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule with a 45-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function. As noted above, and also without prejudice to the Department position that this rulemaking is not subject to the APA, the Department previously published a related Advance Notice of Proposed Rulemaking (RIN 1400–AC78), and accepted comments for 60 days.

Regulatory Flexibility Act

Since this proposed amendment is not subject to 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This proposed amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This proposed amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proposed amendment.

Executive Order 12866

The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has reviewed the proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

Executive Order 12988

The Department of State has reviewed the proposed amendment in light of sections 3(a) and 3(b) (2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirement of Executive Order 13175 does not apply to this rulemaking.

Executive Order 13563

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Paperwork Reduction Act

This proposed amendment does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 121 is proposed to be amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920.

2. Section 121.1 is revised to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category XIX—Gas Turbine Engines and Associated Equipment

*(a) Turbofan and Turbojet engines, whether in development, production, or inventory (including technology demonstrators), capable of 15,000 lbf (66.7 kN) of thrust or greater that have any of the following:

(1) with or capable of thrust augmentation (afterburner);

(2) thrust or exhaust nozzle vectoring;

(3) contains parts or components controlled in paragraph (f)(4) of this category;

(4) capable of inverted flight;

(5) capable of high power extraction (greater than 50 percent of engine thrust) at altitudes greater than 40,000 feet; or

(6) capable of directed flow thrust reversing using bypass/fan and core flow air and also capable for being deployed in flight.

*(b) Turboshaft and Turboprop engines, whether in development, production, or inventory (including technology demonstrators), capable of 1500 shp (1119 kW) or greater that have any of the following:

(1) Cooled low pressure turbine, cooled intermediate pressure turbine, or cooled power turbine;

(2) contains parts or components controlled in paragraph (f)(4)(i) or (f)(4)(ii) of this category; or

(3) capable of oil sump sealing when the engine is in the vertical position.

(c) Engines, whether in development, production, or inventory (including technology demonstrators), ''specially designed'' for armed or military unmanned aerial vehicle systems, cruise missiles, or target drones.

*(d) AGT1500, CTS800, TF40B, T55, TF60, T700, and TF50 engines.

*(e) Digital engine controls (e.g., Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)) ''specially designed'' for gas turbine engines controlled in this category.

(f) Components, parts, accessories, attachments, or associated equipment as follows:

(1) components, parts, accessories, attachments, and equipment ''specially designed'' for the following U.S.-origin engines (and military variants thereof): AE1107C, F101, F107, F112, F118, F119, F120, F124, F125, F135, F136, F414, F415, J402, GE38, TF40B, and TF60;

Note: Digital engine controls (*e.g.,* Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)) ''specially designed'' for the engines identified in (f)(1) of this category are controlled by (e) of this category.

*(2) hot section components (*i.e.,* combustors, turbine blades, vanes, nozzles, disks and shrouds) ''specially designed'' for gas turbine engines controlled this category and related cooled components (*i.e.,* cooled low pressure turbine blades, vanes, disks; cooled augmenters; and cooled nozzles) ''specially designed'' for gas turbine engines controlled in this category. The cowl, diffuser, dome, chamber, shells, and liners for the combustors are also controlled by this paragraph;

(3) engine monitoring systems (*i.e.,* prognostics, diagnostics, and health) ''specially designed'' for gas turbine engines and components controlled in this category; or

(4) any component, part, accessory, attachment, equipment, or system that:

(i) is classified;

(ii) contains classified software;

(iii) is manufactured using classified production data; or

(iv) is being developed using classified information.

''Classified'' means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government.

(g) Technical data and defense services directly related to the defense articles enumerated in paragraphs (a) through (f) of this category.

* * * * *

Dated: November 28, 2011.

Ellen O. Tauscher,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2011–30977 Filed 12–5–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice 7702]

RIN 1400–AC77

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category VII

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: As part of the President's Export Control Reform effort, the Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) to revise Category VII (ground vehicles) of the U.S. Munitions List (USML) to describe more precisely the military ground vehicles warranting control on the USML.

DATES: The Department of State will accept comments on this proposed rule until January 20, 2012.

ADDRESSES: Interested parties may submit comments within 45 days of the date of publication by one of the following methods:

• *Email:* *DDTCResponseTeam@state.gov* with the subject line, ''ITAR Amendments—Category VII.''

• *Internet:* At *www.regulations.gov*, search for this notice by using this rule's RIN (1400–AC77).

Comments received after that date will be considered if feasible, but consideration cannot be assured. We will make all comments (including any personally identifying information or information for which a claim of confidentiality is asserted in those comments or their transmittal emails) available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls Web site at *www.pmddtc.state.gov.* Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov,* leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via *www.regulations.gov* are immediately available for public inspection.

FOR ADDITIONAL INFORMATION CONTACT: Director Charles B. Shotwell, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792, or email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, USML Category VII.

SUPPLEMENTARY INFORMATION: On December 10, 2010, the Department published as a proposed rule a revised Category VII that included tiering (75 FR 76930). As discussed below, the tiering of the categories has been postponed. In this regard, this revision differs from the earlier one. Because the differences between the two proposed versions of Category VII are considerable, the Department will not provide an assessment of public comments received from the first proposed rule, but welcomes comments on this proposed rule from all parties. If you submitted comments in response to the December 2010 rulemaking, please re-submit your comments, if they are still appropriate.

Background

The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The items subject to the jurisdiction of the ITAR, i.e., ''defense articles,'' are identified on the ITAR's U.S. Munitions List (USML) (22 CFR 121.1). With few exceptions, items not subject to the export control jurisdiction of the ITAR are subject to the jurisdiction of the Export Administration Regulations (''EAR,'' 15 CFR parts 730–774, which includes the Commerce Control List in part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. Both the ITAR and the EAR impose license requirements on exports and reexports. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR.

Export Control Reform Update

The Departments of State and Commerce described in their respective Advanced Notices of Proposed Rulemaking (ANPRM) in December 2010 the Administration's plan to make the USML and the CCL positive, tiered, and aligned so that eventually they can be combined into a single control list (see ''Commerce Control List: Revising Descriptions of Items and Foreign Availability,'' 75 FR 76664 (Dec. 9, 2010) and ''Revision to the United States Munitions List,'' 75 FR 76935 (Dec. 10, 2010)). The notices also called for the establishment of a ''bright line'' between the USML and the CCL to reduce government and industry uncertainty regarding export jurisdiction by clarifying whether particular items are subject to the jurisdiction of the ITAR or the EAR. While these remain the Administration's ultimate Export Control Reform objectives, their concurrent implementation would be problematic in the near term. In order to more quickly reach the national security objectives of greater interoperability with our allies, enhancing our defense industrial base, and permitting the U.S. Government to focus its resources on controlling and monitoring the export and re-export of more significant items to destinations, end uses, and end users of greater concern than our NATO and other multi-regime partners, the Administration has decided, as an interim step, to propose and implement revisions to both the USML and the CCL that are more positive, but not yet tiered.

Specifically, based in part on a review of the comments received in response to the December 2010 notices, the Administration has determined that fundamentally altering the structure of the USML by tiering and aligning them on a category-by-category basis would significantly disrupt the export control compliance systems and procedures of exporters and reexporters. For example, until the entire USML was revised and became final, some USML categories would follow the legacy numbering and control structures while the newly revised categories would follow a completely different numbering structure. In order to allow for the national security benefits to flow from re-aligning the jurisdictional status of defense articles that no longer warrant control on the USML on a category-by-category basis while minimizing the impact on exporters' internal control and jurisdictional and classification marking systems, the Administration plans to proceed with building positive lists now and afterward return to structural changes.

Revision of Category VII

This proposed rule revises USML Category VII, Ground Vehicles, to establish a clear ''bright line'' between the USML and the CCL for the control of military ground vehicles. The proposed revision narrows the types of ground vehicle controlled on the USML to only those that warrant control under the stringent requirements of the Arms Export Control Act. Changes include the removal of most unarmored and unarmed military vehicles, trucks, trailers, and trains (unless ''specially designed'' as firing platforms for weapons above .50 caliber), and armored vehicles (either unarmed or with inoperable weapons) manufactured

before 1956. Also, this revision removes gas turbine engines designed for ground vehicles from inclusion in this category. Gas turbine engines for articles controlled in this category will likely be included in proposed Category XIX, which will be the subject of a separate notice.

This proposed rule also would remove from reserved status § 121.4 and define therein ''ground vehicles'' for purposes of the revised USML Category VII.

The most significant aspect of this more positive, but not yet tiered, proposed USML category is that it does not contain controls on all generic parts, components, accessories, and attachments that are specifically designed or modified for a defense article, regardless of their significance to maintaining a military advantage for the United States. Rather, it contains a positive list of specific types of parts, components, accessories, and attachments that continue to warrant control on the USML. All other parts, components, accessories, and attachments will become subject to the new 600 series controls in Category 0 of the CCL that we anticipate will be published separately by the Department of Commerce. The Administration has also proposed revisions to the jurisdictional status of certain militarily less significant end items that do not warrant USML control, but the primary impact of this proposed rule will be with respect to current USML controls on parts, components, accessories, and attachments that no longer warrant USML control.

Definition for Specially Designed

Although one of the goals of the export control reform initiative is to describe USML controls without using design intent criteria, a few of the controls in the proposed revision nonetheless use the term ''specially designed.'' It is, therefore, necessary for the Department to define the term. Two definitions have been proposed to date.

The Department first provided a draft definition for ''specially designed'' in the December 2010 ANPRM (75 FR 76935) and noted the term would be used minimally in the USML, and then only to remain consistent with the Wassenaar Arrangement or other multilateral regime obligations, or when no other reasonable option exists to describe the control without using the term. The draft definition provided at that time is as follows: ''For the purposes of this Subchapter, the term ''specially designed'' means that the end-item, equipment, accessory, attachment, system, component, or part (see ITAR § 121.8) has properties that (i) Distinguish it for certain predetermined purposes, (ii) are directly related to the functioning of a defense article, and (iii) are used exclusively or predominantly in or with a defense article identified on the USML.''

The Department of Commerce subsequently published on July 15, 2011, for public comment the Administration's proposed definition of ''specially designed'' that would be common to the CCL and the USML. The public provided more than 40 comments on that proposed definition on or before the September 13 deadline for comments. The Departments of State, Commerce, and Defense are now reviewing those comments and related issues, but based on a preliminary evaluation of the comments and other considerations, the Departments of State and Commerce plan to publish for public comment another proposed rule on a definition of ''specially designed'' that would be common to the USML and the CCL. For the purpose of evaluation of this proposed rule, reviewers should use the definition provided in the December 2010 ANPRM.

Request for Comments

As the U.S. Government works through the proposed revisions to the USML, some solutions have been adopted that were determined to be the best of available options. With the thought that multiple perspectives would be beneficial to the USML revision process, the Department welcomes the assistance of users of the lists and requests input on the following:

(1) A key goal of this rulemaking is to ensure the USML and the CCL together control all the items that meet Wassenaar Arrangement commitments embodied in Munitions List Category 6 (ML 6). To that end, the public is asked to identify any potential lack of coverage brought about by the proposed rules for Category VII contained in this FRN and the new Category 0 ECCNs published separately by the Department of Commerce, when reviewed together.

(2) This amendment removes from the USML unarmed but armored military vehicles manufactured prior to 1956. The rationale is to discontinue controlling on the USML vehicles of almost no military significance. Armored military vehicles manufactured after 1955 would be maintained on the USML. We ask the public to comment on the efficacy of splitting jurisdiction for these vehicles between the USML and the CCL.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule with a 45-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function. As noted above, and also without prejudice to the Department position that this rulemaking is not subject to the APA, the Department previously published a related Advance Notice of Proposed Rulemaking (RIN 1400–AC78) and a related Notice of Proposed Rulemaking (RIN 1400–AC77), and accepted comments for 60 days in response to both notices.

Regulatory Flexibility Act

Since this proposed amendment is not subject to 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This proposed amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This proposed amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed amendment does not have sufficient

federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proposed amendment.

Executive Order 12866

The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has reviewed the proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

Executive Order 12988

The Department of State has reviewed the proposed amendment in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirement of Executive Order 13175 does not apply to this rulemaking.

Executive Order 13563

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Paperwork Reduction Act

This proposed amendment does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 121 is proposed to be amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920.

2. Section 121.1 is amended by revising U.S. Munitions List Category VII to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category VII—Ground Vehicles

*(a) Armored combat ground vehicles (see § 121.4 of this subchapter) as follows:

(1) tanks; or

(2) infantry fighting vehicles.

*(b) Ground vehicles (not enumerated in paragraph (a) of this category) and trailers that are armed or are ''specially designed'' to serve as a firing or launch platform (see § 121.4 of this subchapter).

(c) Ground vehicles and trailers equipped with any mission systems controlled under this subchapter (see § 121.4 of this subchapter).

(d) [Reserved]

*(e) Armored support ground vehicles (see § 121.4 of this subchapter).

*(f) [Reserved—for articles formerly controlled under this paragraph see Category XIX and ECCN 0A606.]

(g) Ground vehicle components, parts, accessories, attachments, and associated equipment as follows:

(1) armored hulls, armored turrets, and turret rings;

(2) active protection systems (*i.e.,* defensive systems that actively detect and track incoming threats and launch a ballistic, explosive, energy, or electromagnetic countermeasure(s) to neutralize the threat prior to contact with a vehicle) and parts and components ''specially designed'' therefor;

(3) composite armor parts and components ''specially designed'' for the vehicles in this category;

(4) spaced armor components and parts, including slat armor components and parts ''specially designed'' for the vehicles in this category;

(5) reactive armor parts and components;

(6) electromagnetic armor parts and components, including pulsed power parts and components ''specially designed'' therefor;

(7) built in test equipment (BITE) to evaluate the condition of weapons or other mission systems for vehicles identified in this Category. This does not include BITE that provides diagnostics solely for a subsystem or component for the basic operation of the vehicle.

(8) gun mount, stabilization, turret drive, and automatic elevating systems, and parts and components ''specially designed'' therefor;

(9) self-launching bridge components rated class 60 or above for deployment by vehicles enumerated in this category;

(10) suspension components as follows:

(i) rotary shock absorbers ''specially designed'' for the vehicles weighing more than 30 tons in this category; or

(ii) torsion bars ''specially designed'' for the vehicles weighing more than 50 tons in this category;

(11) kits ''specially designed'' to convert a vehicle enumerated in this category into either an unmanned or a driver-optional vehicle. For a kit to be controlled by this paragraph, it must, at a minimum, include equipment for:

(i) remote or autonomous steering;

(ii) acceleration and braking; and

(iii) a control system;

(12) fire control computers, mission computers, vehicle management computers, integrated core processers, stores management systems, armaments control processors, vehicle-weapon interface units and computers;

(13) test or calibration equipment for the mission systems of the vehicles controlled in this category, except those enumerated elsewhere; or

*(14) any component, part, accessory, attachment, equipment, or system that:

(i) is classified;

(ii) contains classified software;

(iii) is manufactured using classified production data; or

(iv) is being developed using classified information.

''Classified'' means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government.

Note: Parts, components, accessories, and attachments ''specially designed'' for vehicles enumerated in this category but not listed in Category VII(g) are subject to the EAR under ECCN 0A606.

(h) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (g) of this category (see § 125.4 of this subchapter for exemptions).

* * * * *

3. Section 121.4 is added to read as follows:

121.4 Ground vehicles.

(a) In Category VII, ''Ground Vehicles'' means developmental, production, or inventory ground vehicles, whether manned or unmanned, that:

(1) are armed or are ''specially designed'' to be used as a platform to deliver munitions or otherwise destroy or incapacitate targets (*e.g.,* firing lasers, launching rockets, firing missiles, firing mortars, firing artillery rounds, or firing other ammunition greater than .50 caliber);

(2) are armored support vehicles capable of off-road or amphibious use ''specially designed'' to transport or deploy personnel or materiel, or to move with other vehicles over land in

close support of combat vehicles or troops (*e.g.,* personnel carriers, resupply vehicles, combat engineer vehicles, recovery vehicles, reconnaissance vehicles, bridge launching vehicles, ambulances, and command and control vehicles); or

(3) incorporate any ''mission systems'' controlled under this subchapter. ''Mission systems'' are defined as ''systems'' (see § 121.8(g) of this subchapter) that are defense articles that perform specific military functions, such as by providing military communication, target designation, surveillance, target detection, or sensor capabilities.

Note: ''Armored'' ground vehicles, for purposes of paragraph (a) of this section, (i) are ground vehicles that have integrated, fully armored hulls or cabs, or (ii) are ground vehicles on which add-on armor has been installed to provide ballistic protection to level III (National Institute of Justice Standard 0108.01, September 1985) or better. ''Armored'' vehicles do not include those that are merely capable of being equipped with add-on armor.

(b) Ground Vehicles ''specially designed'' for military applications that are not identified in (a) of this section are subject to the EAR under ECCN 0A606, including any unarmed ground vehicles, regardless of origin or designation, manufactured prior to 1956 and unmodified since 1955. Modifications made to incorporate safety features required by law, are cosmetic (*e.g.* different paint, repositioning of bolt holes), or that add parts or components otherwise available prior to 1956 are considered ''unmodified'' for the purposes of this subparagraph. ECCN 0A606 also includes unarmed vehicles derived from otherwise EAR99 civilian vehicles that have been modified or otherwise fitted with materials to provide ballistic protection, including protection to level III (National Institute of Justice Standard 0108.01, September 1985) or better and that do not have reactive or electromagnetic armor.

Dated: 28 November 2011.

Ellen O. Tauscher,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2011–30975 Filed 12–5–11; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

22 CFR Part 171

[Public Notice 7710]

Privacy Act; Notice of Proposed Rulemaking: State-78, Risk Analysis and Management Records

SUMMARY: Notice is hereby given that the Department of State proposes to amend its Privacy Act regulation exempting portions of a newly created system of records from certain provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a). Certain portions of the Risk Analysis and Management (RAM) Records, State-78, system of records contain criminal investigation records, investigatory material for law enforcement purposes, confidential source information and are proposed to be exempted under 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

DATES: Comments on this system of records must be submitted by January 17, 2012.

ADDRESSES: Any persons interested in commenting on the proposed exemptions of the new system of records may do so by writing to the Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street NW.; Washington, DC 20522–8001.

FOR FURTHER INFORMATION CONTACT: Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street NW.; Washington, DC 20522–8001.

SUPPLEMENTARY INFORMATION: A notice of proposal to create a new system of records (Public Notice XXXX) is published elsewhere in the **Federal Register**. The proposed system, Risk Analysis and Management (RAM) Records, State-78, will support the vetting of directors, officers, or other employees of organizations who apply for Department of State contracts, grants, cooperative agreements, or other funding. The information collected from these organizations and individuals is specifically used to conduct screening to ensure that Department funds are not used to provide support to entities or individuals deemed to be a risk to U.S. national security interests. The records may contain criminal investigation records, investigatory material for law enforcement purposes, and confidential source information.

The Department of State proposes to amend 22 CFR part 171 to exempt portions of the Risk Analysis and Management Records system of records from subsections (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G), (H), and (I), (e)(5) and (8), (f), (g), and (h) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), pursuant to 5 U.S.C. 552 a (j)(2) and from subsections (c)(3),(d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(1), (k)(2), and (k)(5).

Dated: November 16, 2011.

Keith D. Miller,

Director, Office of Operations, Bureau of Administration, U.S. Department of State.

List of Subjects in 22 CFR Part 171:

Privacy.

Title 22, part 171 covering certain records in State-78 is proposed to be amended as follows:

PART 171—[AMENDED]

1. The authority citation for part 171 continues to read as follows:

Authority: 22 U.S.C. 552, 552a; Ethics in Government Act of 1978, Pub. L. 95–521, 92 Stat. 1824, as amended; E.O. 12958, as amended, 60 FR 19825, 3 CFR, 1995 Comp., p. 333; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

2. Section § 171.36 is amended by adding the following exemptions to paragraphs (a)(2), (b)(1), (b)(2), and (b)(5) to read as follows:

§ 171.36 Exemptions [Amended]

* * * * *

(a) * * *

(2) * * *

Risk Analysis and Management Records, STATE–78.

* * * * *

(b) * * *

(1) * * *

Risk Analysis and Management Records, STATE–78.

* * * * *

(b) * * *

(2) * * *

Risk Analysis and Management Records, STATE–78.

* * * * *

(b) * * *

(5) * * *

Risk Analysis and Management Records, STATE–78.

[FR Doc. 2011–31267 Filed 12–5–11; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

[SATS No. AR–039–FOR; Docket ID: OSM–2011–0016]

Arkansas Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Arkansas regulatory program (Arkansas program) and the Arkansas abandoned mine land reclamation plan (Arkansas plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Arkansas proposes to revise substantial portions of their regulatory program and abandoned mine land plan, make grammatical changes, correct punctuation, revise dates, and add citations. The proposed amendment consists of substantive changes to Arkansas regulations regarding Subchapter A—General Requirements; Subchapter G—Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures Systems; Subchapter J—Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations; Subchapter K—State Program Performance Standards; Subchapter M—Training Programs for Blasters and Members of Blasting Crews, and Certification Programs for Blasters; and Subchapter R—Abandoned Mine Land Reclamation.

This document provides the times and locations that the Arkansas program, Arkansas plan, and the proposed amendment are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.s.t., January 5, 2012. If requested, we will hold a public hearing on the amendment on January 3, 2012. We will accept requests to speak at a hearing until 4 p.m., c.s.t. on December 21, 2011.

ADDRESSES: You may submit comments, identified by SATS No. AR–039–FOR, by any of the following methods:

- *Mail/Hand Delivery:* Alfred L. Clayborne, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128–4629.
- *Fax:* (918) 581–6419.
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID OSM–2011–0016. If you would like to submit comments go to *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Comment Procedures heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Arkansas regulations, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office; or you can view the full text of the program amendment available for you to read at *http://www.regulations.gov*.

Alfred L. Clayborne, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128–4629. *Telephone:* (918) 581–6430.

In addition, you may review a copy of the amendment during regular business hours at the following location:

Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, Arkansas 72118–5317. *Telephone:* (501) 682–0744.

FOR FURTHER INFORMATION CONTACT: Alfred L. Clayborne, Director, Tulsa Field Office. Telephone: (918) 581–6430. Email: *aclayborne@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Arkansas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior (Secretary) conditionally approved the Arkansas program effective November 21, 1980. You can find background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program in the November 21, 1980, **Federal Register** (45 FR 77003). You can find later actions on the Arkansas program at 30 CFR 904.10, 904.12, 904.15.

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Arkansas plan on May 2, 1983. You can find background information on the Arkansas plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the May 2, 1983, **Federal Register** (48 FR 19710). You can find later actions concerning the Arkansas plan at 30 CFR 904.25 and 904.26.

II. Description of the Proposed Amendment

By letter dated August 26, 2011 (Administrative Record No. AR–571.06), Arkansas submitted a proposed amendment to its program and plan pursuant to SMCRA. Arkansas submitted the amendment in response to a September 30, 2009 (Administrative Record No. AR–571), letter from OSM in accordance with 30 CFR 732.17(c). Arkansas is also making substantial changes to other sections of its regulatory program and its abandoned mine land plan on its own initiative. The full text of the program amendment is available for you to read at the

locations listed above under **ADDRESSES** or at *http://www.regulations.gov.*

Arkansas proposes to revise every section title throughout its code by replacing ''Section'' with ''Reg.20.'' and by deleting the title dates. Arkansas also plans to replace the references to ''Section'' with ''Reg.20.,'' replace the word ''Director'' with ''Department,'' and replace the word ''Chapter'' with ''Code'' throughout their regulations.

Arkansas proposes to revise substantial portions of their regulatory program and abandoned mine land plan, make grammatical changes, correct punctuation, revise dates, and add citations. The Arkansas regulations that contain substantive changes are listed in the table below.

SUBSTANTIVE CHANGES TABLE

Arkansas Reg. 20. Sections	Title
SUBCHAPTER A—GENERAL PART 700—GENERAL	
700.11, 700.12, and 700.16	Rulemaking Initiated by the Commission; Petitions to Initiate Rulemaking; and Employee Protection.
PART 701—STATE PROGRAM	
701.5	Definitions.
PART 702—EXEMPTION FOR COAL EXTRACTION INCIDENTAL TO THE EXTRACTION OF OTHER MINERALS	
702.13	Public Availability of Information.
PART 705—RESTRICTIONS ON FINANCIAL INTERESTS OF ENFORCEMENT PERSONNEL	
705.1	Scope.
PART 762—CRITERIA FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS	
762.5	Definition.
SUBCHAPTER G—SURFACE COAL MINING AND RECLAMATION OPERATIONS PERMITS AND COAL EXPLORATION PROCEDURES SYSTEMS	
PART 770—GENERAL	
770.5	Definitions.
PART 771—GENERAL REQUIREMENTS FOR PERMITS AND APPLICATIONS	
771.25	Permit Fees.
PART 776—GENERAL REQUIREMENTS FOR COAL EXPLORATION OPERATIONS	
776.17	Public Availability of Information.
PART 778—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE AND RELATED INFORMATION	
778.1, 778.2, 778.4, 778.6, 778.9, 778.11, 778.12, 778.13, 778.14, 778.17, 778.20, 778.21, and 778.22.	Scope; Objectives; Responsibility; Applicability, Certifying and Updating Existing Permit Application Information; Applicant and Operator Information; Permit History Information; Property Interest Information; Violation Information; Permit Term Information; Identification of Location of Public Office for Filing of Application; Newspaper Advertisement and Proof of Publication; and Facilities or Structures Used in Common.
PART 782—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION	
782.1–782.21	Scope; Objectives; Responsibilities; Applicability; Identification of Interests; Compliance Information; Right of Entry and Operation Information; Relationship to Areas Designated Unsuitable For Mining; Permit Term Information; Personal Injury and Property Damage Insurance Information; Identification of Other Licenses and Permits; Identification of Location of Public Office for Filing of Application; and Newspaper Advertisement and Proof of Publication.
PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING	
785.14, 785.16, 785.18, and 785.25	Mountaintop Removal Mining; Permits Incorporating Variances from Approximate Original Contour Restoration Requirements for Steep Slope Mining; Variances for Delay in Contemporaneous Reclamation Requirements in Combined Surface and Underground Mining Operations; and Lands Eligible for Remining.

SUBSTANTIVE CHANGES TABLE—Continued

Arkansas Reg. 20. Sections	Title
PART 786—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING	
786.1, and 786.3–786.31	Scope; Responsibilities; Pre-Application Conference; Regulatory Coordination with Requirements under Other Laws; Public Participation in Permit Processing; Review of Permit Applications; General Provisions for Review of Permit Application Information and Entry of Information into AVS; Review of Applicant, Operator, and Ownership and Control Information; Review of Permit History; Review of Compliance History; Permit Eligibility Determination; Unanticipated Events or Conditions at Remining Sites; Eligibility for Provisionally Issued Permits; Written Findings for Permit Application Approval; Performance Bond Submittal; Permit Conditions; Permit Issuance and Right of Renewal; Initial Review and Finding Requirements for Improvidently Issued Permits; Notice Requirements for Improvidently Issued Permits; Suspension or Rescission Requirements for Improvidently Issued Permits; Eligibility to Challenge Ownership or Control Listings and Findings; Procedures for Challenging an Ownership or Control Listing or Finding; Burden of Proof for Ownership or Control Challenges; Written Decision on Challenges to Ownership or Control Listings or Findings; Conditions of Permits: Environment, Public Health, and Safety; Improvidently Issued Permits: General Procedures; and Improvidently Issued Permits: Recision Procedures.
787.12	Judicial Review.
PART 788—REVISION; RENEWAL; TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS; POST-PERMIT ISSUANCE REQUIREMENTS; AND OTHER ACTIONS BASED ON OWNERSHIP, CONTROL, AND VIOLATION INFORMATION	
788.5, 788.9, 788.10, 788.11, 788.13, 788.14, 788.15, 788.16, 788.17, 788.18, and 788.19.	Definitions; Post-Permit Issuance Requirements and Other Actions Based on Ownership, Control, and Violation Information; Post-Permit Issuance Requirements for Permittees; Review of Permits; Permit Renewals: General Permit Renewals: Completed Applications; Permit Renewals: Terms; Permit Renewals: Approval or Denial; Transfer, Assignment, or Sale of Permit Rights, Transfer, Assignments, or Sale of Permit Rights; Transfer, Assignments, or Sale of Permit Rights: Obtaining Approval; and Requirements for New Permits for Persons Succeeding to Rights Granted Under a Permit.
SUBCHAPTER J—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS	
PART 800—BONDS AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER THE STATE PROGRAM	
800.23 and 800.40	Self-bonding; and Requirement to Release Performance Bonds.
SUBCHAPTER K—STATE PROGRAM PERFORMANCE STANDARDS	
PART 810—STATE PROGRAM PERFORMANCE STANDARDS GENERAL	
810.11	Applicability.
PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES	
816.11, 816.13, 816.14, 816.22, 816.41, 816.42, 816.43, 816.44, 816.46, 816.48, 816.49, 816.50–S, 816.50–U, 816.51–S, 816.52–S, 816.53, 816.54, 816. 55, 816.61–U, 816.64–U, 816.68, 816.71, 816.100, 816.101–S, 816.101–U, 816.102, 816.106, 816.107, 816.113, 816.114, 816.116, 816.121–U, 816.122–U, 816.133, 816.180, and 816.181.	Signs and Markers; Casing and Sealing of Drilled Holes General Requirements; Casing and Sealing of Drilled Holes: Temporary; Topsoil and Subsoil; Hydrologic Balance: Protection; Hydrologic Balance: Water Quality Standards and Effluent Limitations; Hydrologic Balance: Diversions; Hydrologic Balance: Stream Channel Diversions; Hydrologic Balance: Siltation Structure; Hydrologic Balance: Acid-forming and Toxic-forming Spoil; Impoundments, Hydrologic Balance: Ground Water Protection; Hydrologic Balance: Underground Mine Entry and Access Discharges; Hydrologic Balance: Protection of Groundwater Recharge Capacity; Hydrologic Balance: Surface And Groundwater Monitoring; Hydrologic Balance: Transfer Of Wells; Hydrologic Balance: Water Rights and Replacement; Hydrologic Balance: Discharge of Water into an Underground Mine; Use of Explosives: General Requirements; Use of Explosives: Public Notice of Blasting Schedule; Use of Explosives: Records of Blasting Operations; Disposal of Excess Spoil: General Requirements; Contemporaneous Reclamation; Backfilling and Grading: Time and Distance Requirements; Backfilling and Grading: General Requirements; Backfilling and Grading: General Grading Requirements; Backfilling and Grading: Previously Mined Areas; Backfilling and Grading: Steep Slopes; Revegetation: Timing; Revegetation: Mulching and Other Soil Stabilizing Practices; Revegetation: Standards for Success; Subsidence Control: General Requirements; Subsidence Control: Public Notice; Postmining Land Use; Utility Installations; and Support Facilities.

SUBSTANTIVE CHANGES TABLE—Continued

Arkansas Reg. 20. Sections	Title
PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS —UNDERGROUND MINING ACTIVITIES	
817.1–817.181	Scope; Objectives; Signs and Markers; Casing and Sealing of Exposed Underground Openings: General Requirements; Casing and Sealing of Underground Openings: Temporary; Casing and Sealing of Underground Openings: Permanent; Topsoil and Subsoil; Hydrologic Balance: Protection; Hydrologic Balance: Water Quality Standards and Effluent Limitations; Hydrologic Balance: Diversions; Hydrologic Balance: Sediment Control Measures; Hydrologic Balance: Siltation Structures; Hydrologic Balance: Discharge Structures; Impoundments Hydrologic Balance: Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities; Hydrologic Balance: Surface Activities in or Adjacent to Perennial or Intermittent Streams; Coal Recovery; Use of Explosives: General Requirements; Use of Explosives: Pre-blasting Survey; Use of Explosives: Public Notice of Blasting Schedule; Use of Explosives: Blasting Signs, Warnings, and Access Control; Use of Explosives: Control of Adverse Effects; Use of Explosives: Seismographic Measurements; Use of Explosives: Records of Blasting Operations; Disposal of Excess Spoil: General Requirements; Disposal of Excess Spoil: Valley Fills/Head-of Hollow Fills; Disposal of Excess Spoil: Durable Rock Fills; Disposal of Excess Spoil: Pre-Existing Benches; Coal Mine Waste: General Requirements; Coal Mine Waste: Refuse Piles; Coal Mine Waste: Impounding Structures; Coal Mine Waste: Burning and Burned Waste Utilization; Disposal of Noncoal Mine Wastes; Stabilization of Surface Areas; Protection of Fish, Wildlife, and Related Environmental Values; Slides and Other Damage; Contemporaneous Reclamation; Backfilling and Grading: General Requirements; Backfilling and Grading: Previously Mined Areas; Backfilling and Grading: Steep Slopes; Revegetation: General Requirements; Revegetation: Timing; Revegetation: Mulching and Other Soil Stabilizing Practices; Revegetation: Standards for Success; Subsidence Control: General Requirements; Subsidence Control: Public Notice; Cessation of Operations: Temporary; Cessation of Operations: Permanent; Postmining Land Use; Roads: General; Roads: Primary Roads; Utility Installations; and Support Facilities.
PART 818—SPECIAL STATE PROGRAM PERFORMANCE STANDARDS—CONCURRENT SURFACE AND UNDERGROUND MINING	
818.1–818.15	Scope; Objective; Responsibilities; Applicability; Compliance with Variance; and Additional Performance Standards.
PART 819—SPECIAL STATE PROGRAM PERFORMANCE STANDARDS—AUGER MINING	
819.11, 819.1, 819.15, 819.17, 819.19, and 819.21	Auger Mining; Auger Mining: Coal Recovery; Auger Mining: Hydrologic Balance; Auger Mining: Subsidence Protection; Auger Mining: Backfilling and Grading; and Auger Mining: Protection of Underground Mining.
PART 823—SPECIAL STATE PROGRAM PERFORMANCE STANDARDS—OPERATIONS ON PRIME FARMLAND	
823.15	Revegetation and Restoration of Soil Productivity.
PROCEDURES PART 842—INSPECTIONS	
842.11	Inspections
PART 843—ENFORCEMENT	
843.11, 843.15, and 843.16	Cessation Orders; Informal Public Hearing; and Formal Review of Citations
PART 845—CIVIL PENALTIES	
845.11, 845.13, 845.15, 845.17, 845.18, 845.19, and 845.20.	How Assessments are Made; Point System for Penalties; Assessment of Separate Violations for Each Day; Procedures for Assessment of Civil Penalties; Procedures for Assessment Conference; Request for Adjudicatory Public Hearing; and Final Assessment and Payment of Penalty.
PART 846—INDIVIDUAL CIVIL PENALTIES	
846.5, 846.14, 846.17, and 846.18	Definitions; Amount of Individual Civil Penalty; Procedure for Assessment of Individual Civil Penalty; and Payment of Penalty.
PART 847—ALTERNATIVE ENFORCEMENT	
847.1–847.16	Scope; General Provisions; Criminal Penalties; and Civil Actions for Relief.

SUBSTANTIVE CHANGES TABLE—Continued

Arkansas Reg. 20. Sections	Title
SUBCHAPTER M—TRAINING PROGRAMS FOR BLASTERS AND MEMBERS OF BLASTING CREWS, AND CERTIFICATION PROGRAMS FOR BLASTERS	
PART 850—PROGRAMS	
850.16	Reciprocity.
SUBCHAPTER R—ABANDONED MINE LAND RECLAMATION	
PART 874—GENERAL RECLAMATION REQUIREMENTS	
874.12, 874.13, and 874.16	Eligible Lands and Water; Reclamation Objectives and Priorities; and Contractor Eligibility.
PART 877—RIGHTS OF ENTRY	
877.11, 877.12, 877.13, and 877.14	Consent to Entry; Entry for Studies or Exploration; Entry and Consent to Reclaim; and Entry for Emergency Reclamation.
PART 879—ACQUISITION, MANAGEMENT AND DISPOSITION OF LANDS AND WATER	
879.11, 879.12, 879.13, and 879.15	Land Eligible for Acquisition; Procedures for Acquisition; Acceptance of Gifts of Land; and Disposition of Reclaimed Lands.
PART 882—RECLAMATION ON PRIVATE LAND	
882.13	Liens.
PART 900—PROCEDURES FOR HEARING AND APPEALS	
900.2, 900.3, 900.4, 900.5, 900.6, 900.7, 900.9, and 900.12.	Filing of Documents; Form of Documents; Service and Proof of Service; Intervention, Voluntary Dismissal; Motions; Advancement of Proceedings; and Other Procedures.
PART—920 ADJUDICATORY HEARINGS	
920.1, 920.2, 920.3, 920.7, and 920.8	Presiding Officers; Powers of Presiding Officers; Notice of Hearing; Initial Orders and Decisions; and Effect of Initial Order or Decision.
PART 930—DISCOVERY	
930.1	Discovery.
PART 940—TEMPORARY AND EXPEDITED REVIEW	
940.3	Procedures for Expedited Review.
PART 960—APPEALS	
960.2–960.7	Appeals: How Taken; Answer; Stay Pending Appeal; Certified Transcript; Record on Appeal; and Extended Time for Appeals.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether Arkansas's proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of Arkansas State program.

Under the provisions of 30 CFR 884.15(a), we are requesting comments on whether the amendment satisfies the applicable State reclamation plan approval criteria of 30 CFR 884.14. If we approve the amendment, it will become part of the Arkansas plan.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying

information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.s.t. on December 21, 2011. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 14, 2011.

Ervin J. Barchenger,

Regional Director, Mid-Continent Region.

[FR Doc. 2011–31292 Filed 12–5–11; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[SATS No. CO–040–FOR, Docket ID: OSM–2011–0002]

Colorado Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: We are announcing the receipt of revisions pertaining to a previously proposed amendment to the Colorado regulatory program (hereinafter, the ''Colorado program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). Colorado proposes additions of rules and revisions to Rules of the Colorado Mined Land Reclamation Board for Coal Mining, 2 CCR 407–2, concerning the protection and replacement of the hydrologic balance, subsidence, valid existing rights determinations, roads, requirements associated with annual reclamation reports, prime farmland determinations, various definitions, permit revisions, performance bonds, backfill placement methods and requirements, backfilling and grading, and revegetation. Colorado intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Colorado program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., mountain daylight time January 5, 2012. If requested, we will hold a public hearing on the amendment on January 3, 2012. We will accept requests to speak until 4 p.m., mountain daylight time, on December 21, 2011.

ADDRESSES: You may submit comments, identified by ''CO–040–FOR'' or Docket ID number OSM–2011–0002, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The proposed rule has been assigned Docket ID OSM–2011–0002. If you would like to submit comments via the Federal eRulemaking portal, go to *www.regulations.gov* and follow the instructions.
- *Mail, Hand Delivery/Courier:* Kenneth Walker, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202, *Phone:* (303) 293–5012, *Fax:* (303) 293–5058, *Email: kwalker@osmre.gov.*

Instructions: All submissions received must include the agency name and ''CO–040–FOR.'' For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Comment Procedures heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: Access to the docket to review copies of the Colorado program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement's (OSM's) Denver Field Division. In addition, you may review a copy of the amendment during regular business hours at the following locations:

Kenneth Walker, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202, *Phone:* (303) 293–5012, *Fax:* (303) 293–5058, *Email: kwalker@osmre.gov.*

David Berry, Director, Office of Mined Land Reclamation, Colorado Division of Reclamation, Mining, and Safety, Department of Natural Resources, 1313 Sherman Street, Suite 215, Denver, CO 80203, *Email: David.Berry@state.co.us.*

Or anytime at: *http://www.regulations.gov,* Docket ID OSM–2011–0002.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Colorado Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Colorado program on December 15, 1980. You can find background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program in the December 15, 1980, **Federal Register** (45 FR 82173). You can also find later actions concerning Colorado's program and program amendments at 30 CFR 906.10, 906.15, 906.16, and 906.30.

II. Description of the Proposed Amendment

By letter dated April 8, 2011, Colorado sent us a proposed amendment to its approved regulatory program (Administrative Record Docket ID No. OSM–2011–0002) under SMCRA (30 U.S.C. 1201 *et seq.*). Colorado submitted the amendment to address all required rule changes OSM identified by letters to Colorado dated April 4, 2008, and October 2, 2009, under 30 CFR 732.17(c). These included changes to Colorado's rules for valid existing rights and ownership and control. The amendment also includes changes made at Colorado's own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Specifically, Colorado proposes substantive revisions to the Colorado Code of Regulations at 2 CCR 407–2 Rules 1.07 (Procedures for Valid Existing Rights Determinations), 2.01 (General Requirements for Permits), 2.02 (General Requirements for Coal Exploration), 2.03 (Application for Permit for Surface Coal Mining and Reclamation Operations: Minimum Requirements for Legal, Financial, Compliance, and Related Information), 2.04 (Application for Permit for Surface Coal Mining and Reclamation Operations: Minimum Requirements for Information on Environmental Resources), 2.05 (Application for Permit for Surface Coal Mining and Reclamation Operations: Minimum Requirements for Operation and Reclamation Plans), 2.07 (Public Participation and Approval of Permit Applications), 2.08 (Permit Review, Revisions and Renewals and Transfer, Sale and Assignment), 2.11 (Challenging Ownership or Control Listings and Findings), 4.03 (Roads), 4.05 (Hydrologic Balance), 4.06 (Topsoil), 4.07 (Sealing of Drilled Holes and Underground Openings), 4.08 (Use of Explosives), 4.14 (Backfilling and Grading), 4.15 (Revegetation), 4.16 (Postmining Land Use), 4.20 (Subsidence Control), 4.25 (Operations on Prime Farmland), 5.03 (Enforcement), and 5.06 (Alternative Enforcement). Additionally, Colorado proposes revisions to and additions of definitions supporting those proposed rule changes.

As a result of comments received during the comment period, we identified concerns with regard to Colorado's Statement of Basis, Purpose, and Specific Statutory Authority (SBPSA) document that is incorporated with 2 CCR 407–2 by reference. We notified Colorado of our concerns by letter dated September 19, 2011 (Administrative Record No. OSM–2011–0002–0008). Colorado responded in a letter dated September 22, 2011, by submitting a revised amendment proposal (Administrative Record No. OSM–2011–0002–0009). The full text of the revised program amendment is also available for you to read at the locations listed above under **ADDRESSES**.

In response to our concerns, Colorado made the following change to its April 8, 2011, amendment proposal. Specifically, OSM expressed concerns regarding language in the SBPSA related to 2 CCR 407–2 Rule 1.04(111)(d). Colorado proposes additional language to clarify that Colorado would not usurp the authority of the United States Forest Service by exercising jurisdiction over a National Forest System Road.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Colorado program.

Electronic or Written Comments

Send your written comments to OSM at the addresses given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Denver Field Division may not be logged in.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., mountain standard time on December 21, 2011. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to

speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public; if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 6, 2011.

Allen D. Klein,

Director, Western Region.

[FR Doc. 2011–31294 Filed 12–5–11; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT–034–FOR; Docket ID OSM–2011–0018]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Montana regulatory program (hereinafter, the ''Montana program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). Montana proposes revisions to and additions of statutory definitions for ''approximate original contour,'' ''in situ coal gasification,'' and ''recovery fluid.'' Montana intends to revise its program to clarify ambiguities and improve operational efficiency.

This document gives the times and locations that the Montana program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.s.t. January 5, 2012. If requested, we will hold a public hearing on the amendment on January 3, 2012. We will accept requests to speak until 4 p.m., m.s.t. on December 21, 2011.

ADDRESSES: You may submit comments identified by ''SATS No. MT–034–FOR'' or ''Docket ID No. OSM–2011–0018,'' by any of the following methods:

- *Email: cbelka@osmre.gov.* Please Include ''Docket ID No. OSM–2011–0018'' in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Jeffrey Fleischman, Chief, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 11018, Casper, WY 82601–7032.
- *Fax:* (307) 261–6552.
- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID No. OSM–2011–0018. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to viewing the docket and obtaining copies of documents at *http://www.regulations.gov,* you may review copies of the Montana program, this amendment, a listing of any public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Jeffrey Fleischman, Chief, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, 150 East B, Street Room 1018, Casper, Wyoming 82601–7032, (307) 261–6550, *jfleischman@osmre.gov.*

Edward L. Coleman, Bureau Chief, Industrial and Energy Minerals Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620–0901, (406) 444–2544, *ecoleman@mt.gov*

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Chief, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 11018, Dick Cheney Federal Building, 150 East B Street Room 1018, Casper, Wyoming 82601–7032, (307) 261–6550, *jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Description of the Proposed Amendment

By letter dated August 19, 2011, Montana sent us a proposed amendment to its program (Administrative Record No. MT–31–01) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment in response to Senate Bill 292, which was passed by the 2011 Montana Legislature. Senate Bill 292 amended both the Montana Strip and Underground Mine Reclamation Act (MSUMRA) and the Montana Water Quality Act.

Specifically, Montana proposes to revise the Montana Code Annotated (MCA) Section 82–4–203, Definitions, by adding a reference to the definition of hydrologic balance within the definition of (4) ''Approximate original contour,'' and by adding definitions of (27) ''In situ coal gasification,'' and (44) ''Recovery fluid.'' Other changes are non-substantive recodifications. OSM does not have jurisdiction over proposed changes to Montana's Water Quality Act (Title 75, Chapter 5 of MCA). The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Montana program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available in the electronic docket for this rulemaking at *http://www.regulations.gov.* 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.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. on December 21, 2011. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public; if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 26, 2011.

Allen D. Klein,

Director, Western Region.

[FR Doc. 2011–31293 Filed 12–5–11; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0881; FRL–9499–3]

Approval and Promulgation of Implementation Plans, State of California, San Joaquin Valley Unified Air Pollution Control District, New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Air Pollution Control District portion of the California State Implementation Plan (SIP) submitted by the California Air Resources Board. These revisions concern pre-construction review of new and modified stationary sources (''new source review'' or NSR) within the District. The revisions are intended to remedy deficiencies we identified when granting limited approval and limited disapproval to the rules in 2010, and to add NSR requirements for new major sources of fine particulate matter ($PM_{2.5}$) and major modifications at existing major $PM_{2.5}$ sources as required by the Clean Air Act. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by January 5, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–

OAR–2011–0881, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
- *Email: R9airpermits@epa.gov.*
- *Mail or deliver:* Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or email. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 972–3534, *yannayon.laura@epa.gov.*

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

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B. Do the rules meet the evaluation criteria?
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I. Regulatory Context

On May 11, 2010 (75 FR 26102), we finalized a limited approval and limited disapproval of San Joaquin Valley Unified Air Pollution Control District (''SJVUAPCD'' or ''District'') Rules 2020 (Exemptions) and 2201 (New and Modified Stationary Source Review Rule), which were submitted to EPA by the California Air Resources Board (CARB) to satisfy certain applicable requirements under the Clean Air Act (CAA or ''Act''). These rules strengthened the SIP, but contained deficiencies in enforceability that prevented full approval. Both rules contained references to California Health and Safety Code (CH&SC) under circumstances where the State law has not been submitted to EPA for approval into the SIP and thereby unacceptably ambiguous.

In our May 11, 2010 final rule, we explained that the District could remedy these deficiencies by replacing the references to the CH&SC with an unambiguous description of the agricultural sources covered by the permitting exemption in Rule 2020 and the applicability of the offset requirement to agricultural sources in Rule 2201, or by submitting the State law provisions as a SIP revision. See 75 FR at 26106 (May 11, 2010). EPA is now proposing action on CARB's submittal of new versions of Rules 2020 and 2201, which the District amended to resolve the deficiencies we identified in our May 11, 2010 final rule.

In a separate interim final action, published in the Rules section in today's **Federal Register,** we are deferring sanctions that would otherwise apply to the SJVUAPCD based on EPA's May 11, 2010 limited approval and limited disapproval action on previous versions of District Rules 2020 and 2201.

In addition to addressing these deficiencies, we are also proposing to approve revisions to Rule 2201 that address the 1997 p.m.$_{2.5}$ standard. These revisions ensure that new major sources of $PM_{2.5}$, and major modifications at existing major $PM_{2.5}$ sources, will undergo pre-construction review that requires permit applicants to apply Lowest Achievable Emission Rate (LAER) and provide emission offsets.

II. The State's Submittals of Revised District Rules

A. What rules did the State submit?

Table 1 lists the rules on which we are proposing action with the dates that they were revised by the District and submitted to EPA by CARB.

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Amended	Submitted
SJVUAPCD	2020	Exemptions	8/18/11	9/28/11
SJVUAPCD	2201	New and Modified Stationary Source Review Rule	4/21/11	05/19/11

On October 25, 2011, we found that the submittal of District Rule 2020 and Rule 2201 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

As discussed above, we approved versions of Rule 2020 and Rule 2201 into the SIP on May 11, 2010 (75 FR 26102). The amended versions of Rule 2020, adopted by the District on August 18, 2011 and submitted to us by CARB on September 28, 2011, and of Rule 2201, adopted by the District on April 21, 2011 and submitted to us by CARB on May 19, 2011, are the only revisions to the rule that the District has adopted since our 2010 limited approval.

C. What are the purposes for revisions to these rules?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, nitrogen oxides, particulate matter, and other air pollutants which harm human health and the environment. Permitting rules were developed as part of the local air district's programs to control these pollutants.

The purpose of District Rule 2020 (''Exemptions'') is to specify emission units that are not required to obtain an Authority to Construct or Permit to Operate. Rule 2020 also specifies the recordkeeping requirements to verify such exemptions and outlines the compliance schedule for emission units that lose the exemption.

The purpose of District Rule 2201 (''New and Modified Stationary Source Review Rule'') is to provide for the review of new and modified stationary sources of air pollution and to provide mechanisms including control technology requirements and emission trade-offs by which Authorities to Construct such sources may be granted, without interfering with the attainment or maintenance of ambient air quality standards. District Rule 2201 is also intended to provide for no net increase in emissions above specified thresholds from new and modified stationary sources of all nonattainment pollutants and their precursors.

III. EPA's Evaluation and Action on the Revised Rules

A. How is EPA evaluating the rules?

The rules that are the subject of this proposed action amend rules on which EPA has previously taken limited approval and limited disapproval action. EPA previously took limited approval/limited disapproval action on the rules because, while they met most of the statutory and regulatory requirements for SIPs regarding minor NSR, major nonattainment NSR, and enforceability of permit conditions, they also contained certain unacceptably ambiguous provisions which prevented full approval. Therefore, we have focused our review on the changes in the rules that the District adopted to remedy the deficiencies that we identified as well as those that the District has newly introduced into the rules.

The relevant statutory provisions for our review of the submitted rules include CAA sections 110(a), 110(l), 172(c)(5) and 40 CFR 51.160–165. Section 110(a) requires that SIP rules be enforceable, while section 110(l) precludes EPA approval of SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. Section 172(c)(5) requires SIPs with nonattainment areas to require permits for the construction and operation of new or modified major stationary sources in accordance with section 173, which establishes, among other requirements, a control technology requirement of ''lowest achievable emission rate'' (LAER) and an emissions offset requirement for such new or modified stationary sources.

Title 40, part 51, section 165 of title 40 of the Code of Federal Regulations (40 CFR 51.165) establishes more specific requirements for NSR SIPs to satisfy the requirements of sections 172(c)(5) and 173. With respect to $PM_{2.5}$ and its precursors, those requirements, among others, include a new ''major source'' threshold of 100 tons per year, ''major modification'' thresholds of 10 tons per year (direct $PM_{2.5}$) or 40 tons per year for precursors NO_X and SO_2, and an offset ratio of at least 1:1. See 73 FR 28321 (May 16, 2008).

B. Do the rules meet the evaluation criteria?

EPA found Rule 2020 deficient because the permitting exemption for agricultural sources relied on a cross-reference to CH&SC Section 42301.16, which is not approved in the SIP and allows permitting authorities to expand the universe of exempted sources if certain findings are made in a public hearing, which would change the permit exemption threshold without requiring SIP approval. To address this deficiency, the District revised Rule 2020 by replacing the statutory reference to CH&SC section 42301.16 with a clear description of the sources covered by the exemption.

In addition to resolving the deficiency, the District also added an exemption for wind machines, and a definition of ''wind machine,'' to Rule 2020. A wind machine consists of a large fan mounted on a tower and powered by an internal combustion engine and used only on the coldest winter nights to provide frost protection for certain type of crops (like citrus) when temperatures are forecast to drop below 28° F. Annual usage varies naturally with the frequency and duration of cold spells in the San Joaquin Valley during any given winter; however, the District estimates average annual use of any given wind machine at 35 hours per year. Emissions per unit vary depending upon the size of the engine used to power the fans and the fuel used to power the engine, among other factors, but can reasonably be estimated at approximately 15 pounds per day of NO_X.[1]

We recognize that, when the applicable frost warnings occur, the number of wind machines that operate all night long in certain parts of the valley can number in the thousands, and that NO_X emissions during those particular nights are not necessarily insignificant from the standpoint of PM_{10} and $PM_{2.5}$ formation, particularly in the San Joaquin Valley. Nonetheless, we conclude that the permitting exemption for the wind machines is acceptable because wind machines are not subject to any prohibitory District rule,[2] because no controls would approach any reasonable threshold of cost-effectiveness given the very limited use of the machines and the low emissions per unit, and because neither the EPA-approved San Joaquin Valley PM_{10} maintenance plan nor the EPA-approved $PM_{2.5}$ attainment plan relies on emissions reductions from this particular episodic source of emissions.

EPA found Rule 2201 deficient because the offset exemption for minor agricultural sources was ambiguous because it relied on a cross-reference to the CH&SC, rather than explicitly delineating the exemption within the rule itself. The District remedied this deficiency by replacing the CH&SC references with a clear description of the applicability of the offset requirement to agricultural sources.

The District also added requirements to Rule 2201 to address the 1997 p.m.$_{2.5}$ standard. We have reviewed the $PM_{2.5}$ provisions of the rule, including permitting thresholds, Best Available Control Technology (which in California is the same as Federal LAER), and emission offset requirements (including ratios based on distance from the new or modified emission unit), and found that they satisfy the CAA requirements for NSR for new and modified major stationary sources of $PM_{2.5}$.[3]

CAA section 110(l) precludes EPA from approving SIP revisions that would interfere with any applicable

[1] Most engines are fired on propane, although some are fired on diesel. Some engines are electric, and have no emissions. Based on a NO_X emission factor for uncontrolled propane and use of a 100-horsepower engine at 65% load from 8 p.m. to 7 a.m.: 100 hp × 10 g NO_X/bhp-hr × 0.65 × 11 hours/day/454 g/lb = 15.8 pounds per day per unit.

[2] See District Rule 4702 (''Internal Combustion Engines—Phase 2''), most recently approved by EPA at 73 FR 1819 (January 10, 2008).

[3] While we believe that the District is appropriately accounting for condensable particulate matter in regulating $PM_{2.5}$ from stationary sources, we recommend that District rules be amended to be explicit regarding the inclusion of the condensable portion of particulate matter in the definition of $PM_{2.5}$. See 40 CFR 165(a)(1)(xxxvii)(D). For example, the District should amend the definition of ''$PM_{2.5}$'' in Rule 2201, as has been done for the definition of ''PM_{10}'' in Rule 2201 to refer to Rule 1020 (''Definitions''), and then add a definition of ''$PM_{2.5}$'' in Rule 1020, as has been done for ''PM_{10},'' that refers to applicable state and federal test methods. Lastly, corresponding changes should also then be made to section 5.0 (''Test Methods'') in District Rule 1081 (''Source Sampling'') for $PM_{2.5}$ in a similar manner as the District has already done for PM_{10}.

requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the Act. EPA has evaluated amended Rules 2020 and 2201 and concluded that they would not interfere with attainment and RFP for any of the NAAQS, and would not interfere with any other applicable requirement of the Act. First, amended Rule 2201 does not relax the SIP in any aspect; rather, the amended rule strengthens the SIP by applying NSR requirements to new or modified major sources of $PM_{2.5}$. Second, while amended Rule 2020 contains a new exemption for wind machines, this exemption would not lead to an increase in emissions because, as explained above, wind machines would not be subject to any particular controls under the NSR rule even if no such exemption were in effect because no control device would be considered cost-effective. Lastly, as noted above, neither the EPA-approved San Joaquin Valley PM_{10} maintenance plan nor the EPA-approved $PM_{2.5}$ attainment plan relies on emissions reductions from this particular episodic source of emissions. Thus, we find the SIP revisions acceptable under CAA section 110(l).

EPA's technical support document (TSD) for this rulemaking has more information about these rules, including our evaluation and recommendation to approve them into the SIP.

C. Public Comment and Final Action

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as revisions to the SIP pursuant to section 110(k)(3) of the Act. Specifically, we are proposing to approve SJVUAPCD Rule 2020 (''Exemptions''), as amended by the District on August 18, 2011 and submitted by CARB on September 28, 2011; and SJVUAPCD Rule 2201 (''New and Modified Stationary Source Review Rule''), as amended by the District on April 21, 2011 and submitted by CARB on May 19, 2011, as revisions to the California SIP. In so doing, we conclude that the District has remedied deficiencies that EPA had identified in previous versions of the rules and that other changes made by the District to the rules meet the applicable NSR requirements of the Act and our regulations.

We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rule(s) into the federally enforceable SIP.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 22, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–31183 Filed 12–5–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0900; FRL–9499–2]

Revisions to the California State Implementation Plan, Feather River Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the Feather River Air Quality Management District (FRAQMD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) emissions from internal combustion engines. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by January 5, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0900, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that

you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or email. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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.

Docket: Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Idalia Perez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov.*

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

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
FRAQMD	2.33	Internal Combustion Engines	06/01/09	01/10/10

On February 4, 2010, EPA determined that the submittal for FRAQMD Rule 2.33 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There are no previous versions of Rule 2.33.

C. What is the purpose of the submitted rule?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO_X emissions. Rule 3.22 regulates emissions of NO_X, volatile organic compounds (VOCs) and carbon monoxide (CO) from internal combustion engines with a rated brake horse power of 50 or greater. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each NO_X or VOC major source in ozone nonattainment areas classified as moderate or above (see sections 182(b)(2) and 182(f)), and must not relax existing requirements in violation of CAA sections 110(l) and 193. Nonattainment areas must also implement Reasonably Available Control Measures (RACM), including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of RACT, as expeditiously as practicable for nonattainment areas (see CAA section 172(c)(1)). Although the FRAQMD regulates an ozone nonattainment area classified as severe for the 8-hour ozone NAAQS (40 CFR 81.305), Rule 3.22 does not need to fulfill RACT for NO_X because there are no major sources that are subject to this rule in the ozone nonattainment portion of the FRAQMD. Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

4. ''Alternative Control Techniques Document—NO_X Emissions from Stationary Reciprocating Internal Combustion Engines,'' EPA, July 1993.

5. ''Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Spark-Ignited Internal Combustion Engines,'' California Air Resources Board, November 2001.

B. Does the rule meet the evaluation criteria?

Rule 3.22 improves the SIP by establishing more stringent emission limits and by clarifying monitoring, recording and recordkeeping provisions. The rule is largely consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What are the rule deficiencies?

The following provision conflicts with section 110 and part D of the Act and prevent full approval of the SIP revision. Section G.1.g allows for alternate testing without including sufficient QA/QC requirements to demonstrate compliance. This undermines enforceability of the rule which contradicts CAA requirements for enforceability.

D. EPA Recommendations To Further Improve the Rule

The TSD describes additional rule revisions that we recommend for the

next time the local agency modifies the rule.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rule to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). Neither sanctions nor a Federal Implementation Plan (FIP) would be imposed should EPA finalize this limited disapproval. Sanctions would not be imposed under CAA 179(b) because the submittal of FRAQMD Rule 2.33 is discretionary (*i.e.,* not required to be included in the SIP), and EPA would not promulgate a FIP in this instance under CAA 110(c)(1) because the disapproval does not reveal a deficiency in the SIP for the area that such a FIP must correct. Specifically, the FRAQMD SIP does not rely on emissions reductions from Rule 2.33, and the rule is not subject to CAA section 182 RACT requirements for ozone because the rule does not apply to any major stationary source of NO_X or VOC or any source covered by a CTG document. Accordingly, the failure of the FRAQMD to adopt revisions to Rule 2.33 would not adversely affect the SIP's compliance with the CAA's mandated requirements, such as the requirements for section 182 ozone RACT, reasonable further progress, and attainment demonstrations.

Note that the submitted rule has been adopted by the FRAQMD, and EPA's final limited disapproval would not prevent the local agency from enforcing it. The limited disapproval also would not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at: *http://www.epa.gov/nsr/ttnnsr01/gen/pdf/memo-s.pdf.*

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals or disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the State is already imposing. Therefore, because the proposed Federal SIP limited approval/limited disapproval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the limited approval/limited disapproval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve and disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve or disapprove a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it proposes to approve a State rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

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 lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: November 18, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–31252 Filed 12–5–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1998–0007; FRL–9499–5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Notice of Intent for Deletion of the State Marine of Port Arthur Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is issuing a Notice of Intent to Delete the State Marine of Port Arthur (SMPA) Superfund Site located in Port Arthur, Texas, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Texas, through the Texas Commission on Environmental Quality, have determined that all appropriate response actions at these identified parcels under CERCLA, other than operations, maintenance, and Five-Year Reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by January 5, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1998–0007, by one of the following methods:

- *http://www.regulations.gov:* Follow internet on-line instructions for submitting comments.
- *Email:* Rafael Casanova, *casanova.rafael@epa.gov.*
- *Fax:* (214) 665–6660.
- *Mail:* Rafael A. Casanova; U.S. Environmental Protection Agency, Region 6; Superfund Division (6SF–RA); 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202–2733.
- *Hand delivery:* U.S. Environmental Protection Agency, Region 6; 1445 Ross Avenue, Suite 700; Dallas, Texas 75202–2733; *Contact:* Rafael A. Casanova (214) 665–7437. 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–1998–0007. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your

name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the 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:

1. U.S. Environmental Protection Agency, Region 6; 1445 Ross Avenue, Suite 700; Dallas, Texas 75202–2733; *Hours of operation:* Monday thru Friday, 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m. *Contact:* Rafael A. Casanova (214) 665–7437.

2. Port Arthur Public Library; 4615 9th Avenue; Port Arthur, Texas 77642–5799; *Hours of operation:* Monday thru Thursday, 9 a.m. to 9 p.m.; Friday, 9 a.m. to 6 p.m.; Saturday, 9 a.m. to 5 p.m.; and Sunday, 2 p.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Rafael A. Casanova, Remedial Project Manager; U.S. Environmental Protection Agency, Region 6; Superfund Division (6SF–RA); 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202–2733; *telephone number:* (214) 665–7437; *email: casanova.rafael@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion for SMPA Superfund Site without prior Notice of Intent for Deletion because EPA views this as a noncontroversial revision and anticipates no adverse comments. We have explained our reason for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent for Deletion. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent for Deletion. We will not institute a second comment period on this Notice of Intent for Deletion. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: November 14, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011–31258 Filed 12–5–11; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 76, No. 234
Tuesday, December 6, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 1, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Economic Research Service

Title: National Household Food Acquisition and Purchase Survey.

OMB Control Number: 0536–NEW.

Summary of Collection: The Economic Research Service (ERS) will be conducting the National Household Food Acquisition and Purchase Survey (aka National Food Study). The mission of ERS is to provide timely research and analysis to public and private decision makers on topics related to agriculture, food, the environment, and rural America. To achieve this mission, ERS requires a variety of data that describe agricultural production, food distribution channels, availability and price of food at the point of sale, and household demand for food products. There is a great need for the above information as it relates to low-income households. It is critical for USDA to better understand the food acquisition behaviors of low-income, program-eligible households in order to effectively serve this segment of the population with efficient and effective programs. Section 17 (U.S.C. 2026)(a)(1) of the Food and Nutrition Act of 2008 provides legislative authority for the planned data collection. This section authorizes the Secretary of Agriculture to enter into contracts with private institutions to undertake research that will help to improve the administration and effectiveness of the Supplemental Nutrition Assistance Program (SNAP) in delivering nutrition-related benefits.

Need and Use of the Information: The National Food Study will collect information about household food acquisitions, including foods purchased and foods obtained at no cost (e.g., home-grown vegetables). Information also will be collected about household characteristics, including demographics, income, major categories of nonfood expenditures, food security, health status (including heights and weights), and dietary knowledge. This survey will provide ERS with information to support the analysis of a wide variety of research questions.

Description of Respondents: Individuals or household.

Number of Respondents: 24,675.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 44,695.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–31303 Filed 12–5–11; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Establishment of the Council for Native American Farming and Ranching

AGENCY: Office of the Secretary, USDA.

ACTION: Notice and Call for Nominations.

SUMMARY: The Department of Agriculture (USDA) is announcing the establishment of the Council for Native American Farming and Ranching (Council). The purpose of the Council is to provide recommendations to the Secretary on how to eliminate barriers to Native American participation in Farm Service Agency (FSA) farm loan programs and other farm programs. The Council will discuss issues related to the participation of Native American farmers and ranchers in USDA farm loan programs and transmit recommendations concerning any changes to FSA regulations or internal guidance or other measures. The Council is necessary and in the public interest. USDA is seeking nominations for individuals to be considered Council members. Candidates who wish to be considered for membership on the Council should submit an AD–755 application form and resume to the Secretary of Agriculture. Cover letters should be addressed to the Secretary of Agriculture. The application form and more information about advisory Councils can be found at *usda.gov/advisory_committees.xml.*

DATES: Submit nominations on or before January 20, 2012.

ADDRESSES: All nomination materials should be mailed in a single, complete package and postmarked by January 20, 2012. Nominations may be submitted by mail to:

- Thomas Vilsack, Secretary, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington DC, 20250, Attn: Council on Native American Farmers and Ranchers.
- Send comments to the Office of Tribal Relations, 500A Whitten

Building, 1400 Independence Avenue SW., Washington DC 20250.

FOR FURTHER INFORMATION CONTACT: Janie Simms Hipp, Senior Advisor, Tribal Relations or John Lowery, Management Analyst, Office of Tribal Relations. Email your questions to *Janie.Hipp@osec.usda.gov* or John Lowery at *John.Lowery@osec.usda.gov* or call (202) 205–2249.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Council Act (FACA) as amended (5 U.S.C. App. 2) and with the concurrence of the General Services Administration, USDA is announcing the establishment of an advisory Council for Native American farmers and ranchers. The Council is a discretionary advisory Council established under the authority of the Secretary of Agriculture, in furtherance of the settlement agreement in *Keepseagle* v. *Vilsack* that was granted final approval by the District Court for the District of Columbia on April 28, 2011. The Council will operate under the provisions of the FACA and report to the Secretary of Agriculture.

The purpose of the Council is (1) to advise the Secretary of Agriculture on issues related to the participation of Native American farmers and ranchers in USDA farm loan programs; (2) to transmit recommendations concerning any changes to FSA regulations or internal guidance or other measures that would eliminate barriers to program participation for Native American farmers and ranchers; (3) to examine methods of maximizing the number of new farming and ranching opportunities created through the farm loan program through enhanced extension and financial literacy services; (4) to examine methods of encouraging intergovernmental cooperation to mitigate the effects of land tenure and probate issues on the delivery of USDA farm loan programs; (5) to evaluate other methods of creating new farming or ranching opportunities for Native American producers; and (6) to address other related issues as deemed appropriate.

The Council will have 15 members, 11 of whom will be Native American leaders or persons who represent the interests of Native American Tribes or Native American organizations. The term ''Native American leaders'' is not limited to elected Tribal representatives or members or persons with Native American ancestry. The remaining four members will be high-ranking USDA officials, including: (1) The Senior Advisor to the Secretary, Tribal Relations; (2) the Farm Service Agency Administrator; (3) the Assistant Secretary for Civil Rights; and (4) the Deputy Administrator for Farm Loan Programs, or their delegates.

Members shall serve without compensation, but may receive reimbursement for travel expenses and per diem in accordance with USDA travel regulations for attendance at Council functions. Council members who represent the interests of Native American farmers and ranchers may also be paid an amount not less than $100 per day for time spent away from their employment or farming or ranching operation, subject to the availability of funds. Members may include:

- Native American farmers or ranchers who have participated in USDA loan or payment programs;
- Representatives of organizations with a history of working with Native American farmers or ranchers;
- Civil rights professionals;
- Representatives of Tribal governments with demonstrated experience working with Native American farmers or ranchers; and
- Such other persons as the Secretary considers appropriate.

No individual who is currently registered as a Federal lobbyist is eligible to serve as a member of the Council.

The Secretary of Agriculture invites those individuals, organizations, and groups affiliated with the categories listed above or who have knowledge of issues related to the purpose of the Council to nominate individuals for membership on the Council. Individuals and organizations who wish to nominate experts for this or any other USDA advisory Council should submit a letter to the Secretary listing these individuals' names and business address, phone, and email contact information. The Secretary of Agriculture seeks a diverse group of members representing a broad spectrum of persons interested in providing suggestions and ideas on how USDA can tailor its farm programs to meet the needs of Native American farmers and ranchers. Individuals receiving nominations will be contacted and asked to return the AD–755 application form and resume within 10 business days of notification. All candidates will be vetted and considered for appointment by the Secretary of Agriculture. Equal opportunity practices will be followed in all appointments to the Council in accordance with USDA policies. The Council will meet at least twice a year.

Dated: December 1, 2011.

Thomas J. Vilsack,

Secretary.

[FR Doc. 2011–31235 Filed 12–5–11; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Notice, Draft Environmental Impact Statement, Rosemont Copper Project on the Coronado National Forest, Nogales Ranger District, Pima County, AZ

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of availability and public meetings.

SUMMARY: On October 19, 2011, the USDA Forest Service, Coronado National Forest, published a Notice of Availability of the Rosemont Copper Project Draft Environmental Impact Statement and public meetings and commenting options (76 FR 64893). This revised notice advises the public of changes in the schedule of public meetings being held during the public review and comment period. All other information given in the original notice remains unchanged.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for meeting addresses.

FOR FURTHER INFORMATION CONTACT: Coronado National Forest, 300 W. Congress St., Tucson, AZ 85701, or by telephone at (520) 388–8300.

SUPPLEMENTARY INFORMATION: Public meeting dates and locations are as follows:

1. December 1, 2011, 5 p.m. to 9 p.m., Corona Foothills Middle School, 16705 S. Houghton Road, Corona de Tucson, AZ 85641.

2. December 7, 2011, 5 p.m. to 9 p.m., Benson High School, 360 S. Patagonia Street, Benson, AZ 85602.

3. December 8, 2011, 12:30 p.m. to 4:30 p.m., Green Valley Recreation-West Social Center, 1111 Via Arcoiris, Green Valley, AZ 85614.

4. December 10, 2011, 1 p.m. to 5 p.m., Elgin Elementary School, 23 Elgin Road, Elgin, AZ 85611.

5. January 14, 2012, 1 p.m. to 5 p.m., Sahuarita District Auditorium, 350 West Sahuarita Road, Sahuarita, AZ 85649.

If you have questions concerning special meeting needs, contact the Coronado National Forest at (520) 388–8300 or email *mailroom_r3_coronado@fs.fed.us* prior

to the meeting. For more information, visit the project Web site at *http://www.RosemontEIS.us.*

Authorization: National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321–4346); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); U.S. Department of Agriculture NEPA Policies and Procedures (7 CFR part 1b); Forest Service NEPA Compliance Regulations (36 CFR part 220); Forest Service Notice, Comment, and Appeal Procedures Regulations (36 CFR part 215).

Dated: November 28, 2011.

Jim Upchurch,

Forest Supervisor.

[FR Doc. 2011–31246 Filed 12–5–11; 8:45 am]

BILLING CODE 3410–11–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Senior Executive Service Performance Review Board

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Notice.

SUMMARY: This notice announces a change in the membership of the Senior Executive Service Performance Review Board for the Chemical Safety and Hazard Investigation Board (CSB).

DATES: Effective December 6, 2011.

FOR FURTHER INFORMATION CONTACT: John Lau, Human Resources Director, (202) 261–7600.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c)(1) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, a performance review board (PRB). The PRB reviews initial performance ratings of members of the Senior Executive Service (SES) and makes recommendations as to final annual performance ratings for senior executives. Because the CSB is a small independent Federal agency, the SES members of the CSB's PRB are drawn from other Federal agencies.

The Chairperson of the CSB has appointed the following individual to the CSB Senior Executive Service Performance Review Board:

PRB Members—Ruth Samardick, Senior Policy Advisor, Federal Mine Safety and Health Review Commission; Fran Leonard, Chief of Staff, Federal Mediation and Conciliation Service and; Nadine Mancini, General Counsel, Occupational Safety and Health Review Commission.

Mary Johnson (General Counsel, National Mediation Board) continues to serve as a Member of the PRB, as announced in the **Federal Register** of May 26, 2011 (76 FR 30646).

This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Dated: December 1, 2011.

Rafael Moure-Eraso,

Chairperson.

[FR Doc. 2011–31278 Filed 12–5–11; 8:45 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 76–2011]

Foreign-Trade Zone 15—Kansas City, MO; Application for Manufacturing Authority; Blount, Inc. (Log Splitters); Kansas City, MO

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign Trade Zone, Inc., grantee of FTZ 15, requesting manufacturing authority on behalf of Blount, Inc. (Blount), located in Kansas City, Missouri. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 29, 2011.

The Blount facility (170 employees, 100,000 unit capacity) is located within Site 3 of FTZ 15. The facility is used for the assembly, warehousing and distribution of forestry, farm and log products. FTZ manufacturing authority is being requested for the assembly of gasoline powered log splitters. Components and materials sourced from abroad (representing 30% of the value of the finished product) include: Beams, cylinders, pumps, tanks, tires, wedges, tongue attachments, beam weldments and non-threaded fasteners (duty rate ranges from 2.8 to 4.7%). The application also requests authority to include a broad range of inputs and finished forestry, farm and log products that Blount may produce under FTZ procedures in the future. New major activity involving these inputs/products would require review by the FTZ Board.

FTZ procedures could exempt Blount from customs duty payments on the foreign components used in export production. The company anticipates that some 10 percent of the plant's shipments will be exported. On its domestic sales, Blount would be able to choose the duty rates during customs entry procedures that apply to log splitters (duty rate 2.4%) for the foreign inputs noted above. FTZ designation would further allow Blount to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 6, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 20, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: November 29, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–31304 Filed 12–5–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1800]

Reorganization and Expansion of Foreign-Trade Zone 141 Under Alternative Site Framework County of Monroe, NY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170, 01/12/09;

correction 74 FR 3987, 01/22/09; 75 FR 71069–71070, 11/22/10) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the County of Monroe, grantee of Foreign-Trade Zone 141, submitted an application to the Board (FTZ Docket 29–2011, filed 04/28/11) for authority to reorganize and expand under the ASF with a service area of Monroe County, New York, in and adjacent to the Rochester Customs and Border Protection port of entry; remove existing Sites 1, 3, 4, 6, 7, 8, 10 and 11; FTZ 141's Sites 2, 5 and 9 would be categorized as magnet sites; and, Site 12 would be categorized as a usage-driven site;

Whereas, notice inviting public comment was given in the **Federal Register** (76 FR 25301, 05/04/11) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 141 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 2, 5 and 9 if not activated by November 30, 2016, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Site 12 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by November 30, 2014.

Signed at Washington, DC, this 28 day of November, 2011.

Paul Piquado,

Assistant Secretary of Commerce, for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–31300 Filed 12–5–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843, A–560–818, A–579–901]

Final Results of Expedited Sunset Review of Antidumping Duty Orders: Lined Paper Products From India, Indonesia, and the People's Republic of China

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

DATES: *Effective Date:* December 6, 2011.

SUMMARY: On August 1, 2011, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty (''AD'') orders on lined paper products (''CLPP'') from India, Indonesia, and the People's Republic of China (''PRC'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 45778 (August 1, 2011). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and an inadequate response (in this case, no response) from respondent interested parties in each of these reviews, the Department decided to conduct expedited sunset reviews of these AD orders pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(A). As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to a continuation or recurrence of dumping at the margins identified in the ''Final Results of Review'' section of this notice.

FOR FURTHER INFORMATION CONTACT: George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1167.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2011, the Department initiated sunset reviews of the AD orders on CLPP from India, Indonesia, and the PRC pursuant to section 751(c) of the Act. *See Initiation of Five-Year (''Sunset'') Reviews,* 76 FR 45778 (August 1, 2011). The Department received a notice of intent to participate in each of these reviews from the Association of American School Paper Suppliers (''AASPS'') and its individual members—MWV Consumer & Office Products (''MWV''), Norcom, Inc., and TopFlight, Inc. (collectively, ''petitioners''), within the deadline specified in 19 CFR 351.218(d)(1)(i). The petitioners claimed interested party status for each of these reviews under section 771(9)(C) of the Act, as domestic producers of CLPP.

The Department received a complete substantive response from the petitioners for each of these reviews within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). However, the Department did not receive a substantive response from any respondent interested party to either of these proceedings. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited reviews of these AD orders.

Scope of the Orders

The scope of these orders includes certain lined paper products, typically school supplies,[1] composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets,[2] including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8¾ inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear-out'' size), and are measured as they appear in the product (*i.e.,* stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of these orders whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced.

[1] For purposes of this scope definition, the actual use or labeling of these products as school supplies or non-school supplies is not a defining characteristic.

[2] There shall be no minimum page requirement for looseleaf filler paper.

Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of these orders are:

- Unlined copy machine paper;
- Writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- Three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- Index cards;
- Printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- Newspapers;
- Pictures and photographs;
- desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
- Telephone logs;
- Address books;
- Columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- Lined business or office forms, including but not limited to: preprinted business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- Lined continuous computer paper;
- Boxed or packaged writing stationery (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper,'' and ''letterhead''), whether or not containing a lined header or decorative lines;
- Stenographic pads (''steno pads''), Gregg ruled,[3] measuring 6 inches by 9 inches;

Also excluded from the scope of these orders are the following trademarked products:

- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen-top computer. The product must bear the valid trademark Fly™.[4]
- Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™.[5]
- FiveStar® Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1'' wide elastic fabric band. This band is located 2⅜″ from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar® Advance™.[6]
- FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™.[7]

Since the issuance of the PRC order, the Department has clarified the scope of the order in response to numerous scope inquiries. In addition, on September 23, 2011, the Department revoked, in part, the PRC AD order with respect to FiveStar® Advance™ notebooks and notebook organizers without PVC coatings. *See Certain Lined Paper Products From People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part,* 76 FR 60803 (September 30, 2011).

Merchandise subject to these orders is typically imported under headings 4810.22.5044, 4811.90.9050, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2060, and 4820.10.4000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of the orders is dispositive.

[3] ''Gregg ruling'' consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book.

[4] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[5] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[6] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[7] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

Analysis of Comments Received

All issues raised in these reviews are addressed in the Issues and Decision Memorandum (''Decision Memorandum'') from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit, room 7046, of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The electronic versions of the Decision Memorandum in IA ACCESS and on the Web are identical in content.

Final Results of Review

Pursuant to sections 752(c)(1) and (3) of the Act, we determine that revocation of the antidumping duty orders on CLPP from India, Indonesia, and the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Country manufacturer/exporter	Margin (percent)
India:	
Aero Exports	23.17
Kejriwal Paper Limited	3.91
Navneet Publications (India) Ltd.	23.17
All Others	3.91
Indonesia:	
PT. Pabrik Kertas Tjiwi Kimia Tbk	118.63
All Others	97.85
PRC	

Exporter	Producer	Margin (percent)
Shanghai Lian Li Paper Products Co., Ltd	Shanghai Lian Li Paper Products Co., Ltd	94.91
Shanghai Lian Li Paper Products Co., Ltd	Sentian Paper Products Co., Ltd	94.91
Shanghai Lian Li Paper Products Co., Ltd	Shanghai Miaopaofang Paper Products Co., Ltd	94.91
Shanghai Lian Li Paper Products Co., Ltd	Shanghai Pudong Wenbao Paper Products Co., Ltd	94.91
Shanghai Lian Li Paper Products Co., Ltd	Changshu Changjiang Printing Co., Ltd	94.91
Shanghai Lian Li Paper Products Co., Ltd	Shanghai Loutang Stationery Factory	94.91
Shanghai Lian Li Paper Products Co., Ltd	Shanghai Beijia Paper Products Co., Ltd	94.91
Ningbo Guangbo Imports and Exports Co. Ltd	Ningbo Guangbo Plastic Products Manufacture Co., Ltd	78.38
Yalong Paper Products (Kunshan) Co., Ltd	Yalong Paper Products (Kunshan) Co., Ltd	78.38
Suzhou Industrial Park Asia Pacific Paper Converting Co., Ltd	Suzhou Industrial Park Asia Pacific Paper Converting Co., Ltd	78.38
Sunshine International Group (HK) Ltd	Dongguan Shipai Tonzex Electronics Plastic Stationery Factory.	78.38
Sunshine International Group (HK) Ltd	Dongguan Kwong Wo Stationery Co., Ltd	78.38
Sunshine International Group (HK) Ltd	Hua Lian Electronics Plastic Stationery Co., Ltd	78.38
Suzhou Industrial Park You-You Trading Co., Ltd	Linqing YinXing Paper Co., Ltd	78.38
Suzhou Industrial Park You-You Trading Co., Ltd	Jiaxing Seagull Paper Products Co., Ltd	78.38
Suzhou Industrial Park You-You Trading Co., Ltd	Shenda Paper Product Factory	78.38
Suzhou Industrial Park You-You Trading Co., Ltd	Lianyi Paper Product Factory	78.38
Suzhou Industrial Park You-You Trading Co., Ltd	Changhang Paper Product Factory	78.38
Suzhou Industrial Park You-You Trading Co., Ltd	Tianlong Paper Product Factory	78.38
Suzhou Industrial Park You-You Trading Co., Ltd	Rugao Paper Printer Co., Ltd	78.38
Suzhou Industrial Park You-You Trading Co., Ltd	Yinlong Paper Product Factory	78.38
You You Paper Products (Suzhou) Co., Ltd	You You Paper Products (Suzhou) Co., Ltd	78.38
Haijing Stationery (Shanghai) Co., Ltd	Haijing Stationery (Shanghai) Co., Ltd	78.38
Orient International Holding Shanghai Foreign Trade Co., Ltd ..	Yalong Paper Products (Kunshan) Co., Ltd	78.38
Orient International Holding Shanghai Foreign Trade Co., Ltd ..	Shanghai Comwell Stationery Co., Ltd	78.38
Orient International Holding Shanghai Foreign Trade Co., Ltd ..	Yuezhou Paper Co., Ltd	78.38
Orient International Holding Shanghai Foreign Trade Co., Ltd ..	Changshu Guangming Stationery Co., Ltd	78.38
Shanghai Foreign Trade Enterprise Co., Ltd	Shanghai Xin Zhi Liang Culture Products Co., Ltd	78.38
Shanghai Foreign Trade Enterprise Co., Ltd	Shangyu Zhongsheng Paper Products Co., Ltd	78.38
Shanghai Foreign Trade Enterprise Co., Ltd	Shanghai Miaoxi Paper Products Factory	78.38
Shanghai Foreign Trade Enterprise Co., Ltd	Shanghai Xueya Stationery Co., Ltd	78.38
Anhui Light Industries International Co., Ltd	Shanghai Pudong Wenbao Paper Products Factory	78.38
Anhui Light Industries International Co., Ltd	Foshan City Wenhai Paper Factory	78.38
Fujian Hengda Group Co., Ltd	Fujian Hengda Group Co., Ltd	78.38
Changshu Changjiang Printing Co., Ltd	Changshu Changjiang Paper Industry Co., Ltd	78.38
Jiaxing Te Gao Te Paper Products Co., Ltd	Jiaxing Te Gao Te Paper Products Co., Ltd	78.38
Jiaxing Te Gao Te Paper Products Co., Ltd	Jiaxing Seagull Paper Products Co., Ltd	78.38
Jiaxing Te Gao Te Paper Products Co., Ltd	Jiaxing Boshi Paper Products Co., Ltd	78.38
Chinapack Ningbo Paper Products Co., Ltd	Jiaxing Te Gao Te Paper Products Co., Ltd	78.38
Linqing Silver Star Paper Products Co., Ltd	Linqing Silver Star Paper Products Co., Ltd	78.38
Wah Kin Stationery and Paper Product Limited	Shenzhen Baoan Waijing Development Company	78.38
Shanghai Pudong Wenbao Paper Products Factory	Shanghai Pudong Wenbao Paper Products Factory	78.38
Shanghai Pudong Wenbao Paper Products Factory	Linqing Glistar Paper Products Co., Ltd	78.38
Shanghai Pudong Wenbao Paper Products Factory	Changshu Changjiang Printing Co., Ltd	78.38
Shanghai Pudong Wenbao Paper Products Factory	Linqing Silver Star Paper Products Co., Ltd	78.38
Paperline Limited	Shanghai Pudong Wenbao Paper Products Factory	78.38
Paperline Limited	Linqing Glistar Paper Products Co., Ltd	78.38
Paperline Limited	Changshu Changjiang Printing Co., Ltd	78.38
Paperline Limited	Linqing Silver Star Paper Products Co., Ltd	78.38
Paperline Limited	Jiaxing Te Gao Te Paper Products Co., Ltd	78.38
Paperline Limited	Yantai License Printing & Making Co., Ltd	78.38

Exporter	Producer	Margin (percent)
Yantai License Printing & Making Co., Ltd	Yantai License Printing & Making Co., Ltd	78.38
Paperline Limited	Anhui Jinhua Import & Export Co., Ltd	78.38
Essential Industries Limited	Dongguan Yizhi Gao Paper Products Ltd	78.38
MGA Entertainment (H.K.) Limited	Kon Dai (Far East) Packaging Co., Ltd	78.38
MGA Entertainment (H.K.) Limited	Dong Guan Huang Giang Rong Da Printing Factory	78.38
MGA Entertainment (H.K.) Limited	Dong Guan Huang Giang Da Printing Co., Limited	78.38
Excel Sheen Limited	Dongguan Shipai Fuda Stationery Factory	78.38
Maxleaf Stationery Ltd	Maxleaf Stationery Ltd	78.38
PRC Entity*		258.21

*Including Atico, Planet International, the companies that did not respond to the Q&V questionnaire in the underlying investigation, and Watanabe Paper Products.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: November 29, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–31286 Filed 12–5–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–928]

Uncovered Innerspring Units from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order [1] on uncovered innerspring units (''innersprings'') from the People's Republic of China (''PRC'') for the period of review (''POR'') February 1, 2010, through January 31, 2011. As discussed below, we preliminarily determine that Goodnite Sdn Bhd (''Goodnite'') failed to cooperate to the best of its ability and are, therefore, applying adverse facts available (''AFA'') to Goodnite's PRC-origin merchandise. 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 entries of subject merchandise during the POR.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–4031.

SUPPLEMENTARY INFORMATION:

Case Timeline

On February 28, 2011, the Department received a request from Petitioner [2] to conduct an administrative review of two companies, Reztec Industries Sdn Bhd (''Reztec'') and Goodnite. On March 31, 2011, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on innersprings from the PRC.[3]

On April 28, 2011, the Department issued antidumping duty questionnaires to Reztec and Goodnite, since they were the only two companies for which a review was requested.[4] On May 3, 2011, Goodnite received the antidumping duty questionnaire issued by the Department.[5] On May 19, 2011, Reztec submitted a no-shipment certification to the Department.[6] Goodnite did not respond to the Department's questionnaire.

Scope of the Order

The merchandise subject to the order is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.,* twin, twin long, full, full long, queen, California king and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in the scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring.

Pocketed and non-pocketed innerspring units are included in this definition. Non-pocketed innersprings are typically joined together with helical wire and border rods. Non-pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a ''pocket'' or ''sock'' of a

[1] *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (February 19, 2009).

[2] The petitioner is Leggett & Platt, Inc. (hereinafter referred to as ''Petitioner'').

[3] *See Initiation of Antidumping Duty Administrative Reviews, Requests for Revocation in Part, and Deferral of Administrative Review,* 76 FR 17825 (March 31, 2011).

[4] *See* Letter from Department to Reztec, regarding Second Administrative Review of Uncovered Innerspring Units from the People's Republic of China: Antidumping Duty Questionnaire, dated April 28, 2011; and Letter from Department to Goodnite, regarding Second Administrative Review of Uncovered Innerspring Units from the People's Republic of China: Antidumping Duty Questionnaire, dated April 28, 2011.

[5] *See* Memorandum to the File, from Susan Pulongbarit, International Trade Analyst, AD/CVD Office 9, Import Administration, regarding 2010–2011 Administrative Review of Uncovered Innerspring Units from the People's Republic of China: Confirmation of Receipt, dated May 17, 2011.

[6] *See* Letter from Reztec, to the Secretary of Commerce, regarding Uncovered Innerspring Units from China Entry of Appearance and No-Shipment Letter of Reztec Industries Sdn Bhd, dated May 19, 2011.

nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010 and have also been classified under subheadings 9404.10.0000, 7326.20.0070, 7320.20.5010, or 7320.90.5010 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the order is dispositive.

Intent To Rescind, in Part, of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), we have preliminarily determined that Reztec had no shipments of subject merchandise during the POR of this administrative review.

The Department received a no-shipment certification from Reztec on May 19, 2011. The Department issued a no-shipment inquiry to U.S. Customs Border and Protection (''CBP''), asking that CBP provide any information contrary to our preliminary findings of no entries of subject merchandise for merchandise manufactured and shipped by Reztec.[7] We did not receive any response from CBP, thus indicating that there were no entries of subject merchandise into the United States exported by Reztec. Consequently, we intend to rescind the review, in part, with respect to Reztec.

Facts Otherwise Available

Section 776(a)(1) of the Tariff Act of 1930, as amended (''the Act''), mandates that the Department use facts otherwise available if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act mandates that the Department use facts otherwise available where an interested party or any other person: (A) Withholds information requested by the Department; (B) fails to provide requested information by the requested date or in the form and manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides information that cannot be verified.

As previously noted, Goodnite did not respond to the antidumping duty questionnaire issued by the Department on April 28, 2011. Accordingly, the Department finds that the necessary information is not available on the record of this proceeding. Further, based upon Goodnite's failure to submit responses to the Department's questionnaire, the Department finds that Goodnite withheld the requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded this proceeding, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act. Therefore, the Department must rely on the facts otherwise available in order to determine a margin for Goodnite.[8]

Adverse Facts Available

Section 776(b) of the Act states that if the Department ''finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority * * *, the administering authority * * * may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.'' [9] Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' [10] In selecting an adverse inference, the Department may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.[11]

As previously stated, Goodnite failed to cooperate to the best of its ability in providing the requested information. Accordingly, pursuant to sections 776(a)(2)(A), (B), and (C) and section 776(b) of the Act, we find it appropriate to assign total AFA to Goodnite.[12] By doing so, we ensure that Goodnite will not obtain a more favorable result by failing to cooperate than had they cooperated fully in this review.

In selecting an AFA rate, the Department's practice has been to assign non-cooperative respondents the highest margin determined for any party in the less than fair value (''LTFV'') investigation or in any administrative review.[13] Therefore, because Goodnite is not a PRC exporter, we are not assigning Goodnite the PRC-wide entity's rate, but rather its own rate, based on AFA, which in this case is 234.51 percent, as established in the investigation.[14] [15]

Corroboration

Section 776(c) of the Act requires that, where the Department relies on secondary information in selecting AFA, the Department corroborate such information to the extent practicable. To be considered corroborated, the Department must find the information has probative value, meaning that the information must be both reliable and relevant.[16]

The Department considers the AFA rate calculated for the current review as both reliable and relevant. On the issue of reliability, the Department corroborated the AFA rate in the LTFV investigation.[17] No information has been presented in the current review that calls into question the reliability of this information. With respect to the relevance, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department

[7] *See* Memoranda to Michael Walsh, Director, AD/CVD/Revenue Policy & Programs, from Jim Doyle, Office Director, dated between October 28, 2010, to December 17, 2010, Request for U.S. Entry Documents: Certain Steel Nails from the People's Republic of China.

[8] *See Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 71 FR 69546 (December 1, 2006) (''*Cast Iron Pipe Fittings''*) and accompanying Issues and Decision Memorandum at Comment 1.

[9] *See also* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316 at 870 (1994) (''SAA'').

[10] *Id.*

[11] *See* section 776(b) of the Act.

[12] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review,* 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA to the NME-wide entity), unchanged in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review,* 72 FR 52052 (September 12, 2007) and accompanying Issues and Decision Memorandum.

[13] *See, e.g., Cast Iron Pipe Fittings,* 71 FR at 69548.

[14] *See Uncovered Innerspring Units From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 79443, 79446 (December 29, 2008) and accompanying Issues and Decision Memorandum.

[15] We note that this decision applies only to Goodnite's subject merchandise, which is limited to PRC-origin merchandise.

[16] *See* SAA at 870; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[17] *See Uncovered Innerspring Units From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 79443, 79446 (December 29, 2008) and accompanying Issues and Decision Memorandum (''*Innersprings Final Determination''*).

will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico* the Department disregarded the highest margin in that case as best information available (the predecessor to AFA) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin.[18] The information used in calculating this margin was based on sales and production data submitted by Petitioner in the LTFV investigation, together with the most appropriate surrogate value information available to the Department chosen from submissions by the parties in the LTFV investigation.[19] Finally, there is no information on the record of this review that demonstrates that this rate is not appropriate for use as AFA. For all these reasons, we determine that this rate continues to have relevance with respect to Goodnite.

As the 234.51 percent AFA rate is both reliable and relevant, we determine that it has probative value and is corroborated to the extent practicable, in accordance with section 776(c) of the Act. Therefore, we have assigned this AFA rate to exports of the subject merchandise by Goodnite.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margin exists:

Manufacturer/exporter	Margin (percent)
Goodnite	234.51

Briefs and Public Hearing

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) A statement of the issue and (2) a brief summary of the argument. Parties are requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited, in accordance with 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room 1117, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), we will calculate importer- (or customer-) specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we will calculate importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). Where an importer- (or customer-) specific *ad valorem* rate is greater than *de minimis,* we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR, pursuant to 19 CFR 351.212(b)(1).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 234.51 percent; (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter; and (5) for Goodnite, any uncovered innerspring units of PRC origin, the cash deposit rate will be 234.51 percent. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: November 30, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–31309 Filed 12–5–11; 8:45 am]

BILLING CODE 3510–DS–P

[18] *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (''*Fresh Cut Flowers from Mexico*'').

[19] *See Uncovered Innerspring Units from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 45729, 45735 (August 6, 2008), unchanged in *Innerspring Final Determination,* 73 FR at 79446.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–855]

Diamond Sawblades and Parts Thereof From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on diamond sawblades and parts thereof (''diamond

sawblades'') from the Republic of Korea (''Korea''). The period of review is January 23, 2009, through October 31, 2010. This review covers imports of diamond sawblades from three manufacturers/exporters: Ehwa Diamond Industrial Co., Ltd. (''Ehwa''); Hyosung D&P Co., Ltd. (''Hyosung''); and Shinhan Diamond Industrial Co., Ltd. (''Shinhan''). The Department preliminarily finds that Shinhan and Ehwa made sales of the subject merchandise below normal value. For Hyosung, we have determined to apply adverse facts available as a result of its failure to provide the information necessary to determine an antidumping duty rate for the preliminary results and its failure to provide information within the deadlines established by the Department. Pursuant to an order issued by the U.S. Court of International Trade (''CIT'') on October 24, 2011, liquidation of the entries covered by this administrative review is enjoined. Interested parties are invited to comment on these preliminary results. The Department will issue the final results not later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* December 6, 2011.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin or Austin Redington, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–6478 and (202) 482–1664, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 2009, the Department published an antidumping duty order on diamond sawblades from Korea. *See Diamond Sawblades and Parts Thereof From the People's Republic of China and the Republic of Korea: Antidumping Duty Orders,* 74 FR 57145 (November 4, 2009) (''*Order*''). On November 1, 2010, the Department published a notice of opportunity to request an administrative review of the *Order. See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 67079 (November 1, 2010).

On November 30, 2010, the Diamond Sawblades Manufacturers' Coalition (''Petitioner'') requested that the Department conduct such a review for the following companies: Ehwa; Hyosung; Hyosung Diamond Industrial Co., Ltd.; SH Trading Inc.; Shinhan; and Western Diamond Tools Inc. Also on November 30, 2010, Husqvarna Construction Products North America (''HCPNA''), a U.S. producer of subject merchandise, requested an administrative review of Ehwa; Shinhan; and Hyosung Diamond Industrial Co., Ltd. On November 30, 2010, Ehwa; Shinhan; and SH Trading, Inc. submitted their own requests for an administrative review.

On December 28, 2010, in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act''), we initiated an administrative review of all six requested companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 81565 (December 28, 2010).

On February 3, 2011, the Department noted that SH Trading, Inc. is the U.S. affiliate of Shinhan; Western Diamond Tools Inc. is the U.S. affiliate of Hyosung; and Hyosung officially changed its name from ''Hyosung Diamond Industrial Co., Ltd.'' to ''Hyosung D&P Co., Ltd.'' in December 2004. *See* Memorandum from Patricia Tran to the File, ''Re: 2009–2010 Diamond Sawblades and Parts Thereof from the Republic of Korea: Respondents to the First Administrative Review,'' dated February 3, 2011. *See also Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Preliminary Critical Circumstances Determination: Diamond Sawblades and Parts Thereof from the Republic of Korea,* 70 FR 77135 (December 29, 2005). Therefore, we preliminarily determine that there are three companies for which an administrative review was requested: Shinhan, Hyosung, and Ehwa.

In the *Final LTFV Determination,* the Department stated that it would consider whether to revise the physical characteristics used to identify the subject merchandise for model matching purposes. *See Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea,* 71 FR 29310 (May 22, 2006) *(''Final LTFV Determination''),* and accompanying Issues and Decision Memorandum (''Diamond Sawblades IDM'') at Comment 1. Accordingly, on February 16, 2011, the Department gave interested parties an opportunity to comment on this issue. *See* Letter from Yasmin Nair, Program Manager, Office 1 AD/CVD Operations, to All Interested Parties, dated February 16, 2011, which is on file in the Central Records Unit (''CRU'') in room 7046; *see also* the *Order.*

On February 23, 2011, the Department received comments filed on behalf of Shinhan and Ehwa. On February 24, the Department received comments filed on behalf of the Petitioner. On March 1, 2011, the Department received rebuttal comments from Shinhan, Ehwa, and Weihai Xiangguang Mechanical Industrial Co. Ltd. (''Weihai''), a Chinese producer affiliated with Ehwa.

On April 4, 2011, the Department adopted changes to certain model matching characteristics for these preliminary results, including physical form and total diamond weight of the subject merchandise. For a full discussion of these changes, *see* Memorandum to Susan Kuhbach, Office Director, from Christopher Siepmann, ''Re: Summary of Comments from Interested parties on Model Match Characteristics,'' dated April 4, 2011 (''Model Match Memo'').

On April 8, 2011, the Department issued antidumping duty questionnaires to Shinhan, Hyosung, and Ehwa. The Department received responses from all three companies in May and June 2011.

On April 18, 2011, Ehwa requested that it be excused from reporting certain information relating to U.S. sales of merchandise further manufactured in the United States by its affiliated U.S. customer, General Tool, Inc. (''General Tool''). Ehwa claimed that the value of the further processing that occurred in the United States substantially exceeded the value of the imported components. Petitioner submitted comments on Ehwa's request on April 22, 2011. The Department met with representatives of Ehwa on May 3, 2011, to discuss the request. On August 12, 2011, the Department agreed that Ehwa did not need to respond to section E of the Department's questionnaire, but directed Ehwa to report the quantity and value of these further manufactured sales. *See* Letter to J. David Park from Yasmin Nair, Program Manager, dated August 12, 2011.

On July 8, 2011, the Department published in the **Federal Register** an extension of the time limit for the completion of the preliminary results of this review until no later than November 30, 2011, as permitted by section 751(a)(3)(A) of the Act. *See Diamond Sawblades and Parts Thereof From the Republic of Korea: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review,* 76 FR 40324 (July 8, 2011).

In July, August, September, and October 2011, the Department issued supplemental questionnaires all three companies. The Department received responses to these supplemental

questionnaires from Ehwa and Shinhan in September and October 2011. Hyosung did not respond to any of the Department's supplemental questionnaires.

Scope of the Review

The products covered by the order are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of the order are semifinished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of this order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of these orders. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of this order. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of this order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of this order.

Merchandise subject to these orders is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. On October 11, 2011, the Department added HTSUS 6804.21.00.00 to the scope description pursuant to a request by CBP.

The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

Period of Review

The period of review (''POR'') is January 23, 2009, through October 31, 2010.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ''facts otherwise available'' if, *inter alia,* necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(d) of the Act.

We have determined that the use of facts otherwise available is appropriate for the preliminary results with respect to Hyosung because, as noted above, Hyosung failed to respond to the Department's supplemental questionnaires. Specifically, the Department issued Hyosung a section D supplemental in August 2011 and a section A supplemental in September 2011. Although Hyosung requested, and the Department granted, an extension of time to respond to the section D supplemental questionnaire, Hyosung ultimately did not respond. Hyosung did not request an extension of time to respond to the section A supplemental questionnaire, nor did it submit a response. By doing so, Hyosung did not provide the information necessary to determine an antidumping duty rate for the preliminary results and failed to provide information within the deadlines established by the Department. Therefore, in light of Hyosung's continued failure to provide requested information necessary to calculate accurate dumping margins in this case, we determine, in accordance with section 776(a) of the Act, that the use of facts otherwise available with an adverse inference is appropriate for these preliminary results.

Adverse Facts Available

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. By electing not to respond to the Department's supplemental questionnaires, Hyosung has not cooperated to the best of its ability in this review. Therefore, we determine that an adverse inference is warranted, pursuant to section 776(b) of the Act.

In deciding which facts to use as adverse facts available (''AFA''), section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) The petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (''SAA'') accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N 4040, 4199.

We are preliminarily assigning Hyosung an AFA rate of 121.19 percent. This rate was selected from Shinhan's transaction specific margins during the POR. *See,* Memorandum from Austin Redington, International Trade Compliance Analyst through Yasmin Nair, Program Manager to Susan H. Kuhbach, Senior Office Director, ''Adverse Facts Available Rate for Hyosung D&P Co., Ltd.,'' dated November 30, 2011. Application of this rate is consistent with the purpose of AFA, *i.e.,* to induce respondents to provide the Department with complete and accurate information in a timely manner as explained above. No corroboration of this rate is necessary because we are relying on information obtained in the course of this review, rather than secondary information. *See,* 19 CFR 351.308(c) and (d) and section 776(c) of the Act; *See also Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 64318, 64322 (October 18, 2011).

Fair Value Comparisons

To determine whether Ehwa's and Shinhan's (collectively, ''the respondents'') sales of diamond sawblades to the United States were made at less than normal value (''NV''), the Department compared constructed export price (''CEP'') to NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice below.

Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to the weighted-average NV of the foreign-like product, where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production Analysis'' section, below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in the home market (''HM'') during the POR that fit the description in the ''Scope of Review'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the HM, where appropriate. We have relied upon fourteen criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product. These criteria, in order of importance are: (1) Physical form; (2) diameter; (3) type of attachment; (4) cutting edge; (5) diamond mesh size; (6) total diamond weight; (7) diamond grade; (8) segment height; (9) segment thickness; (10) segment length; (11) number of segments; (12) core metal; (13) core type; and (14) core thickness.

As detailed in the Model Match Memo, we limited matches on the basis of physical form (*i.e.,* U.S. sales of finished sawblades can only match to home market sales of finished sawblades; U.S. sales of segments can only match to home market sales of segments; and U.S. sales of cores can only match to home markets sales of cores). Where there were no sales of identical merchandise in the HM made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, while still controlling for physical form (*e.g.,* we allowed matching of a U.S. sale to HM sales if physical form was identical, but the home market sale was within a window period that precedes the U.S. sale by three months or is subsequent to the U.S. sale by two months). Where there were no sales of identical or similar merchandise made in the ordinary course of trade, we made product comparisons using constructed value (''CV'').

Date of Sale

Section 351.401(i) of the Department's regulations states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand,* 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; *see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany,* 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

For U.S. sales, each respondent reported the earlier of the date of invoice or the date of shipment.[1] Therefore, for each respondent's U.S. sales, the Department determines that it is appropriate to use the earlier of the date of invoice or the date of shipment as date of sale. This determination is consistent with the *Final LTFV Determination.*

For home market sales, both respondents reported invoice date as date of sale because both permit home market customers to make order changes up to that time.[2] Both Ehwa and Shinhan reported that the invoice establishes the material terms of sale. Therefore, for home market sales, the Department determines that it is appropriate to use invoice date as date of sale for both companies. This determination is consistent with the *Final LTFV Determination.*

Constructed Export Price

For the price to the United States, each respondent reported making only CEP sales. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation, by, or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Act.

Ehwa

We calculated a CEP for all of Ehwa's U.S. sales because the subject merchandise was sold directly to General Tool, Ehwa's U.S. affiliate, prior to being sold to the first unaffiliated purchaser in the United States.[3] Ehwa reported that, while all CEP sales were made to General Tool, from the beginning of the POR through October 21, 2009, Ehwa had three additional U.S. affiliated resellers, Dia-Technolog, Inc., Diamond Vantage, Inc., and New England Diamond, Inc, which merged with General Tool after October 21, 2009.[4] We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include expenses incurred for inland freight, domestic brokerage and handling, and U.S. brokerage and handling. In addition, we made deductions from the U.S. starting price for discounts, rebates, and billing adjustments. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Ehwa and its U.S. affiliates on their sales of the subject merchandise in the United States and the profit associated with those sales.

The Department interprets section 772(c)(1)(B) of the Act as requiring that any duty drawback be added to CEP if two criteria are met: (1) Import duties and rebates are directly linked to, and dependent upon, one another, and; (2) raw materials were imported in sufficient quantities to account for the duty drawback received on exports of the manufactured product. The first prong of the test requires the Department ''to analyze whether the foreign country in question makes entitlement to duty drawback dependent upon the payment of import duties.'' *See Far East Machinery* v. *United States,* 699 F. Supp. 309, 311 (CIT 1988). This ensures that a duty

[1] *See* Ehwa's (date) Questionnaire Response (''Ehwa QR'') at C–14 and Ehwa's (date) Supplemental QR (''Ehwa SQR'') at S–10. *See also* Shinhan's (date) Questionnaire Response (''Shinhan QR'') at C–13, 14.

[2] *See* Ehwa QR at B–13, 14. *See also* Shinhan QR at B–12, 13.

[3] *See* Ehwa QR at A–16 and Section C, generally.

[4] *See* Ehwa QR at A–1.

drawback adjustment will be made only where the drawback received by the manufacturer is contingent on import duties paid or accrued. The second prong requires the foreign producer to show that it imported a sufficient amount of raw material (upon which it paid import duties) to account for the exports upon which it claimed its rebates. *Id.*

Ehwa reported that it received certain ''drawback'' amounts associated with duties paid on imported inputs pursuant to the Korean Government's individual application system, where the duty is rebated based upon each applicant's use of the imported input.[5] As the applicable criteria have been met in the case of Ehwa, we made additions to the starting price for duty drawback in accordance with section 772(c)(1)(B) of the Act.

Shinhan

We calculated a CEP for Shinhan's U.S. sales because the subject merchandise was sold directly to SH Trading, Inc., Shinhan's U.S. affiliate, prior to being sold to the first unaffiliated purchaser in the United States. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include expenses incurred for inland freight, domestic brokerage and handling, and U.S. brokerage and handling. In addition, we made deductions from the U.S. starting price for discounts, rebates, and for billing adjustments. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Shinhan and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

As discussed above, the Department will add duty drawback to U.S. price only if the respondent demonstrates that it has satisfied the Department's two-prong test. Shinhan reported that it received certain ''drawback'' amounts associated with duties paid on imported inputs pursuant to the Korean Government's individual application system, where the duty is rebated based upon each applicant's use of the imported input. As the applicable criteria have been met, we made additions to Shinhan's starting price for duty drawback in accordance with section 772(c)(1)(B) of the Act.

[5] *See* Ehwa QR at C–29 and Ehwa SQR at S–20 and exhibits 26–32.

Normal Value

A. Selection of Comparison Market

To determine whether there was a sufficient volume of sales of diamond sawblades in the home market to serve as a viable basis for calculating NV, the Department compared the respondents' home market sales of the foreign-like product to their volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. Pursuant to section 773(a)(1)(B) of the Act, because each respondent's reported aggregate volume of home market sales of the foreign-like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, the Department determined that the home market was viable for comparison purposes.

B. Level of Trade

Section 773(a)(1)(B) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id. See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (November 19, 1997) (''*CTL Plate''*). To determine whether NV sales are at a different LOT than U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution. *See* 19 CFR 351.412(c)(2). If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See CTL Plate, 62 FR at 61732 and Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada,* 67 FR 8781 (February 26, 2002).

In this review, we obtained information from each respondent regarding the marketing stages involved in making the reported HM and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

Ehwa

As stated, Ehwa made its U.S. sales through four U.S. affiliates which merged into General Tool. However, all of Ehwa's sales were to General Tool.[6] That is, all of the subject merchandise sold in the United States was purchased and imported by General Tool. The Department bases its CEP LOT analysis on the sale to the producer/exporter's U.S. affiliate and, thus, looked only to Ehwa's ''General Tool'' LOT, rather than the four distinct LOTs identified by Ehwa. *See Micron Tech. Inc.* v. *United States, 243 F. 3d 1301, 1313 (Fed. Cir. 1997) and Torrington Co.* v. *United States,* 146 F. Supp.2d 845, 875 (CIT 2001).

For its HM sales, Ehwa reported two LOTs based on customer types, distributors and end-users. Our analysis, however, revealed that there were no significant differences in the selling activities between the two reported HM LOTs. For a detailed analysis of the Department's Ehwa LOT analysis, *see* Memorandum from Sergio Balbontin, International Trade Analyst, to Yasmin Nair, Program Manager, ''Level of Trade Analysis,'' dated November 30, 2011. We, thus, compared one U.S. LOT to one HM LOT.

Based upon: (1) The quantity of selling activities undertaken in the HM LOT but not in the U.S. LOT; and (2) the difference in level of intensity of the selling activities performed in both the markets, we preliminarily determine that the HM is at a more advanced LOT than the U.S. market LOT. Therefore, we are granting Ehwa a CEP offset to NV. *See* sections 773(7)(B) and 772(d)(1)(D) of the Act.

Shinhan

Shinhan's reported LOT information, which is designated business proprietary, does not support a LOT adjustment. However, we have granted Shinhan a CEP-offset. For further discussion of Shinhan's LOT information and our analysis, *see* Memorandum from Scott Holland, International Trade Analyst, to Yasmin Nair, Program Manager, ''Level of Trade Analysis,'' dated November 30, 2011, a public version of which is on file in Department's CRU.

[6] *See* Ehwa QR at A–16, 17.

C. Sales to Affiliated Customers

Shinhan made sales in the home market to affiliated customers. The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.,* sales were made at arm's length prices. *See* 19 CFR 351.403(c). To test whether these sales were made at arm's length, the Department compared the starting prices of sales to affiliated customers to those of sales to unaffiliated customers, net of all movement charges, direct and indirect selling expenses, discounts, and packing. Where the price to affiliated parties was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise to the unaffiliated parties, the Department determined that the sales made to affiliated parties were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186 (November 15, 2002). In accordance with this practice, only Shinhan's sales to affiliated parties made at arm's length were included in the Department's margin analysis. *See* Memorandum from Scott Holland, International Trade Analyst, to Yasmin Nair, Program Manager, ''Preliminary Results Calculation for Shinhan Diamond Industrial Co., Ltd.,'' dated November 30, 2011 (''Shinhan Prelim Calc Memo'').

D. Cost of Production Analysis

In the final determination of the investigation, the Department disregarded some sales by Ehwa and Shinhan because they were made at prices below the cost of production (''COP''). *See Final LTFV Determination.* Under section 773(b)(2)(A)(ii) of the Act, previously disregarded below-cost sales provide reasonable grounds for the Department to believe or suspect that both respondents made sales of the subject merchandise in the home market at prices below the COP in this review. Whenever the Department has reason to believe or suspect that sales were made below the COP, we are directed by section 773(b) of the Act to determine whether, in fact, there were below-cost sales.

Pursuant to section 773(b)(1) of the Act, the Department may disregard sales that were made at less than the COP in its calculation of NV, if such sales were made in substantial quantities over an extended period of time at prices that would not permit recovery of costs within a reasonable period. The Department will find that a respondent's below-cost sales represent ''substantial quantities'' when 20 percent or more of the volume of its sales of a foreign-like product are at prices less than the COP; however, where less than 20 percent of the volume of a respondent's sales of a foreign-like product are at prices less than the COP, the Department will not disregard such sales because they are not made in substantial quantities. *See* section 773(b)(2)(C) of the Act. Further, in accordance with section 773(b)(2)(B) of the Act, the Department normally considers sales to have been made within an extended period of time when the sales are made during a period of one year. Finally, if prices which are below the per-unit COP at the time of sale are not above the weighted-average per-unit COP for the POR, the Department will not consider such prices to provide for the recovery of costs within a reasonable period of time. *See* section 773(b)(2)(D) of the Act.

1. Test of Home Market Prices

On a product-specific basis, the Department compared the respondents' adjusted weighted-average COP figures for the POR to their home market sales of the foreign-like product, as required under section 773(b) of the Act, to determine whether these sales were made at prices below the COP. Home market prices were exclusive of any applicable movement charges and indirect selling expenses.

The Department found that, for certain sales of Ehwa's and Shinhan's foreign-like product, more than 20 percent of their sales were at prices below the COP and, thus, the below-cost sales were made within an extended period of time in substantial quantities. *See* Memorandum from Sergio Balbontin, International Trade Analyst, to Yasmin Nair, Program Manager, ''Preliminary Results Calculation for Ehwa Diamond Industrial Co., Ltd.,'' dated November 30, 2011 (''Ehwa Prelim Calc Memo''); *see also* Shinhan Prelim Calc Memo. In addition, these sales were made at prices that did not permit the recovery of costs within a reasonable period of time. Therefore, the Department excluded these below-cost sales and used both respondents' remaining above-cost sales of foreign-like product, made in the ordinary course of trade, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

2. Calculation of COP

The Department calculated Ehwa's and Shinhan's COP on a product-specific basis, based on the sum of their costs of materials and fabrication for the merchandise under review, plus amounts for SG&A expenses, financial expenses, and the costs of all expenses incidental to placing the foreign-like product packed and in a condition ready for shipment, in accordance with section 773(b)(3) of the Act.

The Department relied on the COP information submitted in the responses to our cost questionnaires with the following adjustments for each company:

Ehwa

We relied on the COP data submitted by Ehwa in its October 27, 2011, section D supplemental response. Based on our review of record evidence, Ehwa did not experience significant changes in the cost of manufacturing during the POR. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

In accordance with the transactions disregarded rule of section 773(f)(2) of the Act, we adjusted Ehwa's cost of manufacturing (''COM'') to reflect the market value of inputs purchased from an affiliate. In addition, we adjusted Ehwa's COM and general and administrative expenses to include the full amount of bonus expenses. For additional details on these adjustments, *see* memorandum from Ernest Z. Gziryan, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Ehwa Diamond Industrial Co., Ltd.,'' dated November 30, 2011.

Shinhan

We relied on the COP data submitted by Shinhan in its October 19, 2011, section D supplemental response. Based on our review of record evidence, Shinhan did not experience significant changes in the cost of manufacturing during the POR. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

E. Constructed Value

In accordance with section 773(e) of the Act, we calculated CV for Ehwa and Shinhan based on the sum of material and fabrication costs, selling, general and administrative (''SG&A'') expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described in the ''Cost of Production Analysis'' section of this notice, above. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Ehwa and Shinhan in connection with the production and sale

of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

F. Calculation of Normal Value

The Department calculated NV based on the prices Ehwa and Shinhan reported for their respective home market sales to unaffiliated customers which were made in the ordinary course of business. The Department added U.S. packing costs and deducted home market packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act, respectively. The Department also made adjustments to NV, consistent with section 773(a)(6)(B)(ii) of the Act, to account for loading fees and for inland freight from the plant to the customer, where appropriate. In addition, the Department made adjustments to NV to account for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, by deducting direct selling expenses incurred by Ehwa and Shinhan on their home market sales (*i.e.,* credit expenses and bank charges) and adding U.S. direct selling expenses (*i.e.,* credit expenses and bank charges), as appropriate. *See* 19 CFR 351.410(c) *see also* Shinhan Prelim Calc Memo and Ehwa Prelim Calc Memo.

Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margins exist for the period January 23, 2009, through October 31, 2010:

Exporter/manufacturer	Margin (percent)
Ehwa Diamond Industrial Co., Ltd	12.21
Hyosung Diamond Industrial Co., Ltd, Western Diamond Tools Inc., and Hyosung D&P Co., Ltd	121.19
Shinhan Diamond Industrial Co., Ltd. and SH Trading, Inc	3.50

Public Comment

The Department will disclose the calculations performed within five days of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, should be filed not later than 5 days after the time limit for filing case briefs. *See* 19 CFR 351.309(d). Parties submitting arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities, in accordance with 19 CFR 351.309(d)(2). Further, parties submitting case and/or rebuttal briefs are requested to provide the Department with an additional electronic copy of the public version of any such comments on a computer diskette. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of publication of this notice in the **Federal Register**. If a hearing is requested, the Department will notify interested parties of the hearing schedule. Issues raised in the hearing will be limited to those raised in the case briefs.

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, unless extended. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rates

The Department shall determine, and CBP will assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b)(1). As mentioned above, on October 24, 2011, the U.S. Court of International Trade (''CIT'') preliminarily enjoined liquidation of entries which are subject to the *Final LTFV Determination.* Accordingly, the Department will not instruct CBP to assess antidumping duties pending resolution of the associated litigation.

Pursuant to 19 CFR 351.212(b)(1), for all sales made by the respondents for which they have reported the importer of record and the entered value of the U.S. sales, we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Where the respondent did not report the entered value for U.S. sales to an importer, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales.

To determine whether the duty assessment rates were *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), the Department calculated importer-specific *ad valorem* ratios based on the entered value or the estimated entered value, when entered value was not reported.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (''*Assessment Policy Notice*''). This clarification will apply to entries of subject merchandise during the POR produced by Ehwa and Shinhan for which these companies did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate involved in the transaction. For a full discussion of this clarification, *see Assessment Policy Notice.*

Cash Deposit Requirements

Effective October 24, 2011, the Department revoked the antidumping duty order on diamond sawblades from Korea, pursuant to a proceeding under section 129 of the Uruguay Round Agreements Act to implement the findings of the WorId Trade Organization dispute settlement panel in United States—*Use of Zeroing in Anti-Dumping Measures Involving Products from Korea* (WTIDS402/R) (January 18, 2011). *See Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof From the Republic of Korea,* 76 FR 66892 (October 28, 2011), and accompanying Issues and Decision Memorandum. Consequently, no cash deposits are required on imports of subject merchandise.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The Department is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 30, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–31285 Filed 12–5–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part

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

SUMMARY: In response to timely requests, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (PRC). The period of review (POR) is January 23, 2009, through October 31, 2010. We have preliminarily determined that sales have been made below normal value by the companies subject to individual examination in this review.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this review are requested to submit with each argument (1) A statement of the issue and (2) a brief summary of the argument.

DATES: Effective Date: December 6, 2011.

FOR FURTHER INFORMATION CONTACT: Jerrold Freeman or Yang Jin Chun, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–0180 and (202) 482–5760, respectively.

Background

On November 4, 2009, the Department published in the **Federal Register** an antidumping duty order on diamond sawblades from the PRC. *See Diamond Sawblades and Parts Thereof From the People's Republic of China and the Republic of Korea: Antidumping Duty Orders,* 74 FR 57145 (November 4, 2009). On November 1, 2010, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 67079 (November 1, 2010).

On December 28, 2010, based on timely requests for an administrative review, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on diamond sawblades from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 81565 (December 28, 2010) (*Initiation Notice*).

Consistent with our determination in *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), and the accompanying Issues and Decision Memorandum (I&D Memo) (*LTFV Final*) at Comment 5, we solicited comments from interested parties concerning whether to change in this review the physical characteristics we use to identify the various products covered by this order. *See* the letter to all interested parties dated February 17, 2011. After reviewing the parties' comments, we decided to continue relying on the physical characteristics used in the investigation. *See* the memorandum entitled ''Diamond Sawblades and Parts Thereof from the People's Republic of China: Physical Characteristics'' dated April 8, 2011.

On February 18, 2011, we selected Advanced Technology & Materials Co., Ltd. (ATM), Beijing Gang Yan Diamond Products Co. (BGY), and Cliff International Ltd. (Cliff) (treated as a single entity in the investigation) and Weihai Xiangguang Mechanical Industrial Co., Ltd. (Weihai), for individual examination in this review. *See* the memorandum entitled ''Diamond Sawblades and Parts Thereof from the People's Republic of China: Selection of Respondents for Individual Examination'' dated February 18, 2011 (Respondent Selection Memo).

We extended the due date for the preliminary results of review by 120 days to November 30, 2011. *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 41759 (July 15, 2011), and *Diamond Sawblades and Parts Thereof From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 64896 (October 19, 2011).

We are conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the order are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of the order are semifinished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the order. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of the order. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order. Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 or 6804.21.00 of the HTSUS. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Intent To Rescind Review in Part

In accordance with 19 CFR 351.213(d)(3), the Department may rescind an administrative review, ''in whole or only with respect to a particular exporter or producer, if (the Department) concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise * * *'' Record evidence indicates that Shanghai Deda Industry & Trading Co., Ltd., did not have any exports of subject merchandise during the POR. *See* the February 28, 2011, submission from Shanghai Deda Industry & Trading Co., Ltd. Moreover, we have reviewed the U.S. Customs and Border Protection (CBP) entry data for the POR and found no evidence of exports from this company. *See* the memorandum entitled ''Diamond Sawblades and Parts Thereof from the People's Republic of China ('PRC'): U.S. Customs and Border Protection ('CBP') Data'' dated January 4, 2011. Additionally, on October 24, 2011, we requested that CBP report any contrary information. To date, we have not received any evidence that this company had any shipments to the United States of subject merchandise during the POR. Therefore, pursuant to 19 CFR 351.213(d)(3), the Department intends to rescind this review in part with respect to Shanghai Deda Industry & Trading Co., Ltd.

Non-Market Economy Country Status

The Department considers the PRC to be a non-market economy (NME) country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2005 Administrative Review and Preliminary Notice of Intent To Rescind the 2004/2005 New Shipper Review,* 71 FR 26736 (May 8, 2006), unchanged in *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review,* 71 FR 66304 (November 14, 2006). None of the parties to this proceeding has contested NME treatment for the PRC. Therefore, for the preliminary results of this review, we have treated the PRC as an NME country and applied our current NME methodology in accordance with section 773(c) of the Act.

Surrogate Country

In antidumping proceedings involving NME countries, pursuant to section 773(c)(1) of the Act, the Department generally bases normal value on the value of the NME producer's factors of production (FOP). In accordance with section 773(c)(4) of the Act, in valuing the FOP, the Department uses to the extent possible the prices or costs of the FOP in one or more market economy countries that are (1) At a level of economic development comparable to that of the NME country and (2) significant producers of merchandise comparable to the subject merchandise. Moreover, as we stated in Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process, dated March 1, 2004, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from these countries.

The Department has determined that India, Indonesia, Peru, the Philippines, Thailand, and Ukraine are countries that are at a level of economic development comparable to that of the PRC. *See* the memorandum entitled ''Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof ('Diamond Sawblades') from the People's Republic of China ('China')'' dated May 9, 2011. On June 23, 2011, we issued a letter inviting comments on the selection of surrogate country and surrogate value. *See* the June 23, 2011, letter to all interested parties.

On August 11, 2011, the petitioner [1] and the respondents selected for individual examination recommended that the Department select India as the surrogate country. On August 25, 2011, Bosun Tools Co., Ltd., and the respondents selected for individual examination submitted information concerning surrogate values based on Indian statistics. For the preliminary results, we have selected India as the surrogate country and used Indian statistics for surrogate values. *See* the memorandum entitled ''Diamond Sawblades and Parts Thereof from the People's Republic of China: Selection of a Surrogate Country'' dated November 30, 2011.

Affiliation

In the less-than-fair-value investigation, we determined that ATM, BGY, and Yichang HXF Circular Saw Industrial Co., Ltd. (HXF), were a single entity and calculated a single antidumping duty margin for this single entity. *See LTFV Final,* 71 FR at 29304, 29306–07. We also determined that BGY and Gang Yan Diamond Products, Inc. (GYDP) were affiliated and that GYDP, SANC Materials, Inc., and Cliff were affiliated with each other. *Id.*

For the preliminary results of this review, we find that ATM, BGY, and HXF continue to be affiliated as the facts are similar to those at the time of the investigation. Moreover, record evidence indicates that BGY determines the prices of the subject merchandise Cliff exports to the United States and thus controls Cliff's business operations with respect to exports of the subject merchandise. For this reason, we preliminarily find that BGY and Cliff are affiliated pursuant to section 771(33)(G) of the Act and 19 CFR 351.102(b)(3). We also preliminarily find that ATM and AT&M International Trading Co., Ltd. (ATMI) were affiliates pursuant to sections 771(33)(E) and (G) of the Act and 19 CFR 351.102(b)(3) for a majority of the POR. For the remainder of the POR, we find that ATM and ATMI were affiliates pursuant to section 771(33)(F) of the Act and 19 CFR 351.102(b)(3). For more details on these companies' affiliation status, which includes these companies' business proprietary information, *see* the memorandum entitled ''Diamond Sawblades and Parts Thereof from the People's Republic of China: Determination to Include Additional Companies in the ATM Single Entity'' dated November 30, 2011. Because ATM, BGY, HXF, Cliff, and ATMI (collectively ATM Single Entity) [2] are affiliated respondents in this review, we treated these five companies as a single entity for purposes of calculating a single margin for these preliminary results.

Separate Rates

A designation of a country as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. 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 antidumping

[1] Diamond Sawblades Manufacturers Coalition.

[2] The ATM Single Entity submitted information showing that HXF changed its name in December 2008 from Yichang HXF Circular Saw Industrial Co., Ltd., a company for which we initiated this review in *Initiation Notice,* 75 FR at 81568, to HXF Saw Co., Ltd. *See* the ATM Single Entity's November 14, 2011, supplemental response at 1–2 and Exhibit SA2–1. The ATM Single Entity also reported that ATM International Trading Co., Ltd., a company for which we initiated this review in *Initiation Notice,* 75 FR at 81567, is the same company as ATMI. *See* the ATM Single Entity's November 17, 2011, supplemental response at 1.

duty rate. *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), and *LTFV Final.*

In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings. *See Initiation Notice,* 75 FR at 81566. It is the Department's policy to assign all exporters of merchandise subject to a proceeding involving an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent from the government so as to be entitled to a separate rate. The Department assigns separate rates in NME proceedings only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities under a test developed by the Department and described in *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), and *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*).

In this review, the following companies submitted separate rate applications:

ASHINE Diamond Tools Co., Ltd.
Bosun Tools Co., Ltd.[3]
Danyang Hantronic Import & Export Co., Ltd.
Danyang Huachang Diamond Tools Manufacturing Co., Ltd.
Hangzhou Deer King Industrial & Trading Co., Ltd.
Hebei Husqvarna-Jikai Diamond Tools Co., Ltd.
Hebei XMF Tools (Group) Co., Ltd.
Henan Huanghe Whirlwind Co., Ltd.
Henan Huanghe Whirlwind International Co., Ltd.
Huzhou Gu's Import & Export Co., Ltd.
Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd.
Jiangsu Inter-China Group Corporation[4]
Jiangsu Youhe Tool Manufacturer Co., Ltd.[5]
Rizhao Hein Saw Co., Ltd.
Saint-Gobain Abrasives (Shanghai) Co., Ltd.[6]
Shanghai Robtol Tool Manufacturing Co., Ltd.
Xiamen ZL Diamond Technology Co., Ltd.[7]

Also, the following companies submitted separate rate certifications:

Chengdu Huifeng Diamond Tools Co., Ltd.
Danyang NYCL Tools Manufacturing Co., Ltd.
Fujian Quanzhou Wanlong Stone Co., Ltd.
Guilin Tebon Superhard Material Co., Ltd.
Qingdao Shinhan Diamond Industrial Co., Ltd.
Quanzhou Zhongzhi Diamond Tool Co. Ltd.
Shijiazhuang Global New Century Tools Co., Ltd.
Wuhan Wanbang Laser Diamond Tools Co.
Zhejiang Wanli Tools Group Co., Ltd.[8]

Additionally, the Department received complete responses for the antidumping questionnaires which contain additional information pertaining to the company's eligibility for a separate rate from the following respondents selected for individual examination:

ATM Single Entity

Weihai Xiangguang Mechanical Industrial Co., Ltd.

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; (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589.

The companies listed above have placed on the administrative record both a copy of their business licenses and export licenses. The selected respondents and companies that filed separate rate applications also placed on the administrative record a copy of their articles of association. None of these documents contains restrictions with respect to export activities.

In their submissions, the companies listed above stated that they are independent legal entities and placed evidence on the record of the review indicating that the government of the PRC does not have *de jure* control over their export activities. The companies listed above submitted evidence of their legal right to set prices independent of all governmental oversight. Furthermore, the business licenses of these companies indicate that they are permitted to engage in the exportation of diamond sawblades. We also found no evidence of *de jure* government control restricting these companies' exportation of the subject merchandise.

The Department has found previously that the *Company Law of the People's Republic of China* (*Company Law*) indicates a lack of *de jure* government control. *See, e.g., Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New-Shipper Reviews,* 75 FR 34100, 34103 (June 16, 2010), unchanged in *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative and New-Shipper Reviews,* 75 FR 79337 (December 20, 2010). The *Company Law* governs business activities of the companies listed above, made effective on July 1, 1994, with the amended version promulgated on August 28, 2004, and states that a company is an enterprise legal person, that shareholders shall assume liability towards the company to the extent of their shareholdings, and that the company shall be liable for its debts to the extent of all its assets. *Id.*

Additionally, the *Foreign Trade Law of the People's Republic of China* also indicates a lack of *de jure* government control. *Id.* Specifically, this document identifies the rights and responsibilities of organizations engaging in foreign trade, grants autonomy to foreign-trade operators in management decisions, and establishes the foreign-trade operator's accountability for profits and losses. *Id.* Based on the foregoing, the Department has preliminarily determined that there is an absence of *de jure* governmental

[3] Bosun Tools Co., Ltd., submitted information showing that it was previously known as Bosun Tools Group Co., Ltd., a company for which we initiated this review in *Initiation Notice,* 75 FR at 81567. *See, inter alia,* Bosun Tools Co., Ltd.'s February 28, 2011, separate rate application at Exhibit 5.

[4] Jiangsu Inter-China Group Corporation submitted information showing that it was previously known as Zhenjiang Inter-China Import & Export Co., Ltd., a company for which we initiated this review in *Initiation Notice,* 75 FR at 81567. *See* Jiangsu Inter-China Group Corporation's February 28, 2011, separate rate application at Exhibit 3.

[5] Jiangsu Youhe Tool Manufacturer Co., Ltd., submitted information showing that it was previously known as Danyang Youhe Tool Manufacturer Co., Ltd., a company for which we initiated this review in *Initiation Notice,* 75 FR at 81567. *See* Jiangsu Youhe Tool Manufacturer Co., Ltd.'s February 28, 2011, separate rate application at 3 and Exhibit 1.

[6] Saint-Gobain Abrasives (Shanghai) Co., Ltd., reported that Saint-Gobain Abrasives Inc., a company for which we initiated this review in *Initiation Notice,* 75 FR at 81568, is its U.S. affiliate. *See* Saint-Gobain Abrasives (Shanghai) Co., Ltd.'s February 28, 2011, separate rate application at 8.

[7] Xiamen ZL Diamond Tools Co., Ltd., a company for which we initiated this review in *Initiation Notice,* 75 FR at 81568, submitted information showing that it changed its name to Xiamen ZL Diamond Technology Co., Ltd., during the POR. *See* Xiamen ZL Diamond Technology Co., Ltd.'s January 14, 2011, separate rate application at 3 and Exhibit 4.

[8] In *Initiation Notice,* we initiated the review for Zhejiang Wanli Tools Group Co., Ltd., aka Wanli Tools Group. *See Initiation Notice,* 75 FR at 81568. In its separate rate certification, Zhejiang Wanli Tools Group Co., Ltd., certified that it used the same trade name as identified in the investigation, which is Zhejiang Wanli Tools Group Co., Ltd. *See* Zhejiang Wanli Tools Group Co., Ltd.'s February 28, 2011, separate rate certification at 3 and *LTFV Final.*

control over the export activities of these companies listed above.

Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide,* 59 FR at 22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The Department typically considers the following four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a government agency; (2) whether the respondent has the 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; (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–87, and *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).

Companies listed above have each certified the following: (1) The company establishes its own export prices; (2) it negotiates contracts without guidance from any government entities or organizations; (3) it makes its own personnel decisions; (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans.

Based on the information on the record of this review, the Department has preliminarily determined that there is an absence of *de facto* governmental control over the export activities of the companies listed above. Given that the Department has found that the companies listed above operate free of *de jure* and *de facto* governmental control, we have preliminarily determined that the companies listed above have satisfied the criteria for a separate rate.

Separate Rate for Non-Selected Companies

In accordance with section 777A(c)(2)(B) of the Act, we selected companies within the ATM Single Entity and Weihai for individual examination because we did not have the resources to examine all companies for which a review was requested. *See* Respondent Selection Memo.

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally we have used section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that we do not calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Accordingly, the Department's usual practice has been to average the rates for the selected companies, excluding zero, *de minimis,* and rates based entirely on facts available. *See, e.g., Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008), and the accompanying I&D Memo at Comment 16.

Because the weighted-average antidumping duty margin for the ATM Single Entity is *de minimis,* the antidumping duty margin for Weihai is the only weighted-average margin which is applicable to companies not selected for individual examination and eligible for a separate rate. Accordingly, for the preliminary results of this review, we are assigning the rate of 8.50 percent to companies not selected for individual examination and eligible for a separate rate. In assigning this separate rate, we did not impute the actions of any other companies to the behavior of the companies not individually examined but based this determination on record evidence that may be deemed reasonably reflective of the potential dumping margin for the companies not selected for individual examination and eligible for a separate rate in this administrative review.

Additionally, in its February 25, 2011, separate rate application, Hebei Husqvarna-Jikai Diamond Tools Co., Ltd., claimed that it is the successor-in-interest to Hebei Jikai Industrial Group Co., Ltd., which is another respondent in this review. The Department has determined that Hebei Husqvarna-Jikai Diamond Tools Co., Ltd., is not the successor-in-interest to Hebei Jikai Industrial Group Co., Ltd., and that Hebei Husqvarna-Jikai Diamond Tools Co., Ltd., is a new entity. *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results and Preliminary Intent To Terminate, in Part, Antidumping Duty Changed Circumstances Review and Extension of Time Limit for Final Results,* 76 FR 38357 (June 30, 2011), unchanged in *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results and Termination, in Part, of the Antidumping Duty Changed Circumstances Review,* 76 FR 64898 (October 19, 2011). Accordingly, because Hebei Jikai Industrial Group Co., Ltd., did not file a separate rate application or a separate rate certification, we assigned a PRC-wide rate to this company for the preliminary results of this review.

U.S. Price

For the price to the United States, we used export price (EP) or constructed export price (CEP) as defined in sections 772(a) and (b) of the Act, as appropriate.

Export Price Sales

For the ATM Single Entity and Weihai, in accordance with section 772(a) of the Act, the Department calculated EP for a portion of sales to the United States because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted. The Department calculated EP based on the sales price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, as appropriate, the Department deducted from the sales price expenses for certain foreign inland freight, brokerage and handling (B&H), and international movement costs. For the inland freight and B&H services provided by an NME vendor or paid for using an NME currency, the Department based the deduction of these charges on surrogate values. *See* the memorandum entitled ''Diamond Sawblades and Parts Thereof from the People's Republic of China: Surrogate Value for the Preliminary Results of Review'' dated November 30, 2011 (Surrogate Value Memo), for details regarding the surrogate values for movement expenses. For international freight provided by a market economy provider and paid in U.S. dollars, the Department used the actual cost per kilogram of the freight.

Constructed Export Price Sales

For some of the U.S. sales the ATM Single Entity and Weihai reported, the Department based U.S. price on CEP in accordance with section 772(b) of the Act because sales were made on behalf of the China-based exporter by a U.S. affiliate to unaffiliated customers in the United States. For these sales, the Department based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, the Department made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. The Department deducted, where appropriate, commissions, inventory carrying costs, credit expenses, warranty expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by PRC service providers or paid for in renminbi, the Department valued these services using surrogate values. *See* the ''Surrogate Values'' section, *infra,* for further discussion. For those expenses that were provided by a market economy provider and paid for in a market economy currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, *see* the company-specific analysis memoranda dated November 30, 2011, for a detailed description of all adjustments made to U.S. price for each company.

Further Manufactured Sales

The ATM Single Entity reported sales of subject merchandise that its U.S. affiliate further manufactured in the United States and responded to section E of the Department's questionnaire. Section E requests data related to cost of further manufacturing or assembly performed in the United States of subject merchandise. Based on the ATM Single Entity's responses and data, we have made the deduction required by section 772(d)(2) of the Act for the costs of the further manufacturing.

On April 27, 2011, Weihai requested that the Department exempt the company from responding to section E. On June 1, 2011, we directed the company to provide the information regarding further manufacturing in section A of our questionnaire and to report its sales of further manufactured products to unaffiliated customers. *See* the June 1, 2011, letter from the Department to Weihai. Weihai submitted the requested information on June 8, 2011, and August 24, 2011, respectively. After reviewing Weihai's responses, we granted Weihai's request not to respond to section E because the total value of Weihai's U.S. sales of further manufactured products was insignificant and did not justify the extensive use of our resources to analyze those sales for the preliminary results of this review. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Static Random Access Memory Semiconductors From the Republic of Korea,* 62 FR 51437, 51438 (October 1, 1997), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From the Republic of Korea,* 63 FR 8934 (February 23, 1998). For business proprietary details on our decision, *see* the Weihai preliminary analysis memorandum dated November 30, 2011.

Revenue Caps

Weihai received freight revenues from its customers for certain U.S. sales. In *Certain Orange Juice From Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 46584 (August 11, 2008), and the accompanying I&D Memo at Comment 7 and in *Polyethylene Retail Carrier Bags From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 6857 (February 11, 2009), and accompanying I&D Memo at Comment 6, the Department determined to treat such revenues as an offset to the specific expenses for which they were intended to compensate. Accordingly, we have used Weihai's freight revenues as an offset to its corresponding freight expenses.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value using an FOP methodology if the merchandise is exported from an NME country and the available information does not permit the calculation of normal value using home market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department uses an FOP methodology because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under its normal methodologies. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent To Rescind in Part,* 70 FR 39744, 39754 (July 11, 2005), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review,* 71 FR 2517 (January 17, 2006).

In accordance with section 773(c) of the Act, we relied on the FOP data reported by the ATM Single Entity and Weihai.[9] We calculated normal value by adding together the value of the FOP, overhead, general expenses, profit, and packing costs. Specifically, we valued material, labor, energy, and packing by multiplying the reported per-unit rates for the factors consumed in producing the subject merchandise by the average per-unit surrogate value of the factor. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the decision by the United States Court of Appeals for the Federal Circuit (CAFC) in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). We increased the calculated costs of the FOP for surrogate general expenses and profit. *See* Surrogate Value Memo.

Surrogate Values

In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the data. For these preliminary results, in selecting the best available data for valuing FOPs in accordance with section 773(c)(1) of the Act, we followed our practice of choosing publicly available values which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive. *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*

[9] We based the values of the FOPs on surrogate values, as applicable. *See* the ''Surrogate Values'' section, *infra.*

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). We also considered the quality of the source of surrogate information in selecting surrogate values. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China,* 59 FR 55625, 55633 (November 8, 1994). Where we could only obtain surrogate values that were not contemporaneous with the POR, we inflated the surrogate values using, where appropriate, the Indian Wholesale Price Index (Indian WPI), as published in the *International Financial Statistics* of the International Monetary Fund. *See* Surrogate Value Memo.

As explained in the legislative history of the Omnibus Trade and Competitiveness Act of 1988, the Department continues to apply its long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized as discussed below.[10] In this regard, we have found previously that it is appropriate to disregard such prices from India, Indonesia, South Korea, and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[11] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies. Additionally, we disregarded prices from NME countries.[12] Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value because the Department could not be certain that they were not from either an NME country or a country with generally available export subsidies.[13]

We used the following surrogate values in our margin calculations for these preliminary results of review. We valued raw materials, packing materials, and energy consumption (with the exception of electricity) using January 2009–October 2010 weighted-average Indian import values derived from the *Global Trade Atlas* online (*GTA*). The Indian import statistics that we obtained from the *GTA* were published by the Directorate General of Commercial Intelligence & Statistics, Ministry of Commerce of India, and are contemporaneous with the POR.

To value electricity, we used March 2008 electricity price rates from *Electricity Tariff & Duty and Average Rates of Electricity Supply in India,* published by the Central Electricity Authority of the Government of India. As the rates listed in this source became effective on a variety of different dates, we are not adjusting the average value for inflation.

We valued truck-freight expenses using an average of the per-unit average rates for January 2009, April 2009, July 2009, October 2009, January 2010, April 2010, July 2010, and October 2010 which we calculated from data at *www.infobanc.com/logistics/logtruck.htm.* The logistics section of this Web site contains rates for inland-freight trucking between many large Indian cities. We inflated or deflated, depending on the month, the per-unit average truck-freight rates for the selected months of the POR using the Indian WPI to make it contemporaneous with the POR.

We valued B&H expenses using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2011: India,* published by the World Bank. Because these data were current throughout the POR, we did not inflate the value for B&H. *See* Surrogate Value Memo for further details.

We valued international freight using the data obtained from the Descartes Carrier Rate Retrieval Database (Descartes) which is available at *http://descartes.com/.* The Descartes database is a web-based service which publishes the ocean freight rates of numerous carriers. In the less-than-fair-value investigation of the subject merchandise, the Department did not use the Descartes database as an ocean freight surrogate value source because the data did not appear to be publicly available. Upon reexamination, we have found that this database is accessible to government agencies without charge in compliance with Federal Maritime Commission regulations and, thus, we now find that this is a publicly available source.

In addition to being publicly available, the Descartes data reflect rates for multiple carriers, the Web site reports rates on a daily basis, the price data are based on routes that correspond closely to those used by a respondent, and they reflect merchandise similar to subject merchandise. Therefore, the Descartes data are product-specific, publicly available, a broad-market average, and contemporaneous with the POR. Accordingly, we find that the Descartes database is the best available source for valuing international freight on the record of this review because it provides rates that are representative of the entire POR and a broader representation of product-specificity.

While we find that the Descartes database is the best available source on the record of the review for valuing international freight, to make the source less impractical, we had to define certain parameters in our selection of data. For example, we calculated the period-average international freight rate by obtaining rates from multiple carriers for a single day in each quarter of the POR. Further, we did not include rates in the period-average international freight calculation that we determined were from NME carriers. Additionally, we excluded from any individual rate calculation any charges that are covered by the B&H expenses that a respondent incurred and which are valued by the appropriate surrogate value. *See* Surrogate Value Memo for further details.

We valued international air freight using rates obtained from DHL Hong Kong. *See* Surrogate Value Memo. We valued marine insurance using a price quote retrieved from RJG Consultants, online at *http://www.rjgconsultants.com/163.html,* a market economy provider of marine insurance. We did not inflate this rate

[10] *See* Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590, reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24.

[11] *See, e.g., Carbazole Violet Pigment 23 From India: Final Results of the Expedited Five-Year (Sunset) Review of the Countervailing Duty Order,* 75 FR 13257 (March 19, 2010), and the accompanying I&D Memo at 4–5, *Certain Cut-to-Length Carbon-Quality Steel Plate From Indonesia: Final Result of Expedited Sunset Review,* 70 FR 45692 (August 8, 2005), and the accompanying I&D Memo at 4, *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009), and the accompanying I&D Memo at 17, 19–20, and *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand,* 66 FR 50410 (October 3, 2001), and the accompanying I&D Memo at 23.

[12] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 9591, 9600 (March 5, 2009), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 36656 (July 24, 2009).

[13] *Id.*

because it is contemporaneous with the POR. *Id.*

Previously, with respect to valuation of labor inputs, the Department used regression-based wages that captured the worldwide relationship between *per capita* Gross National Income (GNI) and hourly manufacturing wages pursuant to 19 CFR 351.408(c)(3) to value the respondent's cost of labor. On May 14, 2010, the CAFC in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (Fed. Cir. 2010) (*Dorbest*), invalidated 19 CFR 351.408(c)(3). As a consequence of the CAFC's ruling in *Dorbest,* the Department no longer relies on the regression-based wage rate methodology described in its regulations. On February 18, 2011, the Department published in the **Federal Register** a request for public comment on the interim methodology and the data sources. *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor; Request for Comment,* 76 FR 9544 (February 18, 2011).

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings. *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (*Labor Methodologies*). In *Labor Methodologies,* the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (Yearbook).

For the preliminary results, we have calculated the labor inputs using the method described in *Labor Methodologies.* To value the labor inputs, we relied on data reported by India to the ILO in Chapter 6A of the Yearbook. We find further that the two-digit description under ISIC–Revision 3, *i.e.,* 28—''Manufacture of Fabricated Metal Products, except Machinery and Equipment,'' is the best available information on the record because it is specific to the industry being examined and is therefore derived from industries that produce comparable merchandise. Specifically, this category captures class 2893—''Manufacture of cutlery, hand tools and general hardware'' and ''includes the manufacture of . . . saws and sawblades including circular sawblades and chainsaw blades.'' Accordingly, relying on Chapter 6A of the Yearbook, we calculated the labor inputs using labor data reported by India to the ILO under Sub-Classification 28 of the ISIC–Revision 3 standard in accordance with section 773(c)(4) of the Act. The ILO data reported under Chapter 6A of the Yearbook reflects all costs related to labor, including wages, benefits, housing, training, *etc.* A more detailed description of the wage-rate calculation methodology is provided in the Surrogate Value Memo.

We valued factory overhead costs, selling, general, and administrative expenses, and profit using the 2010–11 financial statements of Carborundum Universal Limited, an Indian abrasives manufacturer. *See* Surrogate Value Memo. Because the financial statements used to calculate the surrogate financial ratios do not include an itemized detail of labor costs, we did not make adjustments to certain labor costs in the surrogate financial ratios. *See Labor Methodologies,* 76 FR at 36093.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates are available on the Import Administration Web site at *http://ia.ita.doc.gov/exchange/index.html.*

Preliminary Results of Review

As a result of the administrative review, we preliminarily determine that the following weighted-average percentage dumping margins exist for the period January 23, 2009, through October 31, 2010:

Company	Margin (percent)
Advanced Technology & Materials Co., Ltd	0.14
ASHINE Diamond Tools Co., Ltd	8.50
AT&M International Trading Co., Ltd	0.14
Beijing Gang Yan Diamond Products Co.	0.14
Bosun Tools Co., Ltd	8.50
Central Iron and Steel Research Institute Group	164.09
Chengdu Huifeng Diamond Tools Co., Ltd	8.50
Cliff International Ltd [14]	0.14
Danyang Aurui Hardware Products Co., Ltd	164.09
Danyang Dida Diamond Tools Manufacturing Co., Ltd	164.09
Danyang Hantronic Import & Export Co., Ltd	8.50
Danyang Huachang Diamond Tools Manufacturing Co., Ltd	8.50
Danyang NYCL Tools Manufacturing Co., Ltd	8.50
Danyang Tsunda Diamond Tools Co., Ltd	164.09
Danyang Weiwang Tools Manufacturing Co., Ltd	164.09
Electrolux Construction Products (Xiamen) Co. Ltd	164.09
Fujian Quanzhou Wanlong Stone Co., Ltd	8.50
Guilin Tebon Superhard Material Co., Ltd	8.50
Hangzhou Deer King Industrial & Trading Co., Ltd	8.50
Hebei Husqvarna-Jikai Diamond Tools Co., Ltd	8.50
Hebei Jikai Industrial Group Co., Ltd	164.09
Hebei XMF Tools (Group) Co., Ltd	8.50
Henan Huanghe Whirlwind Co., Ltd	8.50
Henan Huanghe Whirlwind International Co., Ltd	8.50
Hua Da Superabrasive Tools Technology Co., Ltd	164.09
Huachang Diamond Tools Manufacturing Co., Ltd	164.09

[14] Cliff International Ltd. also used the company name Cliff (Tianjin) International Ltd., according to various documents provided in the ATM Single Entity's May 10, 2011, section A response.

Company	Margin (percent)
Huzhou Gu's Import & Export Co., Ltd	8.50
HXF Saw Co., Ltd	0.14
Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd	8.50
Jiangsu Fengyu Tools Co., Ltd	164.09
Jiangyin Likn Industry Co., Ltd	164.09
Jiangsu Inter-China Group Corporation.	8.50
Jiangsu Youhe Tool Manufacturer Co., Ltd	8.50
Protech Diamond Tools	164.09
Pujiang Talent Diamond Tools Co., Ltd	164.09
Qingdao Shinhan Diamond Industrial Co., Ltd	8.50
Quanzhou Shuangyang Diamond Tools Co., Ltd	164.09
Quanzhou Zhongzhi Diamond Tool Co. Ltd	8.50
Rizhao Hein Saw Co., Ltd	8.50
Saint-Gobain Abrasives (Shanghai) Co., Ltd	8.50
Shanghai Robtol Tool Manufacturing Co., Ltd	8.50
Shijiazhuang Global New Century Tools Co., Ltd	8.50
Sichuan Huili Tools Co.	164.09
Task Tools & Abrasives	164.09
Weihai Xiangguang Mechanical Industrial Co., Ltd	8.50
Wuhan Wanbang Laser Diamond Tools Co.	8.50
Wuxi Lianhua Superhard Material Tools Co., Ltd	164.09
Xiamen ZL Diamond Technology Co., Ltd	8.50
Zhejiang Tea Import & Export Co., Ltd	164.09
Zhejiang Wanda Import and Export Co.	164.09
Zhejiang Wanda Tools Group Corp.	164.09
Zhejiang Wanli Super-hard Materials Co., Ltd	164.09
Zhejiang Wanli Tools Group Co., Ltd	8.50

Comments

We will disclose the calculations used in our analysis to interested parties to this review within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Interested parties may submit publicly available information to value factors no later than 20 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.301(c)(3)(ii).

Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice of preliminary results of review. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal briefs from interested parties, limited to the issues raised in the case briefs, may be submitted not later than five days after the time limit for filing the case briefs or comments. *See* 19 CFR 351.309(d)(1).

Any interested party may request a hearing no later than the date on which the case briefs are due. *See* 19 CFR 351.310. Interested parties who wish to request a hearing or to participate in a hearing if a hearing is requested must submit a written request to the Assistant Secretary for Import Administration. Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the case briefs. *See* 19 CFR 351.310(c).

If requested, any hearing will be held two days after the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d). Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument a statement of the issue, a summary of the arguments not exceeding five pages, and a table of statutes, regulations, and cases cited. *See* 19 CFR 351.309(c)(2).

The Department intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice. *See* section 751(a)(3)(A) of the Act.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer (or customer)-specific assessment rate or value for merchandise subject to this review as described below. We intend to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by the ATM Single Entity and Weihai, the cash deposit rate will be that established in the final results of review; (2) for previously investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the investigation; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be PRC-wide rate of 164.09 percent; (4) for all non-PRC exporters of subject merchandise the cash deposit rate will be the rate applicable to the PRC entity that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this 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 review and notice are in accordance with sections 751(a)(1), 751(a)(2)(B)(iv), 751(a)(3), and 777(i) of the Act.

Dated: November 30, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–31281 Filed 12–5–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order

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

SUMMARY: On August 1, 2011, the Department of Commerce (''Department'') initiated the third sunset review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (''TRBs'') from the People's Republic of China (''PRC'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''Act''). On August 16, 2011, the Timken Company (''Timken''), a domestic producer and the petitioner in the TRBs less-than-fair-value investigation, notified the Department that it intended to participate in the sunset review. On August 16, 2011, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (''USW''), a union that represents workers engaged in the manufacturing of tapered roller bearings and parts thereof in the United States, also notified the Department that it intended to participate in the sunset review. The Department did not receive a notice of intent to participate from any respondent interested party. Based on the notices of intent to participate and adequate response filed by Timken and USW (together, ''the domestic parties''), and the lack of response from any respondent interested party, the Department conducted an expedited (120-day) sunset review of the antidumping duty order on tapered roller bearings from the PRC pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). *See Antidumping Duty Order; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China,* 52 FR 22667 (June 15, 1987), as amended, *Tapered Roller Bearings From the People's Republic of China; Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order in Accordance With Decision Upon Remand,* 55 FR 6669 (Feb. 26, 1990) (''Order''). As a result of this sunset review, the Department finds that revocation of the Order would likely lead to continuation or recurrence of dumping, at the levels indicated in the ''Final Results of Sunset Review'' section of this notice, infra.

DATES: *Effective Date:* December 6, 2011.

FOR FURTHER INFORMATION CONTACT: Lindsey Novom; AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–5256.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2011, the Department initiated a sunset review of the order on TRBs pursuant to section 751(c) of the Act. *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 45778, 45779 (August 1, 2011) (''*Sunset Initiation*''). On August 16, 2011, the Department received a timely notice of intent to participate in the sunset review from the domestic parties, pursuant to 19 CFR 351.218(d)(1)(i). In accordance with 19 CFR 351.218(d)(1)(ii)(A), Timken claimed interested party status under section 771(9)(C) of the Act as a domestic producer. USW is a certified or recognized union that represents workers engaged in manufacturing the domestic like product, and therefore, is an interested party pursuant to section 771(9)(D) of the Act.

On August 31, 2011, Timken and USW collectively filed an adequate substantive response in the sunset review within the 30-day deadline as specified in 19 CFR 351.218(d)(3)(i). The Department did not receive a substantive response from any respondent interested party in the sunset review. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of the *Order.*

Scope of the Order

The products covered by the order are tapered roller bearings and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15 [1] and 8708.99.80.80.[2] Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Subsequent to the issuance of the order, we issued the following scope rulings:

On February 7, 2011, in response to an inquiry from Blackstone OTR LLC and OTR Wheel Engineering, Inc. (collectively, ''Blackstone OTR''), the Department ruled that Blackstone OTR's wheel hub assemblies are included in the scope of the order.[3]

On April 18, 2011, in response to an inquiry from New Trend Engineering Limited (''New Trend''), the Department ruled that: (1) New Trend's splined and non-splined wheel hub assemblies without antilock braking system (''ABS'') elements are included in the scope of the order; and (2) New Trend's wheel hub assemblies with ABS elements are also included in the scope of the *Order.*[4]

On June 14, 2011, in response to an inquiry from Bosda International (USA) LLC (''Bosda''), the Department ruled that Bosda's wheel hub assemblies are included in the scope of the *Order.*[5]

On August 2, 2011, in response to an inquiry from DF Machinery International, Inc. (''DF Machinery''), the Department ruled that DF

[1] Effective January 1, 2007, the HTSUS subheading 8708.99.8015 is renumbered as 8708.99.8115. *See* United States International Trade Commission (''USITC'') publication entitled, ''Modifications to the Harmonized Tariff Schedule of the United States Under Section 1206 of the Omnibus Trade and Competitiveness Act of 1988,'' USITC Publication 3898 (Dec. 2006) found at *www.usitc.gov.*

[2] Effective January 1, 2007, the HTSUS subheading 8708.99.8080 is renumbered as 8708.99.8180. Id.

[3] *See* Memorandum entitled ''Tapered Roller Bearings from the People's Republic of China: Final Scope Ruling on Blackstone OTR LLC and OTR Wheel Engineering, Inc.'s Wheel Hub Assemblies and TRBs,'' dated February 7, 2011.

[4] *See* Memorandum entitled, ''Tapered Roller Bearings from the People's Republic of China: Final Scope Ruling on New Trend Engineering Ltd.'s Wheel Hub Assemblies,'' dated April 18, 2011.

[5] *See* Memorandum entitled ''Tapered Roller Bearings from the People's Republic of China Final Scope Determination on Bosda's Wheel Hub Assemblies,'' dated June 14, 2011.

Machinery's agricultural hub units are included in the scope of the *Order*.[6]

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review is addressed in the accompanying Issues and Decision Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, which is hereby adopted by this notice. See the Department's memorandum entitled, ''Issues and Decision Memorandum for the Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China,'' dated concurrently with this notice (''I&D Memo''). The issues discussed in the accompanying I&D Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margin likely to prevail if the *Order* is revoked. Parties can obtain a public copy of the I&D Memo which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Services System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit room 7046 of the main Department of Commerce building. In addition, a complete version of the I&D Memo can be accessed directly on the Web at *http://trade.gov/ia.* The signed I&D Memo and the electronic versions of the I&D Memo are identical in content.

Final Results of Sunset Review

Pursuant to section 751(c) of the Act, the Department determines that revocation of the *Order* on TRBs would likely lead to continuation or recurrence of dumping at the rates listed below:

Exporters/producers	Weighted-average margin (percent)
China National Machinery Import & Export Corp	0.03
Zheijiang Wanxiang Group	0.11
Zheijiang Machinery Import & Export Corp	0.11
Luoyang Bearing Corporation	3.20
Premier Bearing & Equipment, Ltd	5.60
Liaoning Mec Group, Ltd.	9.72
China National Machinery and Equipment Import & Export Corp	31.05
PRC-wide	31.05

[6] *See* Memorandum entitled ''Tapered Roller Bearings and Parts Thereof, finished and Unfinished, from the People's Republic of China-Final Scope Determination on DF Machinery's Agricultural Hub Units,'' dated August 3, 2011.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: November 29, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–31297 Filed 12–5–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–901]

Notice of Amended Final Results of the Antidumping Duty Administrative Review of Certain Lined Paper Products From the People's Republic of China

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

DATES: *Effective Date:* December 6, 2011.

FOR FURTHER INFORMATION CONTACT: Victoria Cho, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5075.

SUPPLEMENTARY INFORMATION:

Summary

As a result of the decision of the Court of International Trade (''Court'') in *Association of American School Paper Suppliers* v. *United States,* Court Number 09–00163, Slip Op. 11–101 (August 11, 2011), the Department of Commerce (''the Department'') has recalculated the rates for the separate rate companies [1] in the first administrative review of certain lined paper products (''CLPP'') from the People's Republic of China (''PRC''), for the period of review (''POR'') April 17, 2006 through August 31, 2007.

Background

On April 14, 2009, the Department published its final results of the administrative review for CLPP from the PRC for the period April 17, 2006, through August 31, 2007.[2] The Department individually examined one company, Shanghai Lian Li Paper Products Co., Ltd. (''Lian Li''). In its *Final Results,* the Department determined to apply the weighted-average dumping margin calculated for Lian Li to the separate rate companies. On December 22, 2009, the Department published amended final results, to correct for certain ministerial errors in the *Final Results*.[3]

The Association of American School Paper Suppliers challenged the Department's *Amended Final* at the Court. On July 27, 2010, the Court remanded the case for the Department to revisit its determination concerning the selection of information to calculate surrogate financial values. On August 11, 2011, the Court sustained the Department's final results of redetermination.[4] On August 25, 2011, the Department published an amended final results in which it recalculated Lian Li's rate.[5] However, in that notice,

[1] Hwa Fuh Plastics Co. Ltd./Li Teng Plastics (Shenzhen) Co., Ltd.; Leo's Quality Products Co., Ltd./Denmax Plastic Stationery Factory; and the Watanabe Group (consisting of the following companies: Watanabe Paper Product (Shanghai) Co. Ltd.; Watanabe Paper Product (Linqing) Co. Ltd. (Watanabe Linqing); and Hotrock Stationery (Shenzhen) Co. Ltd.

[2] *See Certain Lined Paper Products From the People's Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review,* 74 FR 17160 (April 14, 2009) (''*Final Results*'').

[3] *See Notice of Amended Final Results of the Antidumping Duty Administrative Review of Certain Lined Paper Products from the People's Republic of China,* 74 FR 68036 (December 22, 2009) (''*Amended Final*'').

[4] *Association of American School Paper Suppliers v. United States,* Court Number 09–00163, Slip Op. 11–101 (August 11, 2011).

[5] *Certain Lined Paper Products From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision,* 76 FR 53116 (August 25, 2011). The Department recalculated Lian Li's rate as determined in *Certain Lined Paper Products From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative*

the Department neglected to announce the changes to the separate rate companies' rates as a result of the litigation in *Association of American School Paper Suppliers* v. *United States.*

Therefore, the Department is now announcing the rate calculated for separate rate companies based on the calculation which was sustained in *Association of American School Paper Suppliers* v. *United States.*

Scope of the Order

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for looseleaf filler paper) including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8¾ inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear-out'' size), and are measured as they appear in the product (*i.e.,* stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- Unlined copy machine paper;
- Writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- Three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- Index cards;
- Printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- Newspapers;
- Pictures and photographs;
- Desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
- Telephone logs;
- Address books;
- Columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- Lined business or office forms, including but not limited to: Pre-printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- Lined continuous computer paper;
- Boxed or packaged writing stationary (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper'', and ''letterhead''), whether or not containing a lined header or decorative lines;
- Stenographic pads (''steno pads''), Gregg ruled (''Gregg ruling'' consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book.), measuring 6 inches by 9 inches;

Also excluded from the scope of this order are the following trademarked products:

- Fly ™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly ™ pen-top computer. The product must bear the valid trademark Fly ™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- FiveStar®Advance:™ A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1″ wide elastic fabric band. This band is located 2⅜″ from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine

Review Pursuant to Court Decision, 76 FR 28213 (May 16, 2011).

cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope). On September 23, 2011, the Department revoked, in part, the AD order with respect to FiveStar® Advance™ notebooks and notebook organizers without PVC coatings. *See Certain Lined Paper Products From People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part,* 76 FR 60803 (September 30, 2011).

Merchandise subject to this order is typically imported under headings 4810.22.5044, 4811.90.9050, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2060, and 4820.10.4000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

Amended Final Results of Review

The Department has recalculated the weighted-average rates for the separate rate companies based on the litigation discussed above. The following margins apply for the separate rate companies during the POR:

Exporter	Weighted-average margin (percent)
Hwa Fuh Plastics Co., Ltd./Li Teng Plastics (Shenzhen) Co., Ltd	20.70
Leo's Quality Products Co., Ltd./ Denmax Plastic Stationery Factory	20.70
The Watanabe Group (consisting of the following companies)	20.70
Watanabe Paper Product (Shanghai) Co., Ltd.	
Watanabe Paper Product (Linqing) Co., Ltd.	
Hotrock Stationery (Shenzhen) Co., Ltd.	

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of these amended final results for all shipments CLLP from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the *Timken Notice,*[6] as provided by section 751(a)(2)(C) of the Act: (1) For Hwa Fuh Plastics Co., Ltd./Li Teng Plastics (Shenzhen) Co., Ltd. and Leo's Quality Products Co., Ltd./Denmax Plastic Stationery Factory, the cash deposit rate will be the rate listed above; (2) for the Watanabe Group, the cash deposit rate will be 258.21 percent,[7] the litigation mentioned above was superseded by the publication of the *Second A.R of CLPP;* (3) for previously reviewed or investigated companies other than those covered by this review, the cash deposit rate will be the company-specific rate established for the most recent period; (4) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (5) if neither the exporter nor the producer is a firm covered in this review, a prior review, or the investigation, the cash deposit rate will be 258.21 percent, the PRC-wide rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until further notice.

[6] *See Certain Lined Paper Products From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision,* 76 FR 53116 (August 25, 2011) (''*Timken Notice*'').

[7] *See Certain Lined Paper Products From the People's Republic of China: Notice of Final Results of the Second Administrative Review of the Antidumping Duty Order,* 74 FR 63387 (December 3, 2009) (''*Second A.R of CLPP*'').

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP that are related to the amended final results 15 days after the publication of the amended final results of review.

These amended final results of administrative review and notice are issued and published in accordance with sections 751(h), and 777(i)(1) of the Act.

Dated: November 29, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–31295 Filed 12–5–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–867]

Large Power Transformers From the Republic of Korea: Postponement of Preliminary Determination of Antidumping Duty Investigation

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

DATES: *Effective Date:* December 6, 2011.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza, David Cordell or Brian Davis, Office 7, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–3019, (202) 482–0408 or (202) 482–7924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2011, the Department of Commerce (the Department) published in the **Federal Register** the initiation of the antidumping duty investigation of large power transformers from the Republic of Korea (Korea). *See Large Power Transformers from the Republic of Korea: Initiation of Antidumping Duty Investigation,* 76 FR 49439 (August 10, 2011). The current deadline for the preliminary determinations of this investigation is December 21, 2011.

Period of Investigation

The period of investigation is July 1, 2010, through June 30, 2011.

Postponement of Preliminary Determination

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination no later than 140 days after the initiation of the investigation.

On November 23, 2011, petitioners ABB Inc., Delta Star, Inc., and Pennsylvania Transformer Technology Inc. (collectively, petitioners) made a timely request pursuant to 19 CFR 351.205(e) for a postponement of the preliminary determination because of the extraordinarily complicated nature of the proceeding and its required analysis, and because the Department is still gathering questionnaire responses from the respondents. See Letter from petitioners to the Department, entitled ''Large Power Transformers from the Republic of Korea—Petitioners' Request for Extension of Preliminary Determination,'' dated November 23, 2011.

For the reasons stated above and because there are no compelling reasons to deny the request, the Department is postponing by 50 days to February 9, 2012, the deadline for its preliminary determination of this investigation pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) and (f). In accordance with section 735(a)(1) of the Act, the deadline for the final determination of this antidumping duty investigation will continue to be 75 days after the date of the preliminary determination, unless extended.

This notice is issued and published in accordance with section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: November 30, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–31288 Filed 12–5–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–844]

Final Results of Expedited Sunset Review of Countervailing Duty Order: Certain Lined Paper Products From India

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

SUMMARY: On August 1, 2011, the Department of Commerce (the Department) initiated a sunset review of the countervailing duty (CVD) order on certain lined paper products (CLPP) from India pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 45778 (August 1, 2011) (*Initiation Notice*). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and an inadequate response (in this case, no response) from respondent interested parties, the Department decided to conduct an expedited sunset review of this CVD order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C). As a result of this review, the Department finds that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated in the ''Final Results of Review'' section of this notice.

DATES: *Effective Date:* December 6, 2011.

FOR FURTHER INFORMATION CONTACT: Eric Greynolds, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–6071.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2011, the Department initiated a sunset review of the CVD order on LPP from India pursuant to section 751(c) of the Act. *See Initiation Notice,* 76 FR 45778 (August 1, 2011). The Department received a notice of intent to participate on behalf of the Association of American School Paper Suppliers (AASPS) and its individual members—MWV Consumer & Office Products (MWV), Norcom, Inc., and TopFlight, Inc. (collectively, petitioners), within the deadline specified in 19 CFR 351.218(d)(1)(i). The petitioners claimed interested party status under sections 771(9) (F) and 771(9)(C) of the Act, as an association of domestic producers of CLLP and domestic producers of CLPP, respectively.

The Department received a complete substantive response from the petitioners within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). However, the Department did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited review of this order.

Scope of the Order

The scope of this order includes certain lined paper products, typically school supplies,[1] composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets,[2] including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8¾ inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear-out'' size), and are measured as they appear in the product (*i.e.,* stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

- Unlined copy machine paper;
- Writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille

[1] For purposes of this scope definition, the actual use or labeling of these products as school supplies or non-school supplies is not a defining characteristic.

[2] There shall be no minimum page requirement for looseleaf filler paper.

the scope of this order are:

pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;

- Three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- Index cards;
- Printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- Newspapers;
- Pictures and photographs;
- Desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
- Telephone logs;
- Address books;
- Columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- Lined business or office forms, including but not limited to: preprinted business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- Lined continuous computer paper;
- Boxed or packaged writing stationery (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper,'' and ''letterhead''), whether or not containing a lined header or decorative lines; and
- Stenographic pads (steno pads), Gregg ruled,[3] measuring 6 inches by 9 inches.

Also excluded from the scope of this order are the following trademarked products:

- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen-top computer. The product must bear the valid trademark Fly™.[4]
- Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™.[5]
- FiveStar® Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1″ wide elastic fabric band. This band is located 2⅜″ from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar® Advance™.[6]
- FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™.[7]

Currently, merchandise subject to this order is typically imported under headings 4810.22.5044, 4811.90.9050, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2060, and 4820.10.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum (Decision Memorandum) from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit, room 7046, of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The electronic versions of the Decision Memorandum in IA ACCESS and on the Web are identical in content.

Final Results of Review

The Department determines that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

[3] ''Gregg ruling'' consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book.

[4] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[5] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[6] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[7] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[8] Kejriwal Exports, a division of Kejriwal Paper Limited was excluded from the order on the basis

Producers/exporters	Net countervailable subsidy (percent)
Aero Exports	7.52
Navneet Publications	10.71
All Other Producers/Exporters[8]	9.89

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: November 29, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–31290 Filed 12–5–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0139]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by [insert 15 days from publication of this notice in the **Federal Register**].

Title, Form, and OMB Number: Department of Defense Inventory of Contracts for Services Compliance; OMB Control Number 0704–TBD.

Type of Request: New, emergency.

Number of Respondents: 48,884.

Responses per Respondent: 1.

Annual Responses: 48,884.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 4,074 hours.

Needs and Uses: This collection is necessary to allow all DoD organizations to fully implement sections 235 and 2330a of title 10, United States Code. The information requested, such as the Reporting Period, Contract Number, Task/Delivery Order Number, Customer Name and Address, Contracting Office Name and Address, Federal Supply Class or Service Code, Contractor Name and Address, Value of Contract Instrument, and the Number and Value of Direct Labor Hours will be used to facilitate the accurate identification of the function performed and to facilitate estimate of the reliability of the data. The Direct Labor Hours are requested for use in calculating contractor manpower equivalents. This information is reported directly from the contractor because this is the most credible data source.

Affected Public: Business or other for profit; not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: November 28, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–31229 Filed 12–5–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0140]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Defense Logistics Agency is proposing to amend a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective without further notice on January 5, 2012 unless comments are received which would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045, or DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of record notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The specific changes to the record system being amended are set forth

of de minimis subsidies during the period of investigation.

below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: December 1, 2011.

Morgan F. Park,

Alternate OSD **Federal Register** *Liaison Officer, Department of Defense.*

S300.10

SYSTEM NAME:

Voluntary Leave Transfer Program Records (August 7, 2009, 74 FR 39650).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Human Resources Policy, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6231, Fort Belvoir, VA 22060–6221, and the Human Resources Offices of the Defense Logistics Agency (DLA) Primary Level Field Activities. Mailing addresses are published as an appendix to DLA's compilation of systems of records notices.''

* * * * *

STORAGE:

Delete entry and replace with ''Records are stored on paper.

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non-duty hours.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Staff Director, Human Resources Policy, Defense Logistics Agency, ATTN: J–1, 8725 John J. Kingman Road, Stop 6231, Fort Belvoir, VA 22060–6221, and the Human Resources Officers of the DLA Primary Level Field Activities. Mailing addresses are published as an appendix to DLA's compilation of systems of records notices.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the record subject's full name and Social Security Number (SSN).''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the record subject's full name and Social Security Number (SSN).''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Information is provided primarily by the record subject; however, some data may be obtained from personnel and leave records.''

* * * * *

S300.10

SYSTEM NAME:

Voluntary Leave Transfer Program Records.

SYSTEM LOCATION:

Human Resources Policy, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6231, Fort Belvoir, VA 22060–6221, and the Human Resources Offices of the Defense Logistics Agency (DLA) Primary Level Field Activities. Mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have volunteered to participate in the leave transfer program as either a donor or a recipient.

CATEGORIES OF RECORDS IN THE SYSTEM:

Leave recipient records contain the individual's name, organization, office telephone number, Social Security Number, position title, grade, pay level, leave balances, brief description of the medical or personal hardship which qualifies the individual for inclusion in the program, the status of that hardship, and a statement that selected data elements may be used in soliciting donations.

The file may also contain medical or physician certifications and agency approvals or denials.

Donor records include the individual's name, organization, office telephone number, Social Security Number (SSN), position title, grade, and pay level, leave balances, number of hours donated and the name of the designated recipient.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. Chapter 63, sections 6331–6339, Leave; Pub. L. 103–103, Federal Employees Leave Sharing Act of 1993; 5 CFR part 630, Absence and Leave, Subpart I, Voluntary Leave Transfer Program; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Records are used to manage the DLA Voluntary Leave Transfer Program. The recipient's name, position data, organization, and a brief hardship description are published internally for passive solicitation purposes. The Social Security Number (SSN) is sought to effectuate the transfer of leave from the donor's account to the recipient's account.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness; where leave donor and leave recipient are employed by different Federal agencies, to the personnel and pay offices of the Federal agency involved to effectuate the leave transfer.

The DoD ''Blanket Routine Uses'' apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper.

RETRIEVABILITY:

Records are retrieved by records subject's name and Social Security Number (SSN).

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non-duty hours.

RETENTION AND DISPOSAL:

Records are destroyed one year after the end of the year in which the file is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Human Resources Policy, Defense Logistics Agency, *ATTN:* J–1, 8725 John J. Kingman Road, Stop 6231, Fort Belvoir, VA 22060–6221, and the Human Resources Officers of the DLA Primary Level Field Activities. Mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the record subject's full name and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the record subject's full name and Social Security Number (SSN).

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided primarily by the record subject; however, some data may be obtained from personnel and leave records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–31205 Filed 12–5–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before January 5, 2012.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: December 1, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New.

Title of Collection: Study of Emerging Teacher Evaluation Systems in the United States.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions; State, Local and Tribal Government.

Total Estimated Number of Annual Responses: 461.

Total Estimated Annual Burden Hours: 467.

Abstract: The Study of Emerging Teacher Evaluation Systems in the United States will contribute to the Department's work by providing research-based information to aid state and local efforts to plan and implement comprehensive teacher evaluation systems. The study includes a review of the research on teacher evaluation practices, programs, and policies, and nine case studies. The study sample will include five fully operational teacher evaluation systems and four systems in the early implementation phase.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4717. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to (202) 401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

[FR Doc. 2011–31308 Filed 12–5–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13623–001]

City of Raleigh; 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.:* 13623–001.

c. *Date Filed:* October 3, 2011.

d. *Submitted by:* City of Raleigh (Raleigh).

e. *Name of Project:* Falls Lake Dam Hydroelectric Project.

f. *Location:* At the U.S. Army Corps of Engineers' Falls Lake Dam, located on the Neuse River, in the northern portion of Wake County, North Carolina, just outside the City of Raleigh municipal boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's Regulations.

h. *Potential Applicant Contact:* Kenneth Waldroup, Assistant Public Utilities Director, City of Raleigh, P.O. Box 590, Raleigh, NC 27601; (919) 996–3489; *Kenneth.Waldroup@raleighnc.gov.*

i. *FERC Contact:* Jennifer Adams (202) 502–8087 or by email at *jennifer.adams@ferc.gov.*

j. The City of Raleigh filed its request to use the Traditional Licensing Process on October 3, 2011. Raleigh filed public notice of its request on November 23, 2011. In a letter dated November 29, 2011, the Director of the Division of Hydropower Licensing approved Raleigh's 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 National Marine Fisheries Service (NMFS) under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; (b) NMFS under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the North Carolina 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. The City of Raleigh 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, 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 City of Raleigh's business office, located at One Exchange Plaza, Suite 620, or by contacting Raleigh at the mailing address located 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: November 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31172 Filed 12–5–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14154–001]

William Arkoosh; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 14154–001.

c. *Date Filed:* November 15, 2011.

d. *Applicant:* William Arkoosh.

e. *Name of Project:* Little Wood River Ranch II.

f. *Location:* On the Little Wood River, six miles west of the Town of Shoshone, Lincoln County, Idaho. The project would occupy approximately 0.5 acre of federal lands managed by the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* William Arkoosh, 2005 Highway 26, Gooding, Idaho 83330. *Phone:* (208) 539–5443.

i. *FERC Contact:* Jennifer Harper, *phone:* (202) 502–6136 or *Jennifer.Harper@ferc.gov.*

j. *Cooperating Agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific studyshould be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must filea request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for Filing Additional Study Requests and Requests for Cooperating Agency Status:* January 14, 2012.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *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.

m. The application is not ready for environmental analysis at this time.

n. *The Little Wood River Ranch II Project Consists of:* (1) A 220-foot-long, 12-foot-wide rock rubble diversion dam, impounding a 9.1-acre reservoir on the Little Wood River; (2) a 3,900-foot-long feeder canal; (3) a concrete intake structure having two parallel 5-foot-diameter, 120-foot-long steel penstocks; (4) a 60-foot-long, 20-foot-wide, 25-foot-high concrete and steel power house containing two hydraulic Francis

turbines with a total installed capacity of 1,230 kilowatts; (5) a 1,600-foot-long tailrace canal; (6) a 2.2-mile-long, 12.5-kilovolt transmission line; (7) an access road; and (8) appurtenant facilities.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Idaho State Historic Preservation Officer (SHPO), as required by 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at 800.4.

q. *Procedural schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate (*e.g.,* if scoping is waived, the schedule would be shortened).

Issue Deficiency Letter	December 2011.
Issue Notice of Acceptance	February 2012.
Issue Scoping Document	February 2012.
Issue notice of ready for environmental analysis	April. 2012
Commission issues EA	August 2012.

Dated: November 30, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31211 Filed 12–5–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–12–000]

Allco Renewable Energy Limited v. Massachusetts Electric Company d/b/a National Grid; Notice of Complaint

Take notice that on November 30, 2011, pursuant to sections 206, 306, and 309 of the Federal Power Act (FPA), 16 U.S.C. 824e, 825e, and 825h, Rules 206 and 212 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedures, 18 CFR 385.206 and 385.212 (2011), and section 210 of the Public Utilities Regulatory Policies Act (PURPA), Allco Renewable Energy Limited filed a formal complaint against Massachusetts Electric Company (National Grid) alleging that National Grid violated section 210 of PURPA by repudiating its obligations to pay a rate that is equal to its minimum avoided cost to various qualifying facilities.

The Complainant certifies that copies of the complaint were served upon Respondents.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 21, 2011.

Dated: November 30, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31213 Filed 12–5–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG11–115–000, EG11–116–000, EG11–118–000, EG11–119–000, EG11–120–000, EG11–121–000, EG11–122–000, EG11–123–000, EG11–124–000]

Notice of Effectiveness of Exempt Wholesale Generator Status; Caney River Wind Project, LLC, Mesquite Solar 1, LLC, Copper Crossing Solar LLC, Copper Mountain Solar 1, LLC, Pinnacle Wind, LLC, Bellevue Solar, LLC, Yamhill Solar, LLC, Osage Wind, LLC, Minco Wind II, LLC

Take notice that during the month of October 2011, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: November 30, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31212 Filed 12–5–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14318–000]

Grand Coulee Project Hydroelectric Authority; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

On November 8, 2011, Grand Coulee Project Hydropower Authority (Grand Coulee Authority) 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 Scooteney Inlet Drop Hydroelectric Project (Scooteney Inlet Project or project) to be located on the Potholes East Canal, which is an inlet structure to the Scooteney Reservoir, near Othello, Franklin County, Washington. 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) An approximately 200-foot-long, 100-foot-wide canal leading to a 100-foot-wide, 15-foot-high intake structure installed on the Potholes East Canal to divert flow from the canal to the penstock; (2) an 80-foot-long, 12-foot-diameter penstock from the intake structure to the powerhouse; (3) an approximately 20-foot-long, 50-foot-wide powerhouse containing a single S-turbine/generator unit rated at 1.7 megawatts at an average head of 14 feet; (4) a 150-foot-long tailrace returning flows from the powerhouse to the Potholes East Canal; (5) a substation at the powerhouse; (6) a 2,500-foot-long, 13.8-kilovolt transmission line which will connect with an existing distribution line; and (7) appurtenant facilities. The project will be located on federal lands, and would operate as run-of-release using irrigation flows provided by the U.S. Bureau of Reclamation and the South Columbia Basin Irrigation District. The estimated annual generation of the Scooteney Inlet Project would be 5.2 gigawatt-hours.

Applicant Contact: Mr. Ronald Rodewald, Secretary-Manager, Grand Coulee Project Hydroelectric Authority, P.O. Box 219, Ephrata, WA 98823; *phone:* (509) 754–2227.

FERC Contact: Jennifer Harper; *phone:* (202) 502–6136.

Competing Application: This application competes with Project No. 14204–000 filed May 31, 2011, and with Project No. 14231, filed July 18, 2011. A notice was issued for both competing projects on August 10, 2011, and competing applications or notices of intent for competing applications had to be filed on or before October 9, 2011. Grand Coulee Authority filed a notice of intent to file a competing application for a preliminary permit on October 7, 2011.

Deadline for filing comments or motions to intervene: 60 days from the issuance of this notice. Comments and motions to intervene 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–14318–000) in the docket number field to access the document. For assistance, call toll-free 1–(866) 208–3372.

Dated: November 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31165 Filed 12–5–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14232–000]

Natural Currents Energy Services, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 18, 2011, Natural Currents Energy Services, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Cape May Tidal Energy Project, which would be located on the Cape May Canal in Cape May County, New Jersey. The proposed project would not use a dam or impoundment. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) Installation of 10 to 30 NC Sea Dragon or Red Hawk tidal turbines at a rated capacity of 100 kilowatts, (2) an estimated 700 meters in length of additional transmission infrastructure, and (3) appurtenant facilities. The project is estimated to have an annual minimum generation of 3,504,000 kilowatt-hours with the installation of 10 units.

Applicant Contact: Mr. Roger Bason, Natural Currents Energy Services, LLC, 24 Roxanne Boulevard, Highland, New York 12561, (845) 691–4009.

FERC Contact: Woohee Choi (202) 502–6336.

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 the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14232–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31167 Filed 12–5–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14234–000]

Natural Currents Energy Services, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 25, 2011, Natural Currents Energy Services, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Maurice River Tidal Energy Project, which would be located on the Maurice River in Cumberland County, New Jersey. The proposed project would not use a dam or impoundment. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) Installation of 1 to 10 NC Sea Dragon or Red Hawk tidal turbines at a rated capacity of 100 kilowatts, (2) an estimated 700 meters in length of additional transmission infrastructure, and (3) appurtenant facilities. The project is estimated to have an annual minimum generation of 3,504,000 kilowatt-hours with the installation of 10 units.

Applicant Contact: Mr. Roger Bason, Natural Currents Energy Services, LLC, 24 Roxanne Boulevard, Highland, New York 12561, (845) 691–4009.

FERC Contact: Woohee Choi (202) 502–6336.

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 the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14234–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31168 Filed 12–5–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–14227–000]

Nevada Hydro Company, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 14, 2011, the Nevada Hydro Company (Nevada Hydro) 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 Lake Elsinore Advanced Pumped Storage Project to be located on Lake Elsinore and San Juan Creek, in Riverside County, California. 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 new upper reservoir (Decker Canyon) having a 240-foot-high main dam and a gross storage volume of 5,500 feet, at a normal reservoir surface elevation of 2,830 feet above mean sea level (msl); (2) a powerhouse with two reversible pump-turbine units with a total installed capacity of 600 megawatts; (3) the existing Lake Elsinore to be used as a lower reservoir; (4) about 32 miles of 500-kV transmission line connecting the project to an existing transmission line owned by Southern California Edison located north of the proposed project and to an existing San Diego Gas & Electric Company transmission line located to the south.

Applicant Contact: Arnold B. Podgorsky and Patrick L. Morand, Wright & Talisman, P.C., 1200 G Street NW., Suite 600, Washington, DC 20005, Phone (202) 393–1200.

FERC Contact: Jim Fargo; *phone:* (202) 502–6095.

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. 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–14227–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31166 Filed 12–5–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14317–000]

Grand Coulee Project Hydroelectric Authority; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

On November 8, 2011, Grand Coulee Project Hydropower Authority (Grand Coulee Authority) 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 Scooteney Outlet Drop Hydroelectric Project (Scooteney Outlet Project or project) to be located on the Potholes East Canal, which is an outlet structure from the Scooteney Reservoir, near Othello, Franklin County, Washington. 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) An approximately 200-foot-long, 100-foot-wide canal leading to an 80-foot-wide, 15-foot-high intake structure installed on the Potholes East Canal to divert flow from the canal to the penstock; (2) an 80-foot-long, 12-foot-diameter penstock from the intake structure to the powerhouse; (3) an approximately 20-foot-long, 50-foot-wide powerhouse containing a single S-turbine/generator unit rated at 1.3 megawatts at an average head of 11 feet; (4) a 150-foot-long tailrace returning flows from the powerhouse to the Potholes East Canal; (5) a substation at the powerhouse; (6) a 1,700-foot-long, 13.8-kilovolt transmission line which will connect with an existing distribution line; and (7) appurtenant facilities. The project will be located on federal lands, and would operate as run-of-release using irrigation flows provided by the U.S. Bureau of Reclamation and the South Columbia Basin Irrigation District. The estimated annual generation of the Scooteney Outlet Project would be 4.1 gigawatt-hours.

Applicant Contact: Mr. Ronald Rodewald, Secretary-Manager, Grand Coulee Project Hydroelectric Authority, P.O. Box 219, Ephrata, WA 98823; *phone:* (509) 754–2227.

FERC Contact: Jennifer Harper; *phone:* (202) 502–6136.

Competing Application: This application competes with Project No. 14207–000 filed May 31, 2011, and noticed on August 10, 2011. Competing applications or notices of intent for competing applications had to be filed on or before October 9, 2011. Grand Coulee Authority filed a notice of intent on October 7, 2011.

Deadline for filing comments or motions to intervene: 60 days from the issuance of this notice. Comments and motions to intervene 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–14317–000) in the docket number field to access the document. For assistance, call toll-free 1–(866) 208–3372.

Dated: November 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31174 Filed 12–5–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14316–000]

Grand Coulee Project Hydroelectric Authority; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

On November 8, 2011, Grand Coulee Project Hydropower Authority (Grand Coulee Authority) 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 PEC 1973 Drop Hydroelectric Project (PEC 1973 Project or project) to be located on the Potholes East Canal, near Othello, Franklin County, Washington. 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) An approximately 400-foot-long, 100-foot-wide canal leading to a 100-foot-long, 15-foot-high intake structure installed on the Potholes East Canal to divert flow from the canal to the penstock; (2) an 80-foot-long, 12-foot-diameter penstock from the intake structure to the powerhouse; (3) an approximately 20-foot-long, 70-foot-wide powerhouse containing a single S-turbine/generator unit rated at 2.2 megawatts at an average head of 18 feet; (4) a 100-foot-long tailrace returning flows from the powerhouse to the Potholes East Canal; (5) a substation at the powerhouse; (6) a 125-foot-long, 13.8-kilovolt transmission line which will connect with an existing distribution line; and (7) appurtenant facilities. The project will be located on private lands, and would operate as run-of-release using irrigation flows provided by the U.S. Bureau of Reclamation and the South Columbia Basin Irrigation District. The estimated annual generation of the PEC 1973 Project would be 6.7 gigawatt-hours.

Applicant Contact: Mr. Ronald Rodewald, Secretary-Manager, Grand Coulee Project Hydroelectric Authority, P.O. Box 219, Ephrata, WA 98823; *phone:* (509) 754–2227.

FERC Contact: Jennifer Harper; *phone:* (202) 502–6136.

Competing Application: This application competes with Project No.

14208–000 filed May 31, 2011, and noticed on August 10, 2011. Competing applications or notices of intent for competing applications had to be filed on or before October 9, 2011. Grand Coulee Authority filed a notice of intent on October 7, 2011.

Deadline for filing comments or motions to intervene: 60 days from the issuance of this notice. Comments and motions to intervene 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–14316–000) in the docket number field to access the document. For assistance, call toll free 1–(866) 208–3372.

Dated: November 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31173 Filed 12–5–11; 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 Midwest Independent Transmission System Operator, Inc. (MISO):

MISO System Planning Committee of the Board of Directors, December 6, 2011, 4 p.m.–6 p.m., Local Time.

MISO Markets Committee of the Board of Directors, December 7, 2011, 8 a.m.–10 a.m., Local Time.

MISO Advisory Committee, December 7, 2011, 10 a.m.–4 p.m., Local Time.

MISO Board of Directors, December 8, 2011, 8:30 a.m.–10 a.m., Local Time.

The above-referenced meetings will be held at: MISO Headquarters, 720 City Center Drive, Carmel, IN 46032.

The above-referenced meetings are open to the public.

Further information may be found at *www.misoenergy.org.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. ER10–1791, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER11–3728, *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL11–56, *FirstEnergy Service Company.*

Docket No. OA08–53, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–480, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–33, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–188, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER11–4337, *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL11–53, *Shetek Wind, Inc.*

Docket No. ER12–334, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–56, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–342, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–280, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER11–4081, *Midwest Independent Transmission System Operator, Inc.*

For more information, contact Christopher Miller, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

Dated: November 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31171 Filed 12–5–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER10–1401–000; ER11–2256–000; ER11–3149–000; ER11–3856–000; ER11–4580–000; ER12–50–000]

California Independent System, Operator Corporation; Notice of FERC Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on the following dates members of its staff will participate in teleconferences and meetings to be conducted by the California Independent System Operator (CAISO). The agenda and other documents for the teleconferences and meetings are available on the CAISO's Web site, *www.caiso.com.*

November 30, 2011	Market Monitoring Quarterly Performance Review.
December 1, 2011	Transmission Planning and Generator Interconnection.
	Working Group Meeting.
	Market Update.
December 5, 2011	Flexible Ramping Product.
December 6, 2011	FERC Order 741 Compliance.
December 7, 2011	Market Performance and Planning Forum.
	Settlements and Market Clearing User Group.
	Congestion Revenue Rights.
December 8, 2011	Market Surveillance Committee.
	2011/2012 Transmission Planning Process.
December 13, 2011	Frequency Response Study Report.
December 14, 2011	Settlements and Market Clearing User Group.
	Congestion Revenue Rights.

December 15, 2011	Board of Governors Meeting and Audit Committee. Market Update.
December 16, 2011	Board of Governors Meeting and Audit Committee.

Sponsored by the CAISO, the teleconferences and meetings are open to all market participants, and staff's attendance is part of the Commission's ongoing outreach efforts. The teleconferences and meetings may discuss matters at issue in the above captioned dockets.

FOR FURTHER INFORMATION CONTACT: Saeed Farrokhpay at *saeed.farrokhpay@ferc.gov;* (916) 294–0322 or Maury Kruth at *maury.kruth@ferc.gov,* (916) 294–0275.

Dated: November 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31170 Filed 12–5–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2011–0890, FRL–9500–3]

Agency Information Collection Activities; Proposed Collection; Comment Request; RCRA Expanded Public Participation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to the Office of Management and Budget (OMB) to renew an existing approved Information Collection Request (ICR) concerning RCRA public participation. This ICR is scheduled to expire on April 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 February 6, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2011–0890, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: rcra-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery:* 1301 Constitution Ave. NW., Room 3334, 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–RCRA–2011–0890. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit 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.*

FOR FURTHER INFORMATION CONTACT: Michael Pease, (5303P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; *telephone number:* (703) 308–0008; *fax number:* (703) 308–8433; *email address: pease.michael@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–RCRA–2011–0890, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the RCRA 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 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 RCRA Docket is (202) 566–0270.

Use *http://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?

Affected entities: Entities potentially affected by this action are Businesses and other for-profit as well as State, local, or Tribal governments.

Title: RCRA Expanded Public Participation.

ICR numbers: EPA ICR No. 1688.07, OMB Control No. 2050–0149.

ICR status: This ICR is currently scheduled to expire on April 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: Section 7004(b) of RCRA gives EPA broad authority to provide for, encourage, and assist public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under RCRA. In addition, the statute specifies certain public notices (i.e., radio, newspaper, and a letter to relevant agencies) that EPA must provide before issuing any RCRA permit. The statute also establishes a process by which the public can dispute a permit and request a public hearing to discuss it. EPA carries out much of its RCRA public involvement at 40 CFR Parts 124 and 270.

Burden Statement: The annual reporting burden for this collection of information is estimated to average 88.0 hours, and the annual recordkeeping burden is estimated to average 4 hours per response.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 33.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: One.

Estimated total annual burden hours: 3,005 hours.

Estimated total annual costs: $180,288, which includes $176,791 for annualized labor costs and $3,497 for annualized capital or O&M costs.

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 Michael Pease at (703) 308–0008 or *pease.michael@epa.gov*.

Dated: November 22, 2011.

Suzanne Rudzinski,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2011–31255 Filed 12–5–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2011–0923, FRL–9500–2]

Agency Information Collection Activities; Proposed Collection; Comment Request; Revisions to the RCRA Definition of Solid Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that EPA is planning to submit a request to the Office of Management and Budget (OMB) to renew an existing approved Information Collection Request (ICR) concerning the definition of Solid Waste. This ICR is scheduled to expire on May 31, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 6, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2011–0923, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email: rcra-docket@epa.gov*.
- *Fax:* (202) 566–9744.
- *Mail:* RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery:* 1301 Constitution Ave. NW., Room 3334, 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–RCRA–2011–0923. 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: Richard Huggins, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, (5304P), Environmental Protection Agency, 2733 South Crystal Drive, Arlington, VA 22202; *telephone number:* (703) 308–0017; *fax number:* (703) 308–0514; *email address: huggins.richard@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–RCRA–2002–0031, which is available for online viewing at *www.regulations.gov,* or in person viewing at the RCRA 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 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 RCRA Docket is (202) 566–0270.

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?

Affected entities: Entities potentially affected by this action include approximately 5,600 facilities in 280 industries in 21 economic sectors that generate or recycle hazardous secondary materials that are currently regulated as RCRA Subtitle C hazardous wastes (*e.g.,* secondary materials, such as industrial co-products, by-products, residues, and unreacted feedstocks). Approximately 60% of these affected facilities are classified in NAICS code economic sectors 31, 32, and 33 (manufacturing). The remaining economic sectors, which have more than ten affected industries each, are in NAICS codes 48 (transportation), 42 (wholesale trade), and 56 (administrative support, waste management and remediation).

Title: Revisions to the RCRA Definition of Solid Waste.

ICR numbers: EPA ICR No. 2310.01, OMB Control No. 2050–0202.

ICR status: This ICR is currently scheduled to expire on May 31, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The U.S. Environmental Protection Agency (EPA) has published final revisions to the definition of solid waste that exclude certain hazardous secondary materials from regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended. The information requirements help ensure that (1) entities operating under the regulatory exclusions contained in today's action are held accountable to the applicable requirements; (2) state inspectors can verify compliance with the restrictions and conditions of the exclusions when needed; and (3) hazardous secondary materials exported for recycling are actually handled as commodities abroad.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review

instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

For the recordkeeping and reporting requirements applicable to hazardous secondary materials sent for reclamation, the aggregate annual burden to respondents over the three-year period covered by this ICR is estimated to be 11,552 hours, with a cost to affected entities (i.e., industrial facilities) of $1,417,242. However, this represents an annual reduction in burden to respondents of 52,050 hours, representing a cost reduction of $3,474,035 per year. The estimated annual operation and maintenance costs to affected entities are $739,469 per year, primarily for purchasing audit or other similar type reports. There are no startup costs and no costs for purchases of services. Administrative costs to the Agency are estimated to be 1,257 hours per year, representing an annual cost of $49,891. Burden is defined at 5 CFR 1320.3(b).

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: November 22, 2011.

Suzanne Rudzinski,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2011–31247 Filed 12–5–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9500–1]

Clean Water Act Section 303(d): Availability of Three Total Maximum Daily Loads (TMDLs) in Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment on the administrative record files and the calculations of three TMDLs prepared by EPA Region 6. This notice covers waters in the State of Louisiana's Lake Pontchartrain Basin that were identified as impaired on the States Section 303(d) list. These TMDLs were completed in response to a court order in the lawsuit styled *Sierra Club, et al.* v. *Clifford, et al.,* No. 96–0527, (E.D. La.).

DATES: Comments must be submitted in writing to EPA on or before January 20, 2012.

ADDRESSES: Comments on the three TMDLs should be sent to Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733 or *email: smith.diane@epa.gov*. For further information, contact Diane Smith at (214) 665–2145 or fax (214)–665–7373. The administrative record files for the three TMDLs are available for public inspection at this address as well. Documents from the administrative record files may be viewed at *http://www.epa.gov/earth1r6/6wq/npdes/tmdl/index.htm*, or obtained by calling or writing Ms. Smith at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al.* v. *Clifford, et al.,* No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that the EPA failed to establish Louisiana TMDLs in a timely manner. The EPA proposes these three TMDLs pursuant to a consent decree entered in this lawsuit.

EPA Seeks Comment on Three TMDLs

By this notice the EPA is seeking comment on the following three TMDLs for waters located within Louisiana:

Subsegment	Waterbody name	Pollutant
040505	Ponchatoula Creek and Ponchatoula River	Dissolved oxygen.
041201	Bayou Labranche—Headwaters to Lake Pontchartrain (Scenic) (Estuarine)	Dissolved oxygen.
041805	Lake Borgne Canal (Violet Canal)—MS River siphon at Violet to Bayou Dupre (Scenic) (Estuarine)	Dissolved oxygen.

The EPA requests the public provide to the EPA any water quality related data and information that may be relevant to the calculations for the three TMDLs. The EPA will review all data and information submitted during the public comment period and will revise the TMDLs where appropriate. The EPA will then forward the TMDLs to the Louisiana Department of Environmental Quality (LDEQ). The LDEQ will incorporate the TMDLs into its current water quality management plan.

Dated: November 28, 2011.

William K. Honker,

Acting Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. 2011–31250 Filed 12–5–11; 8:45 am]

BILLING CODE 6560–50–P

Federal Accounting Standards Advisory Board

Notice of Appointment of New FASAB Member

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that Mr. Sam

McCall has been appointed to a five-year term as a member of the Federal Accounting Standards Advisory Board (FASAB) beginning January 1, 2012. Mr. McCall has over forty years of experience in governmental auditing. He has served as deputy state auditor for the state of Florida and is presently the city auditor in Tallahassee, Florida.

For Further Information Regarding Mr. McCall, Contact: Ms. Wendy M. Payne, Executive Director, 441 G St. NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: December 1, 2011.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 2011–31249 Filed 12–5–11; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of November 1–2, 2011

In accordance with Section 271.7(d) of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on November 1–2, 2011.[1]

''The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range from 0 to ¼ percent. The Committee directs the Desk to continue the maturity extension program it began in September to purchase, by the end of June 2012, Treasury securities with remaining maturities of approximately 6 years to 30 years with a total face value of $400 billion, and to sell Treasury securities with remaining maturities of 3 years or less with a total face value of $400 billion. The Committee also directs the Desk to maintain its existing policies of rolling over maturing Treasury securities into new issues and of reinvesting principal payments on all agency debt and agency mortgage-backed securities in the System Open Market Account in agency mortgage-backed securities in order to maintain the total face value of domestic securities at approximately $2.6 trillion. The Committee directs the Desk to engage in dollar roll transactions as necessary to facilitate settlement of the Federal Reserve's agency MBS transactions. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.''

By order of the Federal Open Market Committee.

November 28, 2011.

William B. English,

Secretary, Federal Open Market Committee.

[FR Doc. 2011–31241 Filed 12–5–11; 8:45 am]

BILLING CODE 6210–01–P

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on November 1–2, 2011, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's Annual Report.

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (''OMB'') to extend through December 31, 2014, the current Paperwork Reduction Act (''PRA'') clearance for the information collection requirements in the Commission's Business Opportunity Rule (''Rule''). That clearance expires on December 31, 2011.

DATES: Comments must be submitted on or before January 5, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''16 CFR Part 437: Paperwork Comment, FTC File No. P114408'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/BusinessOptionRulePRA2* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Christine M. Todaro (202) 326–3711, Division of Marketing Practices, Room 286, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Title: Business Opportunity Rule, 16 CFR part 437.

OMB Control Number: 3084–0142.

Type of Review: Extension of currently approved collection.

Abstract: The Rule requires business opportunity sellers to furnish to prospective purchasers a disclosure document that provides information relating to the seller, the seller's business, the nature of the proposed business opportunity, as well as additional information regarding any claims about actual or potential sales, income, or profits for a prospective business opportunity purchaser. The seller must also preserve information that forms a reasonable basis for such claims. These disclosure and recordkeeping requirements are subject to the PRA.

The Rule is designed to ensure that prospective purchasers of a business opportunity receive information that will help them evaluate the opportunity that is presented to them. Part 437 was promulgated in March of 2007, concurrently with the amendment of the Franchise Rule, and it mirrors the requirements and prohibitions of the original Franchise Rule. The FTC recently announced final amendments to the Rule that will take effect on March 1, 2012.[1] This notice, however, applies to the current requirements of Part 437, which remain in effect until February 28, 2012.[2]

On September 26, 2011, the Commission sought comment on the information collection requirements associated with the Rule currently in effect. 76 FR 59,397. No comments were received. Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing a second opportunity for the public to comment while seeking OMB approval to renew the pre-existing clearance for the Rule.

Estimated annual hours burden: 16,750 hours.

Based on a review of trade publications and information from state regulatory authorities, staff believes

[1] *See http://www.ftc.gov/opa/2011/11/busopp.shtm* (November 22, 2011 press release).

[2] A separate PRA analysis has been prepared within the associated rulemaking that addresses the changes in PRA burden per respondent (largely, reductions due to streamlined disclosure requirements) attributable to the final amendments and the Rule's new applicability to work-at-home opportunity sellers.

that, on average, from year to year, there are approximately 2,500 business opportunity sellers, with perhaps about 10% of that total reflecting an equal amount of new and departing business entrants.

The burden estimates for compliance will vary depending on the particular business opportunity seller's prior experience with the original Franchise Rule. Staff estimates that 250 or so new business opportunity sellers will enter the market each year, requiring approximately 30 hours each to develop a Rule-compliant disclosure document. Thus, staff estimates that the cumulative annual disclosure burden for new business opportunity sellers will be approximately 7,500 hours. Staff further estimates that the remaining 2,250 established business opportunity sellers will require no more than approximately 3 hours each to update their disclosure document. Accordingly, the cumulative estimated annual disclosure burden for established business opportunity sellers will be approximately 6,750 hours.

Business opportunity sellers may need to maintain additional documentation for the sale of business opportunities in states not currently requiring these records as part of their regulation of business opportunity sellers. This might entail an additional hour of recordkeeping per year. Accordingly, staff estimates that business opportunity sellers will cumulatively incur approximately 2,500 hours of recordkeeping burden per year (2,500 business opportunity sellers × 1 hour).

Thus, the total burden for business opportunity sellers is approximately 16,750 hours (7,500 hours of disclosure burden for new business opportunity sellers + 6,750 hours of disclosure burden for established business opportunity sellers + 2,500 of recordkeeping burden for all business opportunity sellers).

Estimated annual labor cost: $3,600,000.

Labor costs are determined by applying applicable wage rates to associated burden hours. Staff presumes an attorney will prepare or update the disclosure document at an estimated $250 per hour.[3] As applied, this would yield approximately $3,562,500 in labor costs attributable to compliance with the Rule's disclosure requirements ((250 new business opportunity sellers × $250 per hour × 30 hours per seller) + (2,250 established business opportunity sellers × $250 per hour × 3 hours per seller)).

Staff anticipates that recordkeeping would be performed by clerical staff at approximately $15 per hour.[4] At 2,500 hours per year for all affected business opportunity sellers (see above), this amounts to an estimated $37,500 of recordkeeping cost. Thus, the combined labor costs for recordkeeping and disclosure for business opportunity sellers is approximately $3,600,000.

Estimated non-labor cost: $3,887,500.

Business opportunity sellers must also incur costs to print and distribute the disclosure document. These costs vary based upon the length of the disclosures and the number of copies produced to meet the expected demand. Staff estimates that 2,500 business opportunity sellers print and mail 100 documents per year at a cost of $15 per document, for a total cost of $3,750,000 (2,500 business opportunity sellers × 100 documents per year × $15 per document).

Business opportunity sellers must also complete and disseminate an FTC-required cover sheet that identifies the business opportunity seller, the date the document is issued, a table of contents, and a notice that tracks the language specifically provided in the Rule. Although some of the language in the cover sheet is supplied by the government for the purpose of disclosure to the public, and is thus excluded from the definition of ''collection of information'' under the PRA, *see* 5 CFR 1320.3(c)(2), there are residual costs to print and mail these cover sheets, including within them the presentation of related information beyond the supplied text. Staff estimates that 2,500 business opportunity sellers complete and disseminate 100 cover sheets per year at a cost of approximately $0.55 per cover sheet, or a total cost of approximately $137,500 (2,500 business opportunity sellers × 100 cover sheets per year × $0.55 per cover sheet).

Accordingly, the cumulative non-labor cost incurred by business opportunity sellers each year attributable to compliance will be approximately $3,887,500 ($3,750,000 for printing and mailing documents + $137,500 for completing and mailing cover sheets).

Request for Comment:

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before January 5, 2012. Write ''16 CFR Part 437: Paperwork Comment, FTC File No. P114408'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential * * *,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[5] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/BusinessOptionRulePRA2* by following the instructions on the web-based form.

[3] Based upon staff's informal discussions with several franchises in various regions of the country.

[4] Based on the ''National Compensation Survey: Occupational Wages in the United States, 2010,'' U.S. Department of Labor, Bureau of Labor Statistics (May 2011), available at *http://www.bls.gov/ncs/ocs/sp/nctb1477.pdf.* Clerical estimates are derived from the above source data, rounded upward, for ''new accounts clerks.''

[5] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''16 CFR Part 437: Paperwork Comment, FTC File No. P114408'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 5, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Willard K. Tom,

General Counsel.

[FR Doc. 2011–31216 Filed 12–5–11; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–0382 (60-day Notice)]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60 days.

Proposed Project: Evaluation of Pregnancy Prevention Approaches: First Follow-Up Data Collection—OMB No. 0990–0382—Office of Adolescent Health.

Abstract: The Office of Adolescent Health (OAH), Office of the Assistant Secretary for Health (OASH), U.S. Department of Health and Human Services (HHS), is requesting approval by OMB on a revised data collection. OAH is overseeing and coordinating adolescent pregnancy prevention evaluation efforts as part of the Teen Pregnancy Prevention Initiative. OAH is working collaboratively with the Office of the Assistant Secretary for Planning and Evaluation (ASPE), the Centers for Disease Control and Prevention (CDC), and the Administration for Children and Families (ACF) on adolescent pregnancy prevention evaluation activities.

OAH is overseeing the Pregnancy Prevention Approaches Evaluation (PPA). The PPA Evaluation is a random assignment evaluation which will expand available evidence on effective ways to reduce teen pregnancy. The evaluation will document and test a range of pregnancy prevention approaches in up to seven program sites. The findings from this evaluation will be of interest to the general public, to policymakers, and to organizations interested in teen pregnancy prevention.

OAH is proposing a data collection activity as part of the PPA Evaluation. The proposed activity involves the collection of follow-up data from a self-administered questionnaire which will be analyzed to determine program effects. Through a survey instrument, respondents will be asked to answer carefully selected questions about demographics and risk and protective factors related to teen pregnancy.

Respondents: The data will be collected through private, phone-administered questionnaires with study participants, i.e. adolescents assigned to a select school or community teen pregnancy prevention program or control group. Trained professional staff will administer a paper and pencil survey over the phone.

ESTIMATED ANNUALIZED BURDEN TABLE

Site/Program	Type of respondent	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours (annual)
Follow-up Instrument (6 months) ..	Participating Youth and Control Group Youth.	255	1	30/60	128
Follow-up Instrument (18 months)	Participating Youth and Control Group Youth.	246	1	30/60	123
Total	.....	.....	.....	.....	251

Keith A. Tucker,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–31199 Filed 12–5–11; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–New]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60-days.

Proposed Project: Evaluation of the Consumer Education Campaign ''Make the Call—Don't Miss a Beat'' for the Office on Women's Health (OWH), U.S. Department of Health and Human Services (HHS) (New)—OMB No. 0990–NEW.

Abstract: The ''Make the Call. Don't Miss a Beat'' campaign is a national Public Service Announcement (PSA) campaign that aims to educate, engage and empower women and their families to learn the seven most common symptoms of a heart attack and to call 911 as soon as those symptoms arise. The campaign launched in February, 2011 and includes TV, radio, print and social media PSA. This study will collect information on awareness of the Make the Call—Don't Miss a Beat campaign, knowledge about heart disease, risk status, and likelihood of calling 911 as the first response to the symptoms of a heart attack. Information will also be collected on demographic variables including age, sex, race, education, income, primary language, and marital status. Information will be collected through the use of a probability sample, Random Digit Dial telephone survey. The respondent base will be surveyed only once, as this is a single-wave survey. The sampling plan is to include a minimum of 1200 women from the United States general population, with at least 600 of these women 50 years or older.

ESTIMATED ANNUALIZED BURDEN TABLE

Form	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Screener	General Population, Adult Women, 25+.	4300	1	5/60	358
Main instrument	General Population, Adult Women, 25+.	1200	1	15/60	300
Total					658

Keith A. Tucker,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2011–31201 Filed 12–5–11; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day-12–12BO]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call (404) 639–5960 or send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Monitoring and Reporting System for Community Transformation Grant Awardees—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Chronic diseases, including heart disease, cancer, stroke, diabetes, arthritis, are the leading causes of death and disability in the United States, accounting for seven of every ten deaths and affecting the quality of life of 90 million Americans. Reducing death and disability through the prevention and control of these conditions, and related risk factors such as tobacco use,

physical inactivity, poor diet, and obesity, has critical importance for public health.

The Prevention and Public Health Fund (PPHF) of the Patient Protection and Affordable Care Act of 2010 (ACA) provides an important opportunity for states, counties, territories and tribes to advance public health across the lifespan and to reduce health disparities. The PPHF authorizes Community Transformation Grants (CTG) for the implementation, evaluation, and dissemination of evidence-based community preventive health activities. The CTG program will create healthier communities by building capacity to implement broad evidence and practice-based policy, environmental, programmatic and infrastructure changes, and supporting implementation of such interventions. The CTG program emphasizes five strategic areas: Tobacco-free living, active living and healthy eating, high impact evidence-based clinical and other preventive services, social and emotional wellness, and a healthy and safe physical environment. The CTG program is administered by the Centers for Disease Control and Prevention (CDC), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP).

CDC awarded 68 CTG cooperative agreements to state and local governmental agencies, tribes and territories, state or local non-profit organizations, and national networks of community-based organizations. Fifty-four awardees were from state, local and tribal government, and 14 awardees were from the private, non-profit sector. Each awardee is charged with implementing a community-or awardee-specific work plan that will lead to specific, measurable health outcomes in its jurisdiction (or service area) among an entire population or a specific population subgroup. Each CTG awardee is required to provide semi-annual reports to CDC describing its work plan, objectives, activities, partnerships, resources, and progress.

CDC plans to collect the required progress report information using an electronic management information system (MIS), which has a number of advantages when compared to the collection of narrative reports. First, the MIS will help awardees formulate objectives that are specific, measurable, achievable, relevant and time-framed (SMART), as required by CDC's evaluation strategy. Second, awardees will have the capacity to enter updates on an ongoing basis. This capacity is expected to improve respondent satisfaction and result in more complete enumeration of CTG-funded efforts. In addition, this feature will facilitate communications with CDC and prompt, data-driven technical assistance. Third, information stored in the MIS can be used to satisfy routine, semi-annual reporting requirements while minimizing data re-entry for information that has not changed. Finally, the electronic MIS will allow CDC to formulate ad hoc analyses and reports that would be impracticable using paper-based information sources. Information collected through the MIS will be used to monitor awardee progress, identify and support CDC technical assistance to awardees, and respond to inquiries from the Department of Health and Human Services (HHS), the White House, Congress and other sources. NCCDPHP has successfully implemented similar MIS-based information collections with other chronic disease prevention and control programs.

OMB approval is requested for three years. Awardees will report information to CDC twice per year. The average burden per response is estimated to be three hours. CDC's collection of this information is authorized by section and sections 311 and 317(k)(2) of the Public Health Service Act, 42 U.S. Code 243 and 247b(k)2. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Community Transformation Grant Awardees (state, local and tribal government sector)	54	2	3	324
CTG Awardees (private sector)	14	2	3	84
Total				408

Dated: November 29, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–31243 Filed 12–5–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0464]

Draft Guidance for Industry and Food and Drug Administration Staff; the Content of Investigational Device Exemption and Premarket Approval Applications for Artificial Pancreas Device Systems; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance document entitled ''Draft Guidance for Industry and FDA Staff: The Content of Investigational Device Exemption (IDE) and Premarket Approval (PMA) Applications for Artificial Pancreas Device Systems.'' This draft guidance document provides industry and the Agency staff with guidelines for developing premarket submissions for artificial pancreas device systems, in particular, the Control-to-Range (CTR) and Control-to-Target (CTT) device systems. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the

final version of the guidance, submit either electronic or written comments on the draft guidance by March 5, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Draft Guidance for Industry and FDA Staff: The Content of Investigational Device Exemption (IDE) and Premarket Approval (PMA) Applications for Artificial Pancreas Device Systems'' to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to (301) 847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Phil Desjardins, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5452, Silver Spring, MD 20993–0002, (301) 796–5678.

SUPPLEMENTARY INFORMATION:

I. Background

Diabetes mellitus has reached epidemic proportions in the United States and more recently, worldwide. The morbidity and mortality associated with diabetes is anticipated to account for a substantial proportion of health care expenditures. Although there are many devices available that help patients manage the disease, FDA recognizes the need for new and improved devices for treatment of diabetes. One of the more advanced diabetes management systems is an artificial pancreas device system. An artificial pancreas system is a type of autonomous system that adjusts insulin infusion based upon the continuous glucose monitor (CGM) via control algorithm. There are a variety of types of artificial pancreas systems depending upon the nature of the control algorithm, including CTR, CTT, and Low Glucose Suspend systems. On June 22, 2011 (76 FR 36542), FDA announced the availability of the draft guidance document entitled ''Draft Guidance for Industry and Food and Drug Administration Staff: The Content of Investigational Device Exemption and Premarket Approval Applications for Low Glucose Suspend Device Systems.'' In this notice, FDA is announcing a draft guidance document with recommendations developing premarket applications for other types of artificial pancreas systems.

CTR and CTT systems link a continuous glucose monitor to an insulin pump and automatically reduce or increase insulin infusion based upon specified thresholds of measured interstitial glucose levels. These types of systems are designed to aid in the management of diabetes. There are significant challenges in creating an autonomous system, which were discussed in a joint FDA and NIH (National Institutes of Health) artificial pancreas workshop on November 10, 2010 (information available at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm226251.htm*). Currently, there is no FDA-approved artificial pancreas device. This workshop sought feedback on ways to overcome the obstacles toward developing an artificial pancreas. The feedback received from this workshop and the continued communication with investigators in this field has provided valuable input for FDA's guidances for artificial pancreas device systems. This guidance will outline considerations for development of clinical studies, and recommends elements that should be included in IDE and PMA applications, focusing on critical elements of safety and effectiveness for approval of this device type.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on developing investigations of and premarket applications for Artificial Pancreas Device systems, particularly the CTT and CTR device systems. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov*. To receive ''Draft Guidance for Industry and FDA Staff: The Content of Investigational Device Exemption (IDE) and Premarket Approval (PMA) Applications for Artificial Pancreas Device Systems,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to (301) 847–8149 to receive a hard copy. Please use the document number 1786 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to currently approved collections of information found in FDA regulations and guidance documents. These collection of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 56.11 are approved under OMB control number 0910–0130; the collections of information in 21 CFR parts 801 and 809 are approved under OMB control number 0910–0485, the collections of information in 21 CFR part 812 are approved under OMB control number 0910–0078, and the collections of information in 21 CFR part 814 are approved under OMB control number 0910–0231; the collections of information in 21 CFR part 820 are approved under OMB control number 0910–0073.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 28, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–31214 Filed 12–5–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0824]

Regulatory Site Visit Training Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA's) Center for Biologics Evaluation and Research (CBER) is announcing an invitation for participation in its Regulatory Site Visit Training Program (RSVP). This training program is intended to give CBER regulatory review, compliance, and other relevant staff an opportunity to visit biologics facilities. These visits are intended to allow CBER staff to directly observe routine manufacturing practices and to give CBER staff a better understanding of the biologics industry, including its challenges and operations. The purpose of this document is to invite biologics facilities to contact CBER for more information if they are interested in participating in this program.

DATES: Submit either an electronic or written request for participation in this program by January 5, 2012. The request should include a description of your facility relative to products regulated by CBER. Please specify the physical address(es) of the site(s) you are offering.

ADDRESSES: If your biologics facility is interested in offering a site visit, submit either an electronic request to *http://www.regulations.gov* or a written request to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. If you previously responded to earlier requests to participate in this program and you continue to be interested in participating, please renew your request through a submission to the Division of Dockets Management.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Henderson, Division of Manufacturers Assistance and Training, Center for Biologics Evaluation and Research (HFM–49), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, (301) 827–2000, FAX: (301) 827–3079, *email: industry.biologics@fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

CBER regulates certain biological products including blood and blood products, vaccines, and cellular, tissue, and gene therapies. CBER is committed to advancing the public health through innovative activities that help ensure the safety, effectiveness, and availability of biological products to patients. To support this primary goal, CBER has initiated various training and development programs, including programs to further enhance performance of its compliance staff, regulatory review staff, and other relevant staff. CBER seeks to continuously enhance and update review efficiency and quality, and the quality of its regulatory efforts and interactions, by providing CBER staff with a better understanding of the biologics industry and its operations. Further, CBER seeks to enhance: (1) Its understanding of current industry practices and regulatory impacts and needs and (2) communication between CBER staff and industry. CBER initiated its RSVP in 2005. Through these annual notices, CBER is requesting that those firms that have previously applied and are still interested in participating reaffirm their interest. CBER is also requesting that new interested parties apply.

II. RSVP

A. Regulatory Site Visits

In this program, over a period of time to be agreed upon with the facility, small groups of CBER staff may observe operations of biologics establishments, including for example, blood and tissue establishments. The visits may include the following: (1) Packaging facilities, (2) quality control and pathology/toxicology laboratories, and (3) regulatory affairs operations. These visits, or any part of the program, are not intended as a mechanism to inspect, assess, judge, or perform a regulatory function, but are meant to improve mutual understanding and to provide an avenue for open dialogue between the biologics industry and CBER.

B. Site Selection

CBER will be responsible for all travel expenses associated with the site visits. Therefore, selection of potential facilities will be based on the coordination of CBER's priorities for staff training as well as the limited available resources for this program. In addition to logistical and other resource factors to consider, a key element of site selection is a successful compliance record with FDA or another Agency with which we have a memorandum of understanding. If a site visit also involves a visit to a separate physical location of another firm under contract to the applicant, the other firm also needs to agree to participate in the program, as well as have a satisfactory compliance history.

III. Requests for Participation

Identify requests for participation with the docket number found in the brackets in the heading of this document. Received requests are available for public examination in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 30, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–31152 Filed 12–5–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.),notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications,the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Fellowships in Digestive Diseases and Nutrition.

Date: February 21, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Thomas A. Tatham, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Translational Research.

Date: January 26, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Michele L. Barnard, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–31296 Filed 12–5–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Mentored Training in Executive Functioning (EF).

Date: December 13, 2011.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Carla Walls, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Rockville, MD 20892–9304, (301) 435–6898, *wallsc@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment program, National Institutes of Health, HHS)

Dated: November 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–31301 Filed 12–5–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: January 17–18, 2012.

Open: January 17, 2012, 1 p.m. to 4:45 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, C Wing, Room 6, Bethesda, MD 20892.

Closed: January 18, 2012, 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, C Wing, Room 6, Bethesda, MD 20892.

Contact Person: Yvonne E Bryan, Ph.D., Special Assistant to the Director, National Institute of Nursing, National Institutes of Health, 31 Center Drive, Room 5B–05, Bethesda, MD 20892, (301) 594–1580, *bryany@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/ninr/a_advisory.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: November 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–31302 Filed 12–5–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; ZHD1 DSR–K 58.

Date: December 14, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To provide concept review of proposed concept review.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard,

Rockville, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment program, National Institutes of Health, HHS)

Dated: November 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–31299 Filed 12–5–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4042–DR; Docket ID FEMA–2011–0001]

Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–4042–DR), dated November 4, 2011, and related determinations.

DATES: Effective Date: November 18, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of November 4, 2011.

Spotsylvania County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–31275 Filed 12–5–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4013–DR; Docket ID FEMA–2011–0001]

Nebraska; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nebraska (FEMA–4013–DR), dated August 12, 2011, and related determinations.

DATES: *Effective Date:* November 18, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Nebraska is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 12, 2011.

Thurston County, including the Omaha Tribe of Nebraska and Iowa, for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–31279 Filed 12–5–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4041–DR; Docket ID FEMA–2011–0001]

Louisiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–4041–DR), dated October 28, 2011, and related determinations.

DATES: *Effective Date:* October 28, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 28, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Louisiana resulting from Tropical Storm Lee during the period of September 1–5, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved

assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William J. Doran, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Louisiana have been designated as adversely affected by this major disaster:

The parishes of East Feliciana, Jefferson, Lafourche, Plaquemines, St. Bernard, St. Charles, Terrebonne, and West Feliciana for Public Assistance.

All parishes within the State of Louisiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–31272 Filed 12–5–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4047–DR; Docket ID FEMA–2011–0001]

New Mexico; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Mexico (FEMA–4047–DR), dated November 23, 2011, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 23, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New Mexico resulting from flooding during the period of August 19–24, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New Mexico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mark H. Armstrong, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Mexico have been designated as adversely affected by this major disaster:

Cibola and Sandoval Counties and the Pueblo of Acoma and the Pueblo of Santa Clara for Public Assistance.

All counties and Indian Tribes in the State of New Mexico are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–31274 Filed 12–5–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4046–DR; Docket ID FEMA–2011–0001]

Connecticut; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Connecticut (FEMA–406–DR), dated November 17, 2011, and related determinations.

DATES: *Effective Date:* November 17, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 17, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Connecticut resulting from a severe storm during the period of October 29–30, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Connecticut.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will

be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Stephen M. De Blasio Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Connecticut have been designated as adversely affected by this major disaster:

Fairfield, Hartford, Litchfield, Middlesex, New Haven, Tolland, and Windham Counties for Public Assistance.

All counties and tribes in the State of Connecticut are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–31283 Filed 12–5–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4045–DR; Docket ID FEMA–2011–0001]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–4045–DR), dated November 17, 2011, and related determinations.

DATES: *Effective Date:* November 17, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 17, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia resulting from the Remnants of Tropical Storm Lee during the period of September 8–9, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Donald L. Keldsen, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Virginia have been designated as adversely affected by this major disaster:

Caroline, Essex, Fairfax, King and Queen, King George, Prince William, and Westmoreland and the independent City of Alexandria for Public Assistance.

All counties and independent cities in the Commonwealth of Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–31282 Filed 12–5–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–119]

Notice of Submission of Proposed Information Collection to OMB; Impact of Housing and Services Interventions for Homeless Families

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This study will enroll up to 2,500 homeless families in twelve sites and randomly assign each family to one of four interventions. Families will be interviewed at baseline (entry/random assignment), tracked for 18 months after intervention, and administered a follow-up interview at 18 months. Outcomes of interest include: Housing stability, family preservation, child well-being, adult well-being, and self-sufficiency. Clearance is sought for the 18-month follow-up survey instrument.

DATES: *Comments Due Date:* January 5, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0259) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* (202) 395–5806. *Email: OIRA_Submission@omb.eop.gov fax:* (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management

Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Impact of Housing and Services Interventions for Homeless Families.

OMB Approval Number: 2528–0259.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: This study will enroll up to 2,500 homeless families in twelve sites and randomly assign each family to one of four interventions. Families will be interviewed at baseline (entry/random assignment), tracked for 18 months after intervention, and administered a follow-up interview at 18 months. Outcomes of interest include: Housing stability, family preservation, child well-being, adult well-being, and self-sufficiency. Clearance is sought for the 18-month follow-up survey instrument.

Frequency of Submission: Other, once.

Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	2,039	1	1.0617	2,165

Total Estimated Burden Hours: 2,165.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 30, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–31256 Filed 12–5–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–118]

Notice of Submission of Proposed Information Collection to OMB; Transformation Initiative: Natural Experiment Grant Program

AGENCY: Office of the Chief Information Officer, HUD

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information is being collected to select applicants for award in this statutorily created competitive grant program and to monitor performance of awardees to ensure they meet statutory and program goals and requirements.

DATES: *Comments Due Date:* January 5, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528—New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* (202) 395–5806. *Email: OIRA_Submission@omb.eop.gov.fax:* (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Transformation Initiative: Natural Experiment Grant Program.

OMB Approval Number: 2528–New.

Form Numbers: HUD–2993, HUD–2880, SF–424, SF–424supp, HUD–424CB, HUD–96011, SF–LLL.

Description of the Need for the Information and Its Proposed Use: The information is being collected to select applicants for award in this statutorily created competitive grant program and to monitor performance of awardees to ensure they meet statutory and program goals and requirements.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	35	50		58	1,010

Total Estimated Burden Hours: 1,010.
Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 23, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–31259 Filed 12–5–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket BOEM–2011–0095]

Request for Information on the State of the Offshore Renewable Energy Industry—Auction Format Information Request (AFIR)

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Request for information.

SUMMARY: BOEM invites public comment on a proposed set of auction formats which may be used to issue commercial renewable energy leases on the Outer Continental Shelf (OCS). BOEM is examining several auction formats, each designed to efficiently issue renewable energy leases to those who value them most and are best positioned to develop them, while also ensuring that the government receives a fair return in exchange. BOEM is focusing primarily on variations of Ascending Clock Auctions and Package Auctions formats described in more detail below. BOEM is also considering a multiple factor auction approach in which bidders can earn a discount on their bids submitted under one of the auction formats noted above, based on company-specific attributes deemed relevant to the success of their projects. The auction format selected for each sale area would likely vary based on the actual characteristics of that sale. Such characteristics could include the size and homogeneity of the area to be offered. BOEM will hold a workshop to help familiarize stakeholders with the auction format options and to solicit feedback on Friday, December 16, 2011, at the South Interior Building in Washington, DC.

DATES: Comments should be submitted electronically or postmarked no later than January 20, 2012. All written comments received during the comment period will be made available to the public and considered during preparation of Proposed Sale Notices (PSN) pertaining to the competitive leasing of OCS lands to support the development of offshore wind energy resources.

ADDRESSES: Potential auction participants, Federal, state, and local government agencies, tribal governments, and other interested parties are requested to submit their written comments on the contents of this AFIR in one of the following ways:

1. *Electronically: http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter BOEM–2011–0095 then click ''search.'' Follow the instructions to submit public comments and view supporting and related materials available for this document.

2. *Written Comments:* In written form, delivered by hand or by mail, enclosed in an envelope labeled ''Comments on Offshore Wind AFIR'' to: Economics Division, Bureau of Ocean Energy Management, 381 Elden Street, MS 4050, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Greg Adams, BOEM Economics Division, 381 Elden Street, MS 4050, Herndon, Virginia 20170–4817, (703) 787–1537 or *greg.adams@boem.gov;* or Wright Frank, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, (703) 787–1325 or *wright.frank@boem.gov.*

SUPPLEMENTARY INFORMATION:

Authority

This request for information is published pursuant to subsection 8(p) of the OCS Lands Act (43 U.S.C. 1337(p)), as amended by section 388 of the Energy Policy Act of 2005 (EPAct) and the implementing regulations at 30 CFR 585.116, which authorize the Director of BOEM to solicit information from industry and other relevant stakeholders to evaluate the state of the offshore renewable energy industry, including economic matters that promote or detract from continued development. The information received may be used to evaluate program options to promote safe and environmentally responsible development in a manner that ensures a fair value for use of the nation's OCS.

Purpose of the AFIR

The purpose of this information request is to invite public comment on the auction format options described in this request. Due to the complexities associated with lease valuation and optimal lease configurations, renewable energy leasing will require more diverse approaches than the sealed-bid, cash bonus approach used to issue offshore oil and gas leases.

The auction formats and their specifications are designed to address important program objectives, including:

- *Fair Return:* BOEM is statutorily required to obtain a ''fair return'' for leases and grants on the OCS;
- *Economic Efficiency:* The lease auction process should try to ensure that commercial renewable energy leases on the OCS are awarded to those who value the areas the most;
- *Program Efficiency:* The lease auction process must be manageable for BOEM to administer;
- *Lease Boundary Flexibility:* Within constraints fixed by BOEM, the auction should allow bidders to identify the optimal lease areas;
- *Competition:* The lease auction process must be fair, and encourage participation from all interested bidders;
- *Transparency:* The lease auction process must be an open one in which bids are comparable and the reason why the winners won is clear;
- *Neutrality:* The lease auction process must ensure that all bidders are treated equally;
- *Simplicity:* The lease auction process must be easily understood and implemented, by both the bidders and BOEM; and
- *Consistency:* The lease auction process should be applicable to the issuance of leases in a variety of potential renewable energy development contexts.

BOEM contracted with Power Auctions LLC to study auction formats for issuing renewable energy leases (hereinafter, ''Ausubel and Cramton (2011a), (2011b), and (2011c),'' respectively). Based on its findings and BOEM's own internal research, BOEM has identified several potentially suitable auction formats. A more comprehensive discussion of these auction formats prepared by BOEM staff, along with the Power Auctions LLC study, can be found on BOEM's

Web site at *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Renewable-Energy-Auction-Formats.aspx.*

Preference for Bidding on the Cash Bonus

Although BOEM has the authority to conduct an auction with either the cash bonus or operating fee rate as the bid variable, the bureau generally prefers using the cash bonus. Conducting an auction with the bonus bid as the variable has a number of benefits. It allows straightforward comparison of competing offers and tends to award leases to developers with good financial backing. Because the winning bidders would need to pay the bonus bid before the lease is issued, it prevents undercapitalized bidders from committing to a greater payment than they can afford. Refer to Section 2.3 in Ausubel and Cramton (2011a) for further discussion.

Single Lot Auctions: Simple Ascending Clock Auction Format

In a single lot auction, there is only one object of bidding (''lot''), and the entire lease area would be auctioned off as a single entity. BOEM could use a single lot auction in situations where it is expected that only one lease would be practical for the available acreage, because the area would not be large enough to support multiple projects.

In a single lot auction utilizing an ascending clock auction format, BOEM would set an initial asking price for the single lot, and bidders would indicate whether or not they are interested in bidding for that lot at that price. If BOEM received more than one bid, BOEM would increase the asking price, which ''ticks'' up like a clock, until only a single bidder is willing to meet the announced price. This format enables price discovery by the bidders during the auction and reduces the guesswork required for bidders to value offshore leases.

One complication of the simple ascending clock auction is that a tie-breaking procedure is needed when all the remaining bidders drop out in the same round. Exit bids are one practical way of solving this problem in the single lot case. An exit bid allows bidders who are unwilling to meet the next round's bid price to specify the maximum price they would be willing to pay short of the new asking price. If all remaining bidders drop out from one round to the next, the bidder with the highest exit bid would prevail. Another tie-breaking procedure would be for BOEM to incrementally reduce the current asking price until one bidder bids. In either approach, if the tie persists after the tie-breaking procedure, the winner could be determined based on a random draw. Refer to Section 5.2 in Ausubel and Cramton (2011c) for further discussion.

Multiple Lot Auctions: Simultaneous Ascending Clock Auction Format

In most lease sales, BOEM expects to issue multiple commercial renewable energy leases in the same auction. In this case, BOEM is considering the use of a Simultaneous Ascending Clock Auction (SACA).

In such a lease sale, BOEM would divide the entire area offered for leasing into smaller lots which would be the objects of the bidding. To form the lots, BOEM would likely use OCS lease blocks (approximately 3 statute miles by 3 statute miles), aliquots (squares 1/16th that size), or some combination of these. The auction would enable bidding on all of the lots simultaneously.

BOEM would set a minimum asking price for each lot. Bidders would bid on the combination of lots they are interested in at that price. The bid price set by BOEM for contested lots (those receiving two or more bids) would increase in the next round, while the price for uncontested lots (those receiving zero or one bid) would remain the same in the next round. BOEM would publish the announced prices and the number of bids on each lot at the outset of each round in the auction.

A lot which is uncontested through several rounds may become contested because, as the auction proceeds, a bidder can shift its bids, for example, from a contested lot to an uncontested lot. If a bidder submits the only bid on a particular lot, the standing price for that lot remains unchanged through subsequent rounds until an additional bid is submitted on that lot at the standing bid price, or the auction ends. As soon as an uncontested lot receives more than one bid, it is treated as a contested lot.

If any bidder finds that it has submitted a bid on a contested lot, in the next round that bidder can either:

- Meet the new asking price for this lot;
- Drop its bid for this lot and submit a new bid elsewhere; or
- Drop its bid for this lot and not submit a new bid elsewhere.

The auction ends when no lot has more than one bid at the last-announced asking price set by BOEM. Because any bidder can move a bid from a contested lot to another lot, the auction for any particular lot is not over until bidding has concluded for all lots. The winning bidders are those with active bids in the final round and they are obligated to pay the final round prices for the lots they win.

Bidding in a SACA auction must comply with a set of rules that BOEM will include in the Proposed and Final Sale Notices. For example:

- A bidder may only bid on contiguous lots to form a single lease.
- Bidders who want to acquire multiple lease areas must register for the auction as separate bidding entities.
- Bidders may maintain or reduce the number of lots they bid on from one round to the next; but they may not increase the number of lots they bid on from one round to the next. This helps to control certain opportunities for gaming, and drives the auction towards a timely conclusion.
- A ''bid eligibility rule'' would determine the maximum number of lots that a bidder is eligible to bid on in the auction in the opening round, or in any subsequent round of the auction. Bidders' eligibility is based on the amount of money posted as their bid deposit. The maximum number of lots that a bidder may bid on equals the maximum number of lots that would be covered by the bidder's deposit at the opening bid price.
- Bidders may submit an exit bid amount for a particular set of lots in any round. An exit bid can only win if the auction ends in that round, and there is no higher bid on any of the lots in the set. If any of these conditions is not met, the bid is set aside and the bidder exits the auction.

The SACA format provides an opportunity for price discovery like the ascending clock auction format used to bid on a single item. Also, the SACA format permits a bidder to identify combinations of lots which support its particular plan for a commercial offshore wind energy project. Refer to Section 5 in Ausubel and Cramton (2011a) for further discussion of clock auctions and Section 5.3.5 in Ausubel and Cramton (2011c) (Alternative I) for an example of how they work.

One potential problem with the SACA format arises when multiple bidders who have submitted bids on the same lots simultaneously drop out of the auction. In this situation, designing and implementing tiebreaking rules becomes complex. Under the sample rules described above, because bidders may not increase the number of lots on which they bid from one round to the next, large and potentially high-value areas in the auction area may go unclaimed (hereinafter, ''undersell''). The difficulty of designing effective exit bidding rules for multiple lot auctions limits their potential effectiveness in

addressing undersell. As a result, it may be a challenge to fully achieve program goals such as optimal configuration of the winning sets of packages and ensuring receipt of fair value with the SACA format.

Alternative for Multiple Lot Auctions: Package Auctions

Several variations of the package auction format merit consideration for leasing packages of lots for offshore development of electricity from wind resources. Below are brief outlines of three such package auction variants. More detailed descriptions of these auction formats are available on BOEM's web site. A ''package'' is the arrangement of lots that a given bidder has selected in a given round of bidding paired with the price the bidder is willing to pay in that round for that arrangement of lots.

• One variant is a single-phase package clock auction where the bidding would proceed just like a SACA. However, BOEM could select the best arrangement of packages from earlier rounds of the auction to maximize seller revenue, perhaps subject to the condition that the prevailing bids in the final round are included in the winning set of lots. If the SACA phase of bidding resulted in a significant undersell, BOEM could revive early round bids to ''fill in'' undersold areas.

• A second variant builds on the first variation, but allows bidders to add a number of additional package bids at the conclusion of the SACA phase through a supplemental round of sealed bidding. BOEM would then consider all bid configurations from all the SACA rounds and the supplemental round in determining the winning set of lots based on revenue maximization. Note that any time BOEM proposes a sealed bidding round, we would consider using a ''Second Price Rule,'' in which the winning bidder would only be required to pay the amount bid by the next highest bidder. This prevents a winning bidder from paying more than would have been necessary to win. The Second Price Rule can also benefit the government by discouraging ''bid shading.'' This happens when a bidder bids the amount the bidder thinks will win instead of the amount the bidder thinks the lot is worth, in order to avoid overpaying.

• A third variant would use a non-clock ascending package auction format. In this format, bidders would select packages and also name the price they would pay for those packages. In contrast to the clock formats, bidders would submit a price at or above the minimum required bid increment for their desired package in each round, and the set of packages with the greatest auction revenue would become provisional winners at the end of each round. The auction would end when none of the bids change from one round to the next. BOEM would examine all the packages submitted and select the packages that maximize revenue.

For each of the auction formats listed above, BOEM would need to determine what information is given to bidders at the outset of each round of the auction. For example, bidders could be informed of the number of bids for each lot submitted in the previous round. Bidders in a clock auction (variations 1 and 2) would also be informed of the announced price for each lot, while bidders in a non-clock auction (variation 3) would be informed of the aggregate dollar amount of active high bids.

Theoretical work, including the contract study mentioned earlier, indicates that a package clock auction with a supplemental bidding round is the most effective method for improving auction efficiency. However, BOEM is concerned about designing and using this approach in initial sales, given its reliance on complex bidding rules and solution algorithms, in conjunction with the need to prepare and publish these complicated bidding rules in a transparent manner.

Expanded details on both the clock and non-clock options under consideration are available on BOEM's web site, and we encourage comments on the more complicated package auction alternatives and their appropriateness in early auctions. Refer to Section 6 in Ausubel and Cramton (2011a) for an overview of clock auctions and Section 5.3 in Ausubel and Cramton (2011c) for a comparison of the package clock approaches with examples and further explanation of the rules.

Multiple Factor Auctions

The auction formats described above in this notice are considered sufficient to meet the agency's needs in a wide variety of contexts. However, in certain limited circumstances, BOEM may determine that other factors, along with cash bids, should be considered in determining how it issues leases and, indirectly, how much winning bidders should pay. For example, as BOEM noted in publishing its regulations in 2009:

> [D]uring the time that [BOEM] has been promulgating this rule, the States of Delaware, New Jersey, and Rhode Island have conducted competitive processes and have selected companies to develop wind resources on the OCS. We believe that the pre-existing State processes are relevant to the competitive processes that [BOEM] is required to conduct following approval of this rule. We intend to do so by using a competitive process that considers, among other things, whether a prospective lessee has a power purchase agreement or is the certified winner of a competitive process conducted by an adjacent State.

74 FR 19,663 (Apr. 29, 2009). Therefore, in certain circumstances, BOEM will consider holding ''Multiple Factor Auctions,'' in which non-financial considerations are taken into account at the outset.

If BOEM decides to employ such an auction format, it proposes to do so in a two-phase auction: A non-monetary phase, followed by a second phase using one of the standard auction formats described above. Prior to the auction, BOEM would announce the non-monetary factors to be considered, and the value assigned to each factor. To ensure a fair and transparent process and to ease the task of implementing the auction, BOEM would use a limited number of objective, ''yes-no'' factors. Examples of such factors could include:

• Do you currently hold a firm financial commitment for the sale of at least 100 MW of power from a proposed offshore wind development in the lease sale area in the form of either a firm purchase power agreement (PPA) that has been approved by the state utility commission or its equivalent OR an ocean renewable energy credit approved by the appropriate state agency?

• Have you completed installation of a meteorological measurement tower on a BOEM limited lease located within the lease sale area?

Each factor would be assigned a percent discount to be applied against the amount that winning bidders would be required to pay BOEM following the auction. Between the non-monetary phase and the monetary phase, each bidder would be informed of the total discount for which it qualifies. To encourage competition and balance non-financial and financial bidding factors in the auction, BOEM is not likely to offer a bidder a discount of more than 25 percent on the basis of non-monetary factors. Refer to Ausubel and Cramton (2011b) and Sections 3 and 4 in Ausubel and Cramton (2011c) for further evaluation of multiple-factor approaches.

Comments and Responses Requested

BOEM is requesting that the public and any interested or affected parties provide specific and detailed comments regarding the auction format

recommendations described herein and in the supporting materials. In addition, BOEM is providing the following list of questions to which it is seeking substantive responses, including rationales and explanations for the answers provided.

1. How should we configure and size auction lots? Should lots generally correspond to an OCS block? What characteristics should BOEM take into account when sub-dividing a wind energy area into lots represented by OCS blocks or by OCS blocks grouped into zones or project areas? Refer to Sections 6.1.1 and 7.1 in Ausubel and Cramton (2011c) for discussions of lot designation.

2. Should the lots auctioned to a single bidder consist of contiguous OCS blocks? Refer to Section 6.2.9 in Ausubel and Cramton (2011c) for a discussion of the contiguous lots rule.

3. Should each bidding entity be limited to bidding on a single contiguous set of blocks?

4. What restrictions should be placed on bidders seeking more than one package of lots during an auction?

5. What factors contribute to the size of an area needed to support an economically viable offshore wind energy facility? Should there be an established rule-of-thumb used to determine the minimum and maximum number of OCS blocks needed? Refer to Section 4.4 in Ausubel and Cramton (2011c) for a discussion of competition constraints.

6. At what asking price per block or per acre should BOEM commence the auction? In other words, what is an appropriate minimum bid per block? At what minimum asking price would you consider not participating in the auction? Refer to Section 6.2.6 in Ausubel and Cramton (2011c) for a discussion of reserve pricing.

7. Which of the auction formats discussed and referenced in this notice do you prefer BOEM use? Does your answer differ by location? Which features of the auction formats would you like to see modified or eliminated?

8. Do the concerns associated with a SACA format (*e.g.,* undersell) justify the added complexity of a package auction? Refer to Section 5.3 in Ausubel and Cramton (2011c) for an example of how undersell occurs.

9. BOEM is considering using a ''second-pricing rule'' in certain specific contexts, including any auction that includes a sealed-bid phase. How important is it to you that the auction format includes such a second-pricing rule? Would you offer your maximum value as a bid for all lots of interest under a second-price auction formulation? Refer to Section 5.3.11 in Ausubel and Cramton (2011c) for a discussion of winning price determination.

10. What aspects of the auction formats discussed in this note concern you the most? Which features would you like to see retained in practice?

11. What additional factors should BOEM consider in a multiple factor auction beyond those enumerated in this Information Request? How should all of these factors be weighted? Refer to Section 4.1.3 in Ausubel and Cramton (2011b) and Section 3.2 in Ausubel and Cramton (2011c) for a discussion of factor design and weighting.

12. Should lots in desirable locations be weighted differently than those of equal size in less desirable locations? Would this potentially affect your level of activity during the auction? For example, BOEM could adjust rules such that a bidder could expand the number of lots bid on if those lots are in an area that BOEM had determined is less desirable. This is described further in the materials available on BOEM's Web site. Refer to Sections 5.3.8 and 6.2.7 in Ausubel and Cramton (2011c) for discussion of such rules.

13. Are there auction formats not included in this Information Request that BOEM should consider?

Please provide responses to the above questions, and/or any comments or suggestions on the auction formats and activity rules discussed in this Information Request and referenced in the material at BOEM's Web site at *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Renewable-Energy-Auction-Formats.aspx.*

References

Ausubel, Lawrence M. and Peter Cramton (2011a) ''Auction Design for Wind Rights,'' Report to Bureau of Ocean Energy Management.

Ausubel, Lawrence M. and Peter Cramton (2011b) ''Multiple-Factor Auction Design for Wind Rights,'' Report to Bureau of Ocean Energy Management.

Ausubel, Lawrence M. and Peter Cramton (2011c) ''Comparision of Auction Formats for Auctioning Wind Rights,'' Report to Bureau of Ocean Energy Management.

Dated: November 28, 2011.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2011–31222 Filed 12–1–11; 4:15 pm]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[USGS–GX12RN000DSA200]

Agency Information Collection Activities: Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of an information collection (1028–0048).

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on March 31, 2012.

DATES: You must submit comments on or before February 6, 2012.

ADDRESSES: Please submit a copy of your comments to the Information Collections Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7199 (fax); or *smbaloch@usgs.gov* (email). Use Information Collection Number 1028–0048 in the subject line.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Jim Dewey at (303) 274–8419.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Geological Survey is required to collect, evaluate, publish and distribute publish information concerning earthquakes. Respondents will have an opportunity to voluntarily supply information concerning the effects of shaking from an earthquake—on themselves, buildings, other man-made structures, and ground effects such as faulting or landslides.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked. We will release data collected on these forms only in formats that do not include proprietary information volunteered by respondents.

II. Data

Title: USGS Earthquake Report.

OMB Control Number: 1028–0048.

Type of Request: Revision of a currently approved collection.

Affected Public: General Public.

Respondent Obligation: Voluntary.

Frequency of Collection: On occasion, after each earthquake.

Estimated Number and Description of Respondents: Approximately 300,000 individuals affected by an earthquake each year.

Estimated Number of Responses: 300,000.

Annual Burden Hours: 30,000 hours.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: The previously approved ''hour'' burden for this collection is 10,000 hours. However, voluntary earthquake reports have increased in recent years as the public becomes aware of the opportunity to contribute their earthquake observations. We estimate the public reporting burden will average 6 minutes per response. This includes the time for reviewing instructions, and answering a web-based questionnaire.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

III. Request for Comments

We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. Please note that the comments submitted in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: November 18, 2011.

Jill McCarthy,

Geologic Hazards Science Center, Chief Scientist.

[FR Doc. 2011–31307 Filed 12–5–11; 8:45 am]

BILLING CODE 4310–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L14200000–BJ0000]

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 January 5, 2012.

DATES: Protests of the survey must be filed before January 5, 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: Marty Bonorden, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (701) 227–7730 or (406) 896–5009, *Mbondore@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 Regional Land Surveyor, Region 6, U.S. Fish and Wildlife Service, and was necessary to determine the boundaries of Federal lands administered by the U.S. Fish and Wildlife Service.

The lands we surveyed are:

Principal Meridian, Montana

T. 35 N., R. 16 E.

The plat, in two sheets, representing the dependent resurvey of portions of the subdivisional lines and the adjusted original meanders of Thibadeau Lake, and the subdivision of section 26, Township 35 North, Range 16 East, Principal Meridian, Montana, was accepted November 28, 2011.

We will place a copy of the plat, in two sheets, 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 two sheets, 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 two sheets, 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. Claflin,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2011–31262 Filed 12–5–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM940000. L1420000.BJ0000]

Notice of Filing of Plats of Survey, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of Plats of Survey.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management (BLM), Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico (NM)

The plat, representing the dependent resurvey and survey, in Township 9 and 10 North, Range 4 East, of the New Mexico Principal Meridian, accepted June 20, 2007, for Group 1062 NM.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico. Copies may be obtained from this office upon payment. Contact Marcella Montoya at (505) 954–2097, or

by email at *Marcella_Montoya@blm.gov,* for assistance.

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 BLM Project Manager listed above 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.

These plats are to be scheduled for official filing 30 days from the notice of publication in the **Federal Register,** as provided for in the BLM Manual Section 2097—Opening Orders. Notice from this office will be provided as to the date of said publication. If a protest against a survey, in accordance with 43 CFR 4.450–2, of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest.

A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the BLM New Mexico State Director stating that they wish to protest.

A statement of reasons for a protest may be filed with the Notice of protest to the State Director or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

Stephen W. Beyerlein,

Acting Deputy State Director, Cadastral Survey/GeoSciences.

[FR Doc. 2011–31311 Filed 12–5–11; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA 942000 L57000000 BX0000]

Filing of Plats of Survey: California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey and supplemental plats of lands described below are scheduled to be officially filed in the Bureau of Land Management California State Office, Sacramento, California, thirty (30) calendar days from the date of this publication.

ADDRESSES: A copy of the plats may be obtained from the California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, upon required payment.

Protest: A person or party who wishes to protest a survey must file a notice that they wish to protest with the California State Director, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Services, Bureau of Land Management, California State Office, 2800 Cottage Way, Room W–1623, Sacramento, California 95825, (916) 978–4310.

SUPPLEMENTARY INFORMATION: These surveys and supplemental plats were executed to meet the administrative needs of various Federal agencies; the Bureau of Land Management, Bureau of Indian Affairs, General Services Administration or U.S. Forest Service. The lands surveyed are:

Mount Diablo Meridian, California

T. 15 N., R. 8 W., dependent resurvey and subdivision of sections accepted November 18, 2011.

T. 17 N., R. 7 W., dependent resurvey and subdivision of sections accepted November 18, 2011.

T. 1 S., R. 5 W., supplemental plat accepted November 22, 2011.

Authority: 43 U.S.C., Chapter 3.

Dated: November 28, 2011.

Lance J. Bishop,

Chief Cadastral Surveyor, California.

[FR Doc. 2011–31248 Filed 12–5–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID100000–L10200000–MJ0000]

Notice of Public Meeting, Idaho Falls District Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The RAC will next meet in Idaho Falls, Idaho on January 24–25, 2012 for a two day meeting. The first day will be new member orientation in the afternoon starting at 2 p.m. at the Idaho Falls BLM Office, 1405 Hollipark Drive, Idaho Falls, Idaho. The second day will be at the same location starting at 8 a.m. with elections of a new chairman, vice chairman and secretary. Other meeting topics include the Thompson Creek Mine land exchange, district and field office updates and Recreation RAC items. Other topics will be scheduled as appropriate. All meetings are open to the public.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the BLM Idaho Falls District (IFD), which covers eastern Idaho.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Sarah Wheeler, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. *Telephone:* (208) 524–7550. *Email: sawheeler@blm.gov.*

Dated: November 23, 2011.

Joe Kraayenbrink,

District Manager, Idaho Falls District.

[FR Doc. 2011–31253 Filed 12–5–11; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTB070000–L14300000.ET0000; MTM 73404]

Public Land Order No. 7785; Extension of Public Land Order No. 6912; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the withdrawal created by Public Land Order No. 6912 for an additional 20-year period. This extension is necessary to continue protection of the Mount Haggin Prehistoric Quarry Site in Deer Lodge County, Montana, which would otherwise expire on November 28, 2011.

DATES: Effective Date: November 29, 2011.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, (406) 896–5052. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339 to reach the Bureau of Land Management contact during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The purpose for which the withdrawal was first made requires this extension in order to continue the protection of the archaeological, historical, educational, interpretive, and recreational resources of the Mount Haggin Prehistoric Quarry Site. The withdrawal extended by this order will expire on November 28, 2031, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (f), the Secretary determines that the withdrawal shall be further extended.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 6912 (56 FR 60928 (1991)), which withdrew approximately 490 acres of reserved public minerals from location and entry under the United States mining laws (30 U.S.C. ch. 2), but not the mineral leasing laws, to protect the Mount Haggin Prehistoric Quarry Site, is hereby extended for an additional 20-year period until November 28, 2031.

(Authority: 43 CFR 2310.4.)

Dated: November 21, 2011.

Rhea S. Suh

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2011–31206 Filed 12–5–11; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTL06000.L14300000.ET0000; MTM 78802]

Notice of Realty Action: Termination of Segregation, Opening of Public Lands; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice partially terminates the segregative effect of a proposed Alluvial Valley Floor (AVF) coal land exchange as to 961.09 acres of public land located in Big Horn County, Montana. This order opens 360 acres to settlement, sale, location, and entry under the public land laws and the mining and mineral leasing laws. This order also opens 601.09 acres to the mining and mineral leasing laws.

DATES: December 6, 2011.

FOR FURTHER INFORMATION CONTACT: Phil Perlewitz, BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101, (406) 896–5159, *pperlewi@blm.gov* or Pam Wall, BLM Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59301, (406) 233–2846, *pkwall@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 either of the above individuals during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with either of the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: On June 10, 2009, the coal land was segregated for a proposed AVF coal land exchange. The following-described land was removed from the exchange proposal and the segregative effect is hereby terminated:

1. Principal Meridian, Montana

(a) T. 8 S., R. 39 E.,
Sec. 35, E½.
T. 9 S., R. 39 E.,
Sec. 1, SE¼SW¼.

The area described contains 360.00 acres in Big Horn County.

(b) T. 9 S., R. 39 E.,
Sec. 1, Lots 1 to 4, W½E½, NW¼, N½SW¼, and SW¼SW¼.

The area described contains 601.09 acres in Big Horn County.

The total areas described in (a) and (b) aggregate 961.09 acres in Big Horn County.

2. At 9 a.m. on December 6, 2011, the lands described in Paragraph 1(a) above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on December 6, 2011, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on December 6, 2011, the lands described in Paragraph 1(a) and (b) above will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempting adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by state law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

4. At 9 a.m. on December 6, 2011, the lands described in Paragraph 1(a) and (b) above will be opened to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

(Authority: 43 CFR 2201.1–2(c)(2); 43 CFR 2091.3–2(b))

Jamie E. Connell,

Montana/Dakotas State Director.

[FR Doc. 2011–31207 Filed 12–5–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Fish and Wildlife Service

Final Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Suisun Marsh Habitat Management, Preservation and Restoration Plan, California

AGENCIES: Bureau of Reclamation and Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Reclamation (Reclamation) and the U.S. Fish and Wildlife Service (Service), as the National Environmental Policy Act (NEPA) Federal joint lead agencies, and the State of California Department of Fish and Game (DFG), acting as the California Environmental Quality Act lead agency, have prepared the Suisun Marsh Habitat, Management, Preservation, and Restoration Plan (SMP) Final EIS/EIR. The SMP is a comprehensive plan designed to address the various conflicts regarding use of Suisun Marsh resources, with the focus on achieving an acceptable multi-stakeholder approach to the restoration of tidal wetlands and the management of managed wetlands and their functions.

DATES: Reclamation and the Service will not make a decision on the proposed action until at least 30 days after release of the Final EIS/EIR. After the 30 day waiting period, Reclamation and the Service will complete a Record of Decision (ROD). The ROD will state the actions that will be implemented by each agency and will discuss factors leading to the decisions.

ADDRESSES: A compact disk or a copy of the Final EIS/EIR may be requested from Ms. Becky Victorine, Bureau of Reclamation, Bay-Delta Office, 801 I Street, Suite 140, Sacramento, California 95814–2536, or emailed to *rvictorine@usbr.gov,* or by calling (916) 414–2429. The Final EIS/EIR is also accessible from the following Web site: *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=781.*

FOR FURTHER INFORMATION CONTACT: Ms. Becky Victorine, Bureau of Reclamation, (916) 414–2429, *rvictorine@usbr.gov;* or Ms. Cay Goude; U.S. Fish and Wildlife Service, (916) 414–6600, *cay_goude@fws.gov.*

SUPPLEMENTARY INFORMATION: Suisun Marsh (Marsh) is the largest contiguous brackish water marsh remaining on the west coast of North America and is a critical part of the San Francisco Bay/Sacramento—San Joaquin Delta (Bay-Delta) estuary ecosystem. The values of the Marsh have been recognized as important and several agencies have been involved in its protection since the mid-1970s. In 2001, the principal Federal, State and local agencies that have jurisdiction or interest in the Marsh directed the formation of a charter group to develop a plan for the Marsh that would balance the needs of the California Bay-Delta Authority (CALFED), the Suisun Marsh Preservation Agreement, and other plans by protecting and enhancing existing land uses, existing waterfowl and wildlife values, including those associated with the Pacific Flyway, endangered species, and state and Federal water project supply quality. A subset of this charter group has collaboratively prepared the SMP Final EIS/EIR. The principal agencies include the Service, Reclamation, National Marine Fisheries Service (NMFS), DFG, State of California Department of Water Resources, and Suisun Resource Conservation District. Each principal agency would use this EIS/EIR to implement particular actions described and analyzed in the document that would contribute to the overall implementation of the SMP. NMFS and the U.S. Army Corps of Engineers are cooperating agencies in accordance with NEPA.

The SMP preferred alternative includes restoring 5,000 to 7,000 acres in the Marsh to fully functioning, self-sustaining tidal wetland and protecting and enhancing existing tidal wetland acreage; and improving levee stability and flood and drain capabilities of the remaining 44,000 to 46,000 acres of managed wetlands. The plan is intended to guide near-term and future actions related to restoration of tidal wetlands and managed wetland activities in the Marsh. Restoration of tidal wetlands under the SMP preferred alternative would implement the tidal restoration goal established for the Marsh by the CALFED Ecosystem Restoration Program Plan, and would contribute to the tidal restoration goals of the San Francisco Bay Area Wetlands Ecosystem Goals Project, and the Service's Draft Recovery Plan for Tidal Marsh Ecosystems of Northern and Central California for the Suisun Bay Area Recovery Unit. SMP actions would be implemented over the 30-year SMP timeframe. Benefits from individual tidal restoration projects would change as elevations rise, vegetation becomes established, and vegetation communities shift over time from low marsh to high marsh condition.

The intended outcomes of the managed wetlands activities described in the SMP EIS/EIR are to maintain and improve habitat conditions and minimize or avoid adverse effects of wetland operations. Most of these activities are already occurring in the Marsh; however, some of the current activities would be modified, and some new activities would be conducted, as described in detail in the SMP EIS/EIR.

The SMP EIS/EIR documents the direct, indirect, and cumulative effects to the physical, biological, and socioeconomic environment that may result from the SMP, including potential effects on hydrology, water quality, geology, groundwater, flood control, sediment transport, transportation and navigation, air quality, noise, climate change, fish, vegetation and wetlands, wildlife, visual resources, cultural resources, land and water use, social and economic conditions, utilities and public services, recreation, power, public health and environmental hazards, environmental justice, and Indian trust assets.

Public meetings on the draft EIS/EIR were held on Thursday, November 18, 2010, in Suisun City, CA, and Benicia, CA.

Public Disclosure

Before including your name, address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 30, 2011.

Michelle Denning,

Acting Regional Director, Mid-Pacific Region, U.S. Bureau of Reclamation.

November 30, 2011.

Paul McKim,

Acting Deputy Regional Director, Pacific Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2011–31245 Filed 12–5–11; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–718]

Certain Electronic Paper Towel Dispensing Devices and Components Thereof; Issuance of General Exclusion Order and Cease and Desist Orders; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a general exclusion order and cease and desist orders in the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 337 (''section 337''), and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade

Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on May 21, 2010, based upon a complaint filed on behalf of Georgia-Pacific Consumer Products LP of Atlanta, Georgia (''Georgia-Pacific'') on April 19, 2010, and supplemented on May 10, 2010. 75 FR 28652 (May 21, 2010). The complaint alleged violations of Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic paper towel dispensing devices and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,871,815 (''the '815 patent''); 7,017,856 (''the '856 patent''); 7,182,289 (''the '289 patent''); and 7,387,274 (''the '274 patent''). The complainant named as respondents Kruger Products LP of Mississauga, Canada; KTG USA LP of Memphis, Tennessee (''KTG USA''); Stefco Industries, Inc. of Haines City, Florida (''Stefco''); Cellynne Corporation of Haines City, Florida (''Cellynne''); Draco Hygienic Products Inc. of Ontario, California; NetPak Electronic Plastic and Cosmetic, Inc., d/b/a/Open for Business of Chicago, Illinois (''NetPak Chicago''); NetPak Electronik Plastik ve Kozmetik Sanayi, Ve Ticaret Ltd of Izmir, Turkey (''NetPak Turkey''); Paradigm Marketing Consortium, Inc. of Syosset, New York; United Sourcing Network Corp. of Syosset, New York; New Choice (H.K.) Ltd. of Shatin, Hong Kong; and Vida International Inc. of Taipei, Taiwan.

On August 16, 2010, the Commission issued notice of its determination not to review an ID amending the complaint and notice of investigation: (1) To correct the corporate name of NetPak Chicago; (2) to redefine ''Kruger'' to ''Kruger Products and/or KTG USA''; (3) to indicate that Georgia-Pacific no longer alleges that NetPak Turkey is the source of Stefco's and Cellynne's accused product; (4) to add new respondents Jet Power International Limited; Winco Industries Co.; DWL Industries Co.; Ko-Am Corporation Inc. d/b/a Janitor's World; Natury, S.A. De C.V.; Franklin Financial Management, Inc. d/b/a Update International; and Alliance in Manufacturing LLC.

Two respondents, Stefco and Cellynne, did not respond to the complaint and notice of investigation, and a third respondent, NetPak Turkey, did not participate in discovery. On October 12, 2010, the ALJ issued an order to show cause why Stefco and Cellynne should not be found in default, and on November 2, 2010, issued an order to show cause why NetPak Turkey should not be found in default. On December 30, 2010, the ALJ issued an ID (Order No. 28) finding Stefco, Cellynne, and NetPak Turkey in default. On January 16, 2011, the Commission determined not to review this order. The other respondents to the investigation were terminated by consent order.

On July 12, 2011, the ALJ issued an ID, Order No. 36, finding substantial, reliable, and probative evidence that the Stefco, Cellynne, and Netpak Turkey violated section 337 based on the importation, sale for importation, and/or sale after importation into the United States of electronic paper towel dispensing devices that infringe the asserted patent claims. The ALJ issued a recommended determination with the ID. The ALJ recommended that the Commission issue a general exclusion order and cease and desist orders, finding that such orders would not be contrary to the public interest, and recommended that the bond for importation during the presidential review period be set at 100 percent of the entered value of the infringing products for respondents and no bond be set for nonrespondents. On August 19, 2011, the Commission issued notice of its determination not to review the ID, and solicited submissions on remedy, the public interest, and bonding. 76 FR 53154 (Aug. 25, 2011). Georgia-Pacific and the Commission investigative attorney filed submissions and reply submissions with respect thereto.

After reviewing the relevant portions of the record, the Commission has determined to issue a general exclusion order with respect to claims 4–7 of the '815 patent, claims 8–22 of the '856 patent, claims 1–3 of the '289 patent, and claims 4–22 of the '274 patent, and cease and desist orders against Stefco and Cellynne with respect to the same claims. In this connection, the Commission has determined to set a bond of 100 percent of entered value during the period of Presidential review. The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.
Issued: December 1, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–31257 Filed 12–5–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Planning Guidance and Instructions for Submission of the Strategic State Plan and Plan Modifications for Title I of the Workforce Investment Act and Wagner-Peyser Act

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Planning Guidance and Instructions for Submission of the Strategic State Plan and Plan Modifications for Title I of the Workforce Investment Act and Wagner-Peyser Act,'' as proposed to be revised, to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before January 5, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk

Officer for the Department of Labor, Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* (202) 395–6929/*Fax:* (202) 395–6881 (these are not toll-free numbers), *email: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Workforce Investment Act of 1998 (WIA), Public Law 105–220 provides the framework for a network of State workforce investment systems designed to meet the needs of the nation's businesses, job seekers, youth, and those who want to further their careers. Title I requires that States develop five-year strategic plans for this system, which must also contain the detail plans required under the Wagner-Peyser Act (29 U.S.C. 49g). Plan modifications to the WIA title I and Wagner-Peyser Act are required by regulations 20 CFR 661.230.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1205–0398. The current OMB approval is scheduled to expire on November 30, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only become effective after OMB approval. For additional information, see the related notice published in the **Federal Register** on July 19, 2011 (76 FR 42735).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1205–0398. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Title of Collection: Planning Guidance and Instructions for Submission of the Strategic State Plan and Plan Modifications for Title I of the Workforce Investment Act and Wagner-Peyser Act.

OMB Control Number: 1205–0398.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 57.

Total Estimated Number of Responses: 57.

Total Estimated Annual Burden Hours: 2280.

Total Estimated Annual Other Costs Burden: $0.

Dated: November 22, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–31231 Filed 12–5–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–75,120A; TA–W–75,120B; TA–W–75,120C; TA–W–75,120D]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Steelcase, Inc., North America Division, Including Workers From Steelcase University, Also Known As Steelcase Learning Center, Including Kentwood City Fleet Truck Garage, Including On-Site Leased Workers From Manower, Inc., Grand Rapids, Michigan.

Steelcase, Inc, North America Division, Kentwood East and Kentwood West Plants, Corporate Development Center, Grand Rapids, Michigan.

Steelcase, Inc., North America Division, Regional Distribution Center, Grand Rapids, Michigan.

Leased Workers From Manpowergroup, Experis, Die Tech Services, Probuss, Inc., The Bartech Group, And Metro Engineering Of Grand Rapids, Inc., Working On-Site At Steelcase, Inc., North America Division, Kentwood East And Kentwood West Plants, Corporate Development Center And Regional Distribution Center, Grand Rapids, Michigan.

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 4, 2011, applicable to workers of Steelcase, Inc., North America Division, including on-site leased workers from Manpower, Inc., Grand Rapids, Michigan. The workers are engaged in the production of office furniture. The notice was published in the **Federal Register** on February 24, 2011 (76 FR 10399). The notice was amended on February 24, 2011 to correct the impact date to read December 10, 2010. The amended notice was published in the **Federal Register** on March 10, 2011 (76 FR 13228). The notice was also amended on July 5, 2011 to include Steelcase University, also known as Steelcase Learning Center. The notice as published in the **Federal Register** on July 14, 2011 (76 FR 41523)

At the request of the State Workforce Office and the company, the Department reviewed the certification for workers of the subject firm.

The review shows the Kentwood East and Kentwood West Plants, Kentwood City Fleet Truck Garage, Regional Distribution Center and Corporate Development Center are engaged in the production of office furniture, warehousing and distribution and supply various support function services for Steelcase, Inc. The review also shows that workers leased from ManpowerGroup, Experis, Die Tech Services, ProBusS, Inc., The Bartech Group and Metro Engineering of Grand Rapids, Inc. were employed on-site at the Grand Rapids, Michigan location of the above mentioned departments of the subject firm.

Based on these findings, the Department is amending this certification to include workers of the Kentwood East and Kentwood West Plants, Kentwood City Fleet Truck Garage, Regional Distribution Center and Corporate Development Center, including workers leased from

ManpowerGroup, Experis, Die Tech Services, ProBusS, Inc., The Bartech Group, and Metro Engineering of Grand Rapids, Inc. working on-site at the Grand Rapids, Michigan location of the subject firm.

The intent of the Department's certification is to include all workers employed at Steelcase, Inc., North America Division, Grand Rapids, Michigan who were adversely affected by a shift in production of office furniture to Mexico.

The amended notices applicable to TA–W–75,120A, TA–W–75,120B, TA–W–75,120C, and TA–W–75,120D are hereby issued as follows:

All workers of Steelcase, Inc., North America Division, including workers from Steelcase University, also known as Steelcase Learning Center, including Kentwood City Fleet Truck Garage, including on-site leased workers from Manpower, Inc., Grand Rapids, Michigan (TA–W–75,120A), who became totally or partially separated from employment on or after December 10, 2010 through February 4, 2013, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended; and

All workers of Steelcase, Inc., North America Division, Kentwood East and Kentwood West Plants, Corporate Development Center, Grand Rapids, Michigan (TA–W–75,120B), who became totally or partially separated from employment on or after November 21, 2011 through February 4, 2013, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended; and

All workers of Steelcase, Inc., North America Division, Regional Distribution Center, Grand Rapids, Michigan (TA–W–75,120C), who became totally or partially separated from employment on or after November 28, 2011 through February 4, 2013, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended; and

Leased workers from ManpowerGroup, Experis, Die Tech Services ProBusS, Inc., The Bartech Group, and Metro Engineering of Grand Rapids, Inc. working on-site at Steelcase, Inc., North America Division, Kentwood East and Kentwood West Plants, Corporate Development Center, and Regional Distribution Center, Grand Rapids, Michigan (TA–W–75,120D), who became totally or partially separated from employment on or after December 10, 2010 through February 4, 2013, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 28th day of November 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–31238 Filed 12–5–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of November 17, 2011 through November 25, 2011.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph

(2) Accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
80,090A	ELC Management, LLC, The Estee Lauder Companies, Inc., Manpower.	Melville, NY	March 31, 2010.
80,284	Duro Bag Manufacturing Company, Standard Products, Inter Span Resources, Inc.	Richmond, VA	July 12, 2010.
80,320	Thule	Thomasville, GA	July 26, 2010.
80,324	Shiloh Industries, Inc., Mansfield Blanking Division, Legacy Staffing	Mansfield, OH	July 28, 2010.
80,327	Mohawk, ESV, Inc., Laurel Hill—Residential Yarn Division	Laurel Hill, NC	July 28, 2010.
80,410	Solyndra, LLC, 360 Degree Solar Holding, West Alley, Aerotek, Oxford, etc.	Fremont, CA	September 1, 2010.
80,478	Skip's Cutting, Inc	Ephrata, PA	September 27, 2010.
80,496	Ben Mar Hosiery	Ft. Payne, AL	October 23, 2010.
80,514	Innertech-Shreveport, Division of Intier, Career Adventures	Shreveport, LA	October 13, 2010.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
80,097	Ingersoll Rand, Security Technologies Division, Tata Consultancy, Cognizant Tecnology, etc.	Carmel, IN	April 8, 2010.
80,136	Mitsubishi Digital Electronics America, Inc., Helphmates and Remote Workers Throughout the United States Report to.	Irvine, CA	April 21, 2010.
80,136A	Mitsubishi Digital Electronics America, Inc., Helphmates	Ontario, CA	April 21, 2010.
80,136B	Mitsubishi Digital Electronics America, Inc., Automation Personnel Services, Inc., and Hire Dynamics.	Braselton, GA	April 21, 2010.
80,274	OmniVision Technologies Inc., Optics Division	Boulder, CO	July 8, 2010.
80,311	Verizon Business Network Services, Inc., MCI Communications Corporation.	Tulsa, OK	July 21, 2010.
80,358	Wipro Technologies, Working on-site at Alcatel-Lucent	Alpharetta, GA	July 15, 2010.
80,361	Bank Of America, Bank of America Corporation, Global Trade Operations Import Letter, etc.	Scranton, PA	July 27, 2010.
80,366	Technicolor Network Services US, LLC, Technicolor Digital Delivery, Broadcast Services Division, Ajilon Finance.	Greenwood Village, CO	August 10, 2010.
80,370	Boston Scientific Corporation, Information Systems Division, Accenture and HP.	Arden Hills, MN	August 12, 2010.
80,370A	Boston Scientific Corporation, Information Systems Division, Accenture and HP.	Maple Grove, MN	August 12, 2010.
80,416	MPS Limited, Wages under MPS Content Services	Beverly, MA	September 6, 2010.
80,434	International Business Machines Corporation (IBM), Including Telecommuters.	Armonk, NY	September 9, 2010.

TA–W No.	Subject firm	Location	Impact date
80,442	Bon Worth, Inc	Hendersonville, NC	September 13, 2010.
80,486	Lattice Semiconductor Corporation, Research & Development	Bethlehem, PA	September 22, 2010.
80,494	Anthelio Healthcare Solutions, Inc., Information Technology Services Division, CSI Tech & Health Data Specialist.	Dallas, TX	October 4, 2010.
80,499	Standard Insurance Company, Information Technology Department, Stancorp Financial, Volt Temporary, etc.	Portland, OR	September 26, 2010.
80,509	Semiconductor Components Industries, LLC, dba ON Semiconductor/Zener-Rectifier, Superior Technical Resources.	Phoenix, AZ	October 20, 2011.
80,510	Suntron Corporation	Sugar Land, TX	October 12, 2010.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
80,495	BCI Fitchburg, Newark Graphicboard Products Division, The Newark Group, Labor Ready.	Fitchburg, MA	October 5, 2010.
80,495A	Newark America, Paperboard Mills Divison, The Newark Group	Fitchburg, MA	October 5, 2010.
80,503	VIAM Manufacturing, Inc., CA Facility, Japan Vilene, Kelly Services, Link Staffing.	Santa Fe Springs, CA	October 6, 2010.
80,505	Haldex, Inc., IT Department, Lade Digital Systems, Delta Systems, etc.	Kansas City, MO	October 12, 2010.
80,515	AI–Shreveport, LLC, Android Industries	Shreveport, LA	October 28, 2010.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1)(employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
80,481	Kyowa America Corporation, Corporate Office	Westminster, CA.	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
80,090	Whitman Packaging Corporation, The Estee Lauder Companies, Inc	Islandia, NY.	
80,291	R R Donnelley & Sons, Inc., Premedia Services Division, Kelly Services.	Seattle, WA.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
80,314	Avon Products, Inc.	New York, NY.	
80,346	Graceway Pharmaceuticals, LLC	Bristol, TN.	
80,346A	Graceway Pharmaceuticals, LLC	Exton, PA.	
80,360	Pepsico, Inc.	Deerfield Beach, FL.	
80,435	New United Motor Mfg. Inc (NUMMI)	Fremont, CA.	
80,500	IBM	San Francisco, CA.	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
80,469	CEVA Freight, LLC	Houston, TX.	

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

TA–W No.	Subject firm	Location	Impact date
80,526	BASF Corporation	Belvidere, NJ.	

I hereby certify that the aforementioned determinations were issued during the period of November 17, 2011, through November 25, 2011. These determinations are available on the Department's Web site at *http://www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at (888) 365–6822.

Dated: November 28, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–31236 Filed 12–5–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 16, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 16, 2011.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 23rd day of November 2011.

Michael Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

28 TAA petitions instituted between 11/14/11 and 11/18/11

TA-W	Subject Firm (Petitioners)	Location	Date of Institution	Date of Petition
81074	Radia Medical Imaging Inc. (State/One-Stop)	Everett, WA	11/14/11	11/08/11
81075	Advanced Micro Devices (AMD) (State/One-Stop)	Austin, TX	11/14/11	11/10/11
81076	Amphenol Aerospace (Company)	Sidney, NY	11/14/11	11/10/11
81077	Maida Electronics Shaghai Co., LTD (Company)	Shanghai, China 201611, VA	11/14/11	11/11/11
81078	Genie Company - Overhead Door (Workers)	Alliance, OH	11/14/11	11/11/11
81079	Sierra Pine (Company)	Rocklin, CA	11/14/11	11/09/11
81080	Travelers Insurance (State/One-Stop)	Glens Falls, NY	11/14/11	11/10/11
81081	RR Donnelley (Workers)	Detroit, MI	11/15/11	11/11/11
81082	Motorola Solutions (State/One-Stop)	Schaumburg, IL	11/15/11	11/14/11
81083	John Crane, Inc. (Workers)	Morton Grove, IL	11/15/11	11/14/11
81084	Spectrum Sensor and Controls (Workers)	St. Marys, PA	11/15/11	11/14/11
81085	Western United Life Assurance Company (Company)	Spokane, WA	11/15/11	11/14/11
81086	The Flexaust Company Inc. (Workers)	El Paso, TX	11/16/11	11/04/11
81087	Burlington Basket Company (State/One-Stop)	West Burlington, IA	11/16/11	11/15/11
81088	Unilin Flooring NC, LLC (Company)	Holden, WV	11/16/11	11/15/11

[FR Doc. 2011–31237 Filed 12–5–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

2002 Reopened—Previously Denied Determinations;

Notice of Negative Determinations on Reconsideration Under the Trade Adjustment Assistance Extension Act of 2011 Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) (Act) the Department of Labor (Department) herein presents summaries of negative determinations on reconsideration regarding eligibility to apply for Trade Adjustment Assistance for workers by case (TA–W–) number regarding negative determinations issued during the period of February 13, 2011 through October 21, 2011. Notices of negative determinations were published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271). As required by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), all petitions that were denied during this time period were automatically reopened. The reconsideration investigation revealed that the following workers groups have not met the certification criteria under the provisions of TAAEA.

After careful review of the additional facts obtained, the following negative determinations on reconsideration have been issued.

TA–W–80,019; Sea Gull Lighting Products, Riverside, NJ.
TA–W–80,021; Pitney Bowes Mail Services, Purchase, NY.
TA–W–80,034; Tennessee Valley Parts, Fort Payne, AL.
TA–W–80,061; Sara Lee Corp., Bensenville, IL.
TA–W–80,068; New Enterprise Stone and Lime, Erie, PA .
TA–W–80,103; Hirel Systems, Duluth, MN.
TA–W–80,141; Bank of America, Fort Wayne, IN.
TA–W–80,145; Truelove Dental Laboratory, Norman, OK.
TA–W–80,151; Sound Publishing, Inc., Everett, WA.
TA–W–80,325; UTC Corp., Syracuse, NY.
TA–W–80,175; Verizon Communications, Tampa, FL.
TA–W–80,195; Preferred Dental Lab, Roseland, NJ.
TA–W–80,204; Starks Manufacturing, Paris, AR.
TA–W–80,204A; Stark Manufacturing, Russellville, AR.
TA–W–80,209; Med Tec Ambulance Corp., White Pigeon, MI.
TA–W–80,239; Eastman Kodak Co., Rochester, NY.
TA–W–80,246; Border Apparel, Inc., El Paso, TX.
TA–W–80,266; BAE Systems Survivability Systems, Fairfield, OH.
TA–W–80,315; Marlette Homes, Inc., Lewistown, PA.
TA–W–80,323; Allen Family Foods, Cordova, MD.
TA–W–80,355; Pacific Northwest Maine, Gig Harbor, WA.
TA–W–80,394; Deluxe Printing Co., Inc., Hickory, NC.
TA–W–80,462; Tradewins, LLC, Woodinville, WA.

I hereby certify that the aforementioned revised determinations on reconsideration were issued on November 25, 2011. These determinations are available on the Department's Web site at *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at (888) 365–6822.

Dated November 29, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–31240 Filed 12–5–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

2002 Reopened—Previously Denied Determinations; Notice of Revised Denied Determinations on Reconsideration Under the Trade Adjustment Assistance Extension Act of 2011 Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) (Act) the Department of Labor (Department) herein presents summaries of revised determinations on reconsideration regarding eligibility to apply for Trade Adjustment Assistance for workers by case (TA–W-) number regarding negative determinations issued during the period of *February 13, 2011 through October 21, 2011.* Notices of negative determinations were published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 USC 2271). As required by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), all petitions that were denied during this time period were automatically reconsidered. The reconsideration investigation revealed that the following workers groups have met the certification criteria under the provisions of TAAEA.

After careful review of the additional facts obtained, the following revised determinations on reconsideration have been issued.

TA–W–80,031; Thomson Reuters, Creve Coeur, MO: March 5, 2010.
TA–W–80,070; CBIZ Medical Management, Reno, NV: March 24, 2010.
TA–W–80,073; IKANO Communications Salt Lake City, UT: March 24, 2010.
TA–W–80,153; Intercontinental Hotels Group, Alpharetta, GA: May 4, 2010.
TA–W–80,179; MOL Information Technology, Edison, NJ: May 11, 2010.
TA–W–80,219; Beacon Medical Services, Aurora, CO: May 16, 2010.
TA–W–80,265; MWH Americas, Inc., Broomfield, MO: June 23, 2010.
TA–W–80,309; Cadmus Journal Services, Columbia, MD: July 21, 2010.

I hereby certify that the aforementioned revised determinations on reconsideration were issued on November 25, 2011. These determinations are available on the Department's Web site at *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at (888) 365–6822.

Dated: November 29, 2011.

Del Min Amy Chen

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–31239 Filed 12–5–11; 8:45 am]

BILLING CODE 4510–FN–P

LEGAL SERVICES CORPORATION

Notice of Public Hearing—Fiscal Oversight Task Force Report & Recommendations

AGENCY: Legal Services Corporation.

ACTION: Notice of Public Hearing.

SUMMARY: The Legal Services Corporation (LSC) will hold a telephonic public hearing to take comments on (1) the July 28, 2011 Report of the LSC Fiscal Oversight Task Force, which reviewed and made

recommendations regarding LSC's fiscal oversight operations; (2) written comments previously submitted during the public comment period; and (3) reactions to those comments submitted by Task Force members.

DATES: Monday, December 12, 2011, from 12 noon to 2 p.m., Eastern Standard Time.

Location: The Legal Services Corporation, 3333 K Street NW., F. William McCalpin Conference Center (3rd Floor), Washington, DC 20007. Members of the public may participate in the teleconference by dialing, toll-free, 1–(866)–451–4981 and entering this passcode when prompted: 4382572489#. Once connected to the teleconference, members of the public are encouraged to place their phones on ''Mute'' by pressing *6 and are asked to avoid placing the call on ''Hold'' to minimize background noise and interference during the call.

FOR FURTHER INFORMATION CONTACT: Rebecca D. Weir, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., 4th Floor, Washington, DC 20007; (202) 295–1618 (phone); (202) 337–6519 (fax); *rweir@lsc.gov.*

SUPPLEMENTARY INFORMATION: LSC was established by the United States Congress ''for the purpose of providing financial support for legal assistance in noncriminal matters or proceedings to persons financially unable to afford such assistance.'' 42 U.S.C. § 2996b(a). LSC performs this function by awarding grants to legal aid programs that provide civil legal services to low-income Americans.

By Resolution adopted on July 21, 2010, the LSC Board of Directors established the Fiscal Oversight Task Force (''FOTF''), comprised of seventeen distinguished grant-making, business, legal services, and accounting professionals, ''to undertake a review of and make recommendations to the Board regarding LSC's fiscal oversight * * * of its grantees.'' On August 1, 2011, the FOTF presented the Board with a report of its findings and recommendations, *Fiscal Oversight Task Force Report to the Board of Directors, July 28, 2011* (''FOTF Report''). The Board subsequently directed LSC Management to publish the FOTF Report in the **Federal Register** for a 30-day public comment period. Nine written comments were received. The Board reviewed those comments at its October 18, 2011 meeting.

On December 12, 2011, the Corporation will hold a telephonic public hearing on the FOTF Report, the public comments previously submitted, and reactions to those comments from several Task Force members. The public comments and a summary of Task Force members' reactions may be viewed online at *http://www.lsc.gov/about/matters-comment.* The purpose of the hearing is to solicit any additional comments and suggestions from members of the public. The hearing will be conducted by LSC Board Members and FOTF Co-Chairs Robert Grey and Victor Maddox.

Dated: November 30, 2011.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 2011–31186 Filed 12–5–11; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 5, 2012. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: (301) 837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, National Records Management Program (ACN), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. *Telephone:* (301) 837–1539. *Email: request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and

of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Agricultural Research Service (N1–310–12–1, 1 item, 1 temporary item). Master files of an electronic information system used to support researchers in developing technologies and strategies needed to help farmers and ranchers.

2. Department of Agriculture, Agricultural Research Service (N1–310–12–2, 1 item, 1 temporary item). Master files of an electronic information system used to improve the health, well being, and efficiency of livestock, poultry, and aquatic food animals.

3. Department of Agriculture, Agricultural Research Service (N1–310–12–3, 1 item, 1 temporary item). Master files of an electronic information system used to support researchers in developing program priorities and providing program review and evaluation regarding crop production and protection.

4. Department of Agriculture, Agricultural Research Service (N1–310–12–4, 1 item, 1 temporary item). Master files of an electronic information system used to define the role of food and its components in optimizing health for all Americans, develop tests and processes that keep the food supply safe, and reduce and control pathogens and toxins in agricultural products.

5. Department of the Army, Agency-wide (N1–AU–10–4, 1 item, 1 temporary item). Master files of electronic information systems used to track human resources information.

6. Department of the Army, Agency-wide (N1–AU–10–33, 1 item, 1 temporary item). Master files of an electronic information system used to manage food service operations at installations in the field.

7. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–12–1, 1 item, 1 temporary item). Records of the National Marine Fisheries Service, including physical examination reports and other documentation of the medical qualification of applicants.

8. Department of Health and Human Services, Office of the Secretary (DAA–0468–2012–0002, 2 items, 2 temporary items). Approved, unapproved, and withdrawn applications for employee child care subsidies.

9. Department of Justice, National Drug Intelligence Center, (N1–523–11–2, 1 item, 1 temporary item). Master files of an electronic information system containing domestic drug intelligence information that creates maps showing data on drug trends, threats, and other drug-related information.

10. Department of Labor, Wage and Hour Division (N1–155–11–1, 5 items, 1 temporary item). Records relating to the development and implementation of policies. Proposed for permanent retention are record relating to the rulemaking process, special committee hearing and meeting records, policy development guidance, and interpretive and technical advisories.

11. Department of State, Bureau of Diplomatic Security (DAA–0059–2011–0004, 9 items, 9 temporary items). Records of the Office of Human Resources Management, including administrative personnel files, copies of intra-agency agreements and personal services contracts, and master files of an electronic information system used to track employment application status.

12. Department of State, Bureau of Near Eastern Affairs (DAA–0059–2011–0013, 2 items, 2 temporary items). Grant management files for the Office of Iraq Economic and Assistance Affairs.

13. Department of State, Office of the Under Secretary for Management (DAA–0059–2011–0017, 1 item, 1 temporary item). Master files of an electronic information system used for online submission and processing of country clearance requests.

14. Department of the Treasury, Bureau of Engraving and Printing, (N1–318–11–1, 21 items, 20 temporary items). Records related to security systems and services, including investigations, police reports and orders, security training records, and surveillance tapes. Proposed for permanent retention are case files of significant internal investigations.

15. Department of the Treasury, Internal Revenue Service (N1–58–11–8, 2 items, 2 temporary items). Master files and system documentation of an electronic information system used to track and assess delinquent tax cases.

16. Department of the Treasury, Office of the Assistant Secretary for Management and Chief Financial Officer (N1–056–11–4, 1 item, 1 temporary item). Records pertaining to policy and program development of all air and hazardous waste materials programs.

17. Securities and Exchange Commission, Office of Human Resources (N1–266–11–1, 2 items, 2 temporary items). Forms and master files of an electronic information system used by employees and members to disclose personal securities holdings prior to acceptance of employment.

18. Social Security Administration, Office of Quality Data Management (DAA–0047–2011–0002, 9 items, 7 temporary items). Records of internal reviews, studies, and surveys of agency programs. Included are administrative records, instructional background files, study data and surveys, and working files. Proposed for permanent retention are program instruction manuals and final reports of studies.

Dated: November 29, 2011.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2011–31284 Filed 12–5–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Committee on Strategy and Budget and the CSB Task Force on Data Policies, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business as follows:

DATE AND TIME: Friday, December 9, 2011 from 2:30 to 3:30 p.m., EST.

SUBJECT MATTER: Discuss the draft Recommendations and Report from the Task Force on Data Policies.

STATUS: Open.

LOCATION: This meeting will be held by teleconference at the National Science Board Office, National Science

Foundation, 4201 Wilson Blvd., Arlington, VA 22230. A public listening room will be available for this teleconference meeting. All visitors must contact the Board Office (call (703) 292–7000 or send an email message to *nationalsciencebrd@nsf.gov*) at least 24 hours prior to the teleconference for the public room number and to arrange for a visitor's badge. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the teleconference to receive a visitor's badge.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site *http://www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting). The point of contact for this meeting is: Blane Dahl, National Science Board Office, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Bushmiller,

NSB Senior Legal Counsel.

[FR Doc. 2011–31354 Filed 12–2–11; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0273]

NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed enforcement policy revision; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting comments from interested parties, including public interest groups, States, members of the public, and the regulated industry (i.e., reactor, fuel cycle, and materials licensees, vendors, and contractors), on proposed revisions to the NRC's Enforcement Policy (the Policy) and the effectiveness of the September 30, 2010 (75 FR 60485), revisions to the Policy. The intent of this request for comment is to assist the NRC in revising its Enforcement Policy.

DATES: Submit comments by January 5, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2011–0273 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0273. Address questions about NRC dockets to Carol Gallagher, *telephone:* (301) 492–3668; *email: Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at (301) 492–3446.

FOR FURTHER INFORMATION CONTACT: Doug Starkey, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; *telephone:* (301) 415–3456, *email: Doug.Starkey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this action using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.* The Enforcement Policy is accessible under ADAMS Accession No. ML093480037. The proposed revisions to the Enforcement Policy discussed in this notice are available under ADAMS Accession Number ML11259A100.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this proposed rule can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0273.

The NRC maintains the Enforcement Policy on its Web site at *http://www.nrc.gov/about-nrc/regulatory/enforcement/current.html.*

II. Background

The purpose of this document is twofold: (1) To solicit comments on the effectiveness of the September 30, 2010, revision to the Enforcement Policy; and (2) to solicit comments on specific proposed changes to the next revision to the Policy.

On December 30, 2009, in SECY–09–0190 (ADAMS Accession Number ML093200520), the staff submitted to the Commission a proposed major revision of the Enforcement Policy. In SECY–09–0190 the staff committed to provide an opportunity for public comments on the revision after it had been in effect for about 18 months. On August 27, 2010, in SRM–SECY–09–0190 (ADAMS Accession Number ML102390327), the Commission approved the revised Policy and directed the NRC staff to evaluate certain items for inclusion in the next proposed revision to the Policy. On September 30, 2010, the NRC published the revised Policy in the **Federal Register**. The revised Policy has been in use for approximately one year and the staff is now soliciting comments on the effectiveness of the changes reflected in the September 30, 2010, revision.

In addition to the direction given to the staff in SRM–SECY–09–0190, the staff is evaluating other Policy changes that it may present to the Commission for approval and inclusion in the next Policy revision.

The staff previously solicited comments on other SRM–SECY–09–0190 items in documents published in the **Federal Register** on August 9, 2011 (76 FR 48919), and September 6, 2011 (76 FR 54986). It was the NRC staff's intent that this document and the

August 9, 2011, and September 6, 2011, documents would each address different proposed changes to the Enforcement Policy. However, the staff acknowledges that there may be some overlap between the subject matter of the three documents. Therefore, interested parties who provided comments on the August 9, 2011, and September 6, 2011, documents may desire to revise their previous comments if they believe those comments are affected by the proposed revisions covered by this document. Any interested party desiring to revise their previous comments should do so within the comment period stated in the **DATES** section of this document.

III. Procedural Requirements

Paperwork Reduction Act Statement

This policy statement contains new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0136.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Dated at Rockville, MD, this 29th day of November 2011.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2011–31315 Filed 12–5–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0275]

Applications and Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment and request a hearing, order.

DATES: Comments must be filed by January 5, 2012. A request for a hearing must be filed by February 6, 2012. Any potential party as defined in Title 10 of the *Code of Federal Regulations* (10 CFR) 2.4 who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by December 16, 2011.

ADDRESSES: Please include Docket ID NRC–2011–0275 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0275. Address questions about NRC dockets to Carol Gallagher, *telephone:* (301) 492–3668; *email: Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at (301) 492–3446.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov*. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov*.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0275.

Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be

considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC

Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–(866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.*

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois; Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois

Date of amendment request: June 23, 2011.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise the maximum power level specified in each unit's operating license and the Technical Specification (TS) definition of rated thermal power. The proposed amendment would revise TS Section 2.1.1 to modify the departure from nucleate boiling (DNB) ratio and use of DNB correlations. The proposed amendment would revise TS 3.4.1 to modify the reactor coolant system total flow rate for measurement uncertainty recapture uprated power conditions. The proposed amendment would revise TS 5.6.5 to add analytical methods used to determine the core operating limits. In addition, the amendment request includes a revised steam generator tube rupture and margin to overfill analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The nuclear steam supply system and balance-of-plant systems, components and analyses that could be affected by the proposed change to the rated thermal power (RTP) level were evaluated using revised design parameters. The evaluations determined that these structures, systems and components are capable of performing their design function at the proposed uprated RTP of 3645 MWt. A portion of the current safety

analyses remain bounding, as they were performed at 102% of the current power level which exceeds the requested MUR [measurement uncertainty recapture] power level. Other analyses were previously performed at the current RTP level and have either been evaluated as acceptable or re-performed at the increased power level. The results demonstrate that acceptance criteria of the applicable analyses continue to be met at the uprated power conditions. As such, all applicable accident analyses continue to comply with the relevant acceptance criteria. Power level is an input assumption to equipment design and accident analyses; however, it is not a transient or accident initiator, and therefore does not increase the probability of an accident. Plant safety barriers are not challenged by the proposed changes.

The source terms used to assess radiological consequences for each transient or accident have been reviewed. he radiological consequences are either bounded by the current analysis or have been evaluated to remain within regulatory limits at the uprated condition. Specifically, the SGTR [steam generator tube rupture] and MTO [margin to overfill] analysis has been revised with updated assumptions to gain additional margin to overfill during a SGTR event. Appropriate modifications will be added to the plant in support of the SGTR analysis single failure assumptions. Although the revised analysis results in more than a minimal increase in the accident dose, as defined in [Nuclear Energy Institute] NEI 96–01, ''Guidelines for 10 CFR 50.59 Implementation,'' Revision 1, dated November 2000, the dose results remain within the limits specified in the Standard Review Plan (SRP), Section 15.6.3, ''Radiological Consequences of Steam Generator Tube Failure (PWR).''

The primary loop components (e.g., reactor vessel, reactor internals, control rod drive housings, piping and supports, and reactor coolant pumps) remain within their applicable structural limits and will continue to perform their intended design functions. Thus, there is no significant increase in the probability of a structural failure of these components.

In addition, the proposed use of the [Leading Edge Flow Meter] LEFM, the NRC-approved W–3 alternative correlations, (i.e., the ABB–NV and WLOP correlations) and the increase in required RCS [reactor coolant systems] flow, serve to facilitate operations at the uprated power level and have no impact on the probability or consequences of any accident previously evaluated.

Therefore, the proposed changes described above do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of any proposed changes. LEFM system failures will not adversely affect any safety-related system or any structures, systems or components required for transient mitigation. Structures, systems and components previously required for transient mitigation continue to be capable of fulfilling their intended design functions. The proposed changes have no significant adverse affect on any safety-related structure systems or components and do not significantly change the performance or integrity of any safety-related system.

The proposed changes do not adversely affect any current system interfaces or create any new interfaces that could result in an accident or malfunction of a different kind than previously evaluated. Operating at RTP of 3645 MWt does not create any new accident initiators or precursors. Credible malfunctions are bounded by the current accident analyses of record or recent evaluations demonstrating that applicable criteria are still met with the proposed changes.

The proposed changes to replace the W–3 [departure from nucleate boiling] DNB correlation with the NRC approved ABB–NV and WLOP correlations, the revision to the required RCS flow rate, and the assumptions used in the revised SGTR and MTO analysis would not prompt a new or different kind of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Operation at the uprated power condition does not involve a significant reduction in a margin of safety. Analyses of the primary fission product barriers have concluded that relevant design criteria remain satisfied, both from the standpoint of the integrity of the primary fission product barrier, and from the standpoint of compliance with the required regulatory and analysis acceptance criteria. As appropriate, all evaluations have been performed using methods that have either been reviewed or approved by the Nuclear Regulatory Commission, or that are in compliance with regulatory review guidance and standards.

The margins of safety associated with the power uprate are those pertaining to core thermal power. These include fuel cladding, reactor coolant system pressure boundary, and containment barriers. Core analyses demonstrate that operation at the proposed uprated power level will continue to meet the nuclear design basis acceptance criteria. Impacts to components associated with the reactor coolant system pressure boundary structural integrity, and factors such as pressure-temperature limits, vessel fluence, and pressurized thermal shock were found to be acceptable under MUR operating conditions. The proposed changes will have minimal effect on operating parameters and the noted components remain capable of performing their intended safety functions following implementation of the MUR power uprate.

The revised SGTR and MTO analysis show acceptable results. The resultant SGTR dose remains within the limits specified in the Standard Review Plan (SRP), Section 15.6.3, ''Radiological Consequences of Steam Generator Tube Failure (PWR).'' The analysis also shows an improvement (i.e., a larger margin) in the MTO results. The results of all other associated safety analyses remain acceptable.

The proposed changes to use the NRC-approved W–3 alternative correlations, (i.e., the ABB–NV and WLOP correlations) and the increase in the required minimum RCS flow value verify that appropriate nuclear and thermal hydraulic margins to safety are maintained.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Jacob I. Zimmerman.

Exelon Generation Company, LLC, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: October 12, 2011.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed changes revise the Technical Specification (TS) relating to the Safety Limit Minimum Critical Power Ratios (SLMCPRs). The changes result from a cycle-specific analysis performed to support the operation of Limerick Generating Station, Unit 1, in the upcoming Cycle 15. Specifically, the proposed TS changes will revise the SLMCPRs contained in TS 2.1, ''Safety Limits,'' for two recirculation loop operation and single recirculation loop operation to reflect the changes in the cycle-specific analysis. The new SLMCPRs are calculated using the Nuclear Regulatory Commission (NRC)-approved methodology described in NEDE 24011–P–A, ''General Electric Standard Application for Reactor Fuel,'' Revision 18.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or

consequences of an accident previously evaluated?

Response: No.

The derivation of the cycle specific Safety Limit Minimum Critical Power Ratios (SLMCPRs) for incorporation into the Technical Specifications (TS), and their use to determine cycle specific thermal limits, has been performed using the methodology discussed in NEDE–24011–P–A, ''General Electric Standard Application for Reactor Fuel,'' Revision 18.

The basis of the SLMCPR calculation is to ensure that during normal operation and during abnormal operational transients, at least 99.9% of all fuel rods in the core do not experience transition boiling if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling.

The MCPR [minimum critical power ratio] safety limit is reevaluated for each reload using NRC-approved methodologies. The analyses for Limerick Generating Station (LGS), Unit 1, Cycle 15 have concluded that a two loop MCPR safety limit of ≥1.09, based on the application of Global Nuclear Fuel's NRC-approved MCPR safety limit methodology, will ensure that this acceptance criterion is met. For single-loop operation, a MCPR safety limit of ≥1.12 also ensures that this acceptance criterion is met. The MCPR operating limits are presented and controlled in accordance with the LGS, Unit 1 Core Operating Limits Report (COLR).

The requested TS changes do not involve any plant modifications or operational changes that could affect system reliability or performance or that could affect the probability of operator error. The requested changes do not affect any postulated accident precursors, do not affect any accident mitigating systems, and do not introduce any new accident initiation mechanisms. Therefore, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The SLMCPR is a TS numerical value, calculated to ensure that during normal operation and during abnormal operational transients, at least 99.9% of all fuel rods in the core do not experience transition boiling if the limit is not violated. The new SLMCPRs are calculated using NRC-approved methodology discussed in NEDE–24011–P–A, ''General Electric Standard Application for Reactor Fuel,'' Revision 18. The proposed changes do not involve any new modes of operation or any plant modifications. The proposed revised MCPR safety limits have been shown to be acceptable for Cycle 15 operation. The core operating limits will continue to be developed using NRC-approved methods. The proposed MCPR safety limits or methods for establishing the core operating limits do not result in the creation of any new precursors to an accident. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

There is no significant reduction in the margin of safety previously approved by the NRC as a result of the proposed change to the SLMCPRs. The new SLMCPRs are calculated using methodology discussed in NEDE–24011–P–A, ''General Electric Standard Application for Reactor Fuel,'' Revision 18. The SLMCPRs ensure that during normal operation and during abnormal operational transients, at least 99.9% of all fuel rods in the core do not experience transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed TS changes do not involve a significant reduction in the margin of safety previously approved by the NRC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Exelon Generation Company, LLC, Docket Nos. STN 50–456, STN 50–457, STN 50–454, and STN 50–455, Braidwood Station, Units 1 and 2, Will County, Illinois and Byron Station, Units 1 and 2, Ogle County, Illinois; Exelon Generation Company, LLC, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E–Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 30th day of November 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

[FR Doc. 2011–31310 Filed 12–5–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of December 5, 12, 19, 26, 2011, January 2, 9, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of December 5, 2011

There are no meetings scheduled for the week of December 5, 2011.

Week of December 12, 2011—Tentative

Tuesday, December 13, 2011

9 a.m. Briefing on NFPA 805 Fire Protection (Public Meeting) (Contact: Alex Klein, (301) 415–2822)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of December 19, 2011—Tentative

There are no meetings scheduled for the week of December 19, 2011.

Week of December 26, 2011—Tentative

There are no meetings scheduled for the week of December 26, 2011.

Week of January 2, 2012—Tentative

There are no meetings scheduled for the week of January 2, 2012.

Week of January 9, 2012—Tentative

Wednesday, January 11, 2012

1 p.m. Briefing on Proposed Rule To Revise the Environmental Review for Renewal of Nuclear Power Plant Operating Licenses (Part 51) (Public Meeting) (Contact: Jeremy Susco, (301) 415–2927).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* * * * *

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at (301) 415–6200, TDD: (301) 415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: December 1, 2011.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–31363 Filed 12–2–11; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 213.103.

FOR FURTHER INFORMATION CONTACT: Roland Edwards, Senior Executive Resource Services, Executive Resources and Employee Development, Employee Services, (202) 606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between September 1, 2011, and September 30, 2011. These notices are published monthly in the **Federal Register** at *http://www.gpoaccess.gov/fr/.* A consolidated listing of all authorities as of September 30 is also published each year. The following Schedules are not codified in the Code of Federal Regulations. These are agency-specific exceptions.

Schedule A

No Schedule A authorities to report during September 2011.

Schedule B

No Schedule B authorities to report during September 2011.

Schedule C

The following Schedule C appointments were approved during September 2011.

Agency name	Organization name	Position title	Authorization No.	Effective date
Department of Agriculture	Office of the Under Secretary for Food Safety.	Special Assistant	DA110121	9/21/2011
Department of Commerce	Assistant Secretary and Director General for United States and Foreign Commercial Service.	Executive Assistant	DC110120	9/2/2011
	Economics and Statistics Administration.	Special Assistant	DC110124	9/22/2011
	Office of the General Counsel	Senior Advisor	DC110128	9/26/2011
	Office of the Chief of Staff	Advance Specialist	DC110119	9/2/2011
	Office of the Under Secretary	Special Assistant	DC110121	9/8/2011
	Office of the Under Secretary	Confidential Assistant and Scheduler.	DC110136	9/30/2011
	Office of Business Liaison	Deputy Director, Office of Business Liaison.	DC110132	9/29/2011
	Office of the General Counsel	Deputy General Counsel for Strategic Initiatives.	DC110125	9/23/2011

Agency name	Organization name	Position title	Authorization No.	Effective date
Department of Defense	Office of Assistant Secretary of Defense (Public Affairs).	Speechwriter	DD110122	9/19/2011
	Office of the Secretary	Confidential Assistant	DD110125	9/7/2011
Department of Education	Office of the Secretary	Confidential Assistant	DB110122	9/26/2011
	Office of the Secretary	Special Assistant	DB110115	9/19/2011
	Office of Vocational and Adult Education.	Special Assistant	DB110119	9/9/2011
	Office of the Deputy Secretary	Confidential Assistant	DB110116	9/9/2011
	Office of Planning, Evaluation and Policy Development.	Deputy Assistant Secretary for Planning and Policy Development.	DB110118	9/23/2011
Department of Energy	Loan Programs Office	Special Advisor, Front-End Nuclear.	DE110137	9/15/2011
	Office of Fossil Energy	Senior Advisor	DE110140	9/16/2011
Environmental Protection Agency	Office of the Associate Administrator for External Affairs and Environmental Education.	Press Secretary	EP110047	9/13/2011
	Office of the Associate Administrator for External Affairs and Environmental Education.	Deputy Associate Administrator for the Office of External Affairs and Environmental Education.	EP110046	9/14/2011
Export-Import Bank	Export-Import Bank	Director of Scheduling	EB110011	9/2/2011
	Export-Import Bank	Deputy Chief of Staff	EB110012	9/23/2011
Department of Health and Human Services.	Office of Intergovernmental and External Affairs.	Special Assistant	DH110137	9/23/2011
	Office of Intergovernmental and External Affairs.	Director of Business Outreach	DH110139	9/23/2011
	Office of Intergovernmental and External Affairs.	Confidential Assistant	DH110130	9/21/2011
	Health Resources and Services Administration Office of the Administrator.	Special Assistant	DH110128	9/13/2011
Department of Homeland Security	Office of the Chief of Staff	Deputy Director of Scheduling	DM110246	9/1/2011
	Office of the Assistant Secretary for Policy.	Chief of Staff	DM110253	9/9/2011
	U.S. Citizenship and Immigration Services.	Special Assistant	DM110272	9/28/2011
	U.S. Citizenship and Immigration Services.	Senior Counselor	DM110262	9/9/2011
	U.S. Customs and Border Protection.	Policy Advisor	DM110255	9/8/2011
	Office of the Assistant Secretary for Public Affairs.	Deputy Press Secretary	DM110252	9/1/2011
Department of the Interior	Office of Congressional and Legislative Affairs.	Deputy Director, Office of Congressional and Legislative Affairs.	DI110086	9/26/2011
	Bureau of Safety and Environmental Enforcement.	Senior Advisor	DI110089	9/28/2011
Department of Justice	Office of the Deputy Attorney General.	Senior Counsel	DJ110120	9/22/2011
Department of Labor	Wage and Hour Division	Special Assistant	DL110058	9/9/2011
	Office of the Secretary	Deputy Director of Recovery for Auto Communities and Workers.	DL110059	9/9/2011
	Office of Congressional and Intergovernmental Affairs.	Legislative Officer	DL110042	9/7/2011
	Office of Congressional and Intergovernmental Affairs.	Legislative Officer	DL110041	9/7/2011
	Office of Congressional and Intergovernmental Affairs.	Deputy Director of Intergovernmental Affairs.	DL110040	9/7/2011
	Office of the Assistant Secretary for Policy.	Policy Advisor	DL110057	9/21/2011
National Aeronautics and Space Administration.	Office of Communications	Press Secretary	NN110060	9/22/2011
	Office of General Counsel	Special Assistant	NN110062	9/29/2011
Office of Management and Budget	Office of Federal Financial Management.	Confidential Assistant	BO110033	9/9/2011
	Office of the Director	Confidential Assistant	BO110034	9/22/2011
Office of Personnel Management	Office of Communications and Public Liaison.	Strategic Communications Specialist.	PM110023	9/6/2011
Pension Benefit Guaranty Corporation.	Office of the Executive Director	Deputy Director for Policy	BG110007	9/26/2011
Small Business Administration	Office of Communications and Public Liaison.	Special Advisor for Public Liaison	SB110049	9/9/2011
	Office of the Administrator	Special Assistant	SB110050	9/23/2011

Agency name	Organization name	Position title	Authorization No.	Effective date
Department of State	Office of the Chief of Protocol	Assistant Chief for Diplomatic Partnerships.	DS110126	9/2/2011
	Bureau of Public Affairs	Deputy Assistant Secretary for Digital Media.	DS110129	9/2/2011
	Office of the Chief of Protocol	Protocol Officer (Visits)	DS110130	9/29/2011
	Bureau of Economic, Energy and Business Affairs.	Special Assistant	DS110131	9/19/2011
	Office of the Under Secretary for Political Affairs.	Staff Assistant	DS110134	9/23/2011
Department of Transportation	Secretary	Scheduler	DT110056	9/26/2011
	Secretary	Associate Director for Scheduling and Advance.	DT110055	9/23/2011
	Assistant Secretary for Governmental Affairs.	Associate Director for Governmental Affairs.	DT110053	9/2/2011
Department of the Treasury	Under Secretary for Domestic Finance.	Senior Advisor	DY110139	9/9/2011
	Secretary of the Treasury	Senior Advisor	DY110138	9/9/2011
	Assistant Secretary (Economic Policy).	Special Assistant	DY110134	9/7/2011

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–31220 Filed 12–5–11; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket No. R2012–5; Order No. 1011]

International Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to enter into an additional bilateral agreement with Canada Post Corporation. This document invites public comments on the request and addresses several related procedural steps.

DATES: *Comments are due:* December 14, 2011, 4:30 p.m., Eastern Time.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On November 23, 2011, the Postal Service filed a notice, pursuant to 39 CFR 3010.40 *et seq.,* and Order No. 549, that it has entered into a bilateral agreement with Canada Post Corporation (Canada Post 2012 Agreement or Agreement), which it seeks to include in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.[1] The Notice concerns the portion of a bilateral agreement with Canada Post for inbound market dominant services that the Postal Service contends is similar and functionally equivalent to agreements already included in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.[2] Notice at 1.

In support of its Notice, the Postal Service filed two attachments as follows:

- Attachment 1—an application for non-public treatment of materials to maintain redacted portions of the agreement and supporting documents under seal; and
- Attachment 2—a redacted copy of the Canada Post 2012 Agreement. The Postal Service also provided a redacted version of the Agreement and supporting financial documentation as a separate Excel file.

In Order No. 549, the Commission approved the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product and included the Strategic Bilateral Agreement Between United States Postal Service and Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement) and the China Post Group–United States Postal Service Letter Post Bilateral Agreement (CPG Agreement) in the product. In Order No. 700, the Commission approved the functionally equivalent HongKong Post Agreement (HongKong Post Agreement).[3] In Order No. 871, the Commission approved the functionally equivalent China Post 2011 Agreement.[4] In Order Nos. 995 and 996,

[1] Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 23, 2011 (Notice); *see also* Docket Nos. MC2010–35, R2010–5 and R2010–6, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010 (Order No. 549).

[2] The Postal Service states that the Agreement is marked ''Draft'' because of continuing negotiation of specific terms and conditions. However, it asserts that no further substantive changes are expected concerning rates, operational terms or the financial liability provisions of the Agreement. Request at 2, n.2. The Postal Service states that it anticipates finalizing the terms of the fully executed Agreement prior to December 31, 2011. The Commission views the draft as acceptable for purposes of issuing notice of the Agreement. However, the Commission cannot base its final order in this proceeding on the draft Agreement. Therefore, to avoid delaying the final order, the Postal Service should file an executed Agreement as soon as possible. In that filing, the Postal Service shall indicate all changes between the draft agreement and the executed agreement.

[3] *See* Docket No. R2011–4, Order Approving Rate Adjustment for HongKong Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, March 18, 2011 (Order No. 700).

[4] *See* Docket No. R2011–7, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1

Continued

the Commission approved the functionally equivalent Singapore Post and Australia Post Agreements, respectively.[5]

Canada Post 2012 Agreement. The Postal Service and Canada Post, the postal operator for Canada, are parties to the Agreement. The Agreement covers, *inter alia,* the delivery of inbound Letter Post, in the form of letters, flats, small packets, parcels, bags, and International Registered Mail service for Letter Post. The planned inbound market dominant rates are scheduled to become effective January 7, 2012. Notice at 3. The Agreement has a term of 2 years commencing January 1, 2012 and ending December 31, 2013, although it may be extended for a third year. *Id.* Attachment 2 at 7–8; *see also* pdf version at 57 (2012–2013 CPC–USPS Contractual Bilateral Agreement, Exhibit 4).[6] The Agreement however, may be terminated by either party without cause on no less than 90 days' written notice. *Id.* Attachment 2 at 8.

Requirements under part 3010. The Postal Service states that the projected financial performance of the Canada Post 2012 Agreement is provided in the Excel file included with its filing. It contends that improvements should enhance mail efficiency and other functions for Letter Post items under the Agreement. Notice at 3–4.

The Postal Service asserts that the Agreement should not cause unreasonable harm in the marketplace since it is unaware of any significant competition in this market. *Id.* at 5–6.

Data collection plan. Under 39 CFR 3010.43, the Postal Service is required to submit a data collection plan. The Postal Service indicates that it intends to report information on this Agreement through its Annual Compliance Report. While indicating its willingness to provide information on mailflows within the annual compliance review process, the Postal Service proposes that no special data collection plan be established for this Agreement. With respect to performance measurement, it requests that the Commission exempt the Canada Post 2012 Agreement from separate reporting requirements under 39 CFR 3055.3(a)(3) as determined in previous agreements approved as functionally equivalent agreements under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.[7]

The Postal Service advances reasons why the instant Agreement is functionally equivalent to the previously filed CPG Agreement, TNT Agreement, HongKong Post Agreement, and China Post 2011 Agreement.[8] It contends that it contains the same attributes and methodology and fits within the Mail Classification Schedule language for the Inbound Multi-Service Agreements with the Foreign Postal Operators 1 product. Additionally, it states that the Canada Post 2012 Agreement includes similar terms and conditions, *e.g.,* is with a foreign postal operator, conforms to a common description, and relates to rates for Letter Post tendered from the postal operator's territory. *Id.* at 8.

The Postal Service identifies specific differences that distinguish the instant Agreement from the previous agreements. It states that the Agreement provides greater specificity in the terms and products because of the parties' business experience with their previous bilateral agreements. The Postal Service states differences include specific performance-based financial incentives and adjustments to the financial model based on the specific negotiations between the parties. *Id.* at 9–10. The Postal Service contends that the instant Agreement is nonetheless functionally equivalent to existing agreements. *Id.* at 11.

In its Notice, the Postal Service maintains that certain portions of the Agreement, prices, and related financial information should remain under seal. *Id.* at 11; *id.* Attachment 1.

The Postal Service concludes that the Canada Post 2012 Agreement should be added as a functionally equivalent agreement under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 12.

II. Notice of Filings

Interested persons may submit comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3622 and 39 CFR part 3010.40. Comments are due no later than December 14, 2011. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2012–5 to consider matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons in this proceeding are due no later than December 14, 2011.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–31208 Filed 12–5–11; 8:45 am]

BILLING CODE 7710–FW–P

Negotiated Service Agreement, September 23, 2011 (Order No. 871).

[5] *See* Docket No. R2012–1, Order Approving Rate Adjustment for Singapore–Post United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, November 23, 2011 (Order No. 995); *see also* Docket No. R2012–2, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, November 23, 2011 (Order No. 996).

[6] When it files an executed copy of the Agreement, the Postal Service should confirm the effective dates of the Agreement.

[7] In Order No. 996, the Commission held that ''[f]uture agreements that fall within the parameters of the Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators 1 product are excepted from the performance reporting requirements.'' Order No. 996 at 7.

[8] The Postal Service specifically references the differences between the instant Agreement and the TNT Agreement for comparison purposes. *Id.* at 8–11.

POSTAL REGULATORY COMMISSION

[Docket No. A2012–64; Order No. 1006]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Little America, Wyoming post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: November 29, 2011: Administrative record due (from Postal Service); December 27, 2011, 4:30 p.m., Eastern Time: Deadline for notices to intervene. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in

the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on November 14, 2011, the Commission received a petition for review of the Postal Service's determination to close the Little America post office in Little America, Wyoming. The petition for review was filed by Byron Wall (Petitioner) and is postmarked November 3, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–64 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than December 19, 2011.

Categories of issues apparently raised. Petitioner contends that (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); (3) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)); and (4) the Postal Service failed to follow procedures required by law regarding closures (*see* 39 U.S.C. 404(d)(5)(B)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record is within 15 days after the date in which the petition for review was filed with the Commission. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is also within 15 days after the date in which the petition for review was filed with the Commission.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before December 27, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The procedural schedule listed below is hereby adopted.

2. Pursuant to 39 U.S.C. 505, Natalie Rea Ward is designated officer of the Commission (Public Representative) to represent the interests of the general public.

3. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

November 14, 2011	Filing of Appeal.
November 29, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
November 29, 2011	Deadline for the Postal Service to file any responsive pleading.
December 27, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
December 19, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
January 9, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
January 24, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
January 31, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
March 2, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–31210 Filed 12–5–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

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 will hold a Closed Meeting on Wednesday, December 7, 2011 at 9:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(10) and 17 CFR 200.402(a)(10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the item listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Wednesday, December 7, 2011 will be:

A matter relating to enforcement proceedings.

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: December 2, 2011.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31457 Filed 12–2–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65854; File No. SR–NASDAQ–2011–159]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Exchange Direct Orders

November 30, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on November 22, 2011, The NASDAQ Stock Market LLC (the ''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 Securities and Exchange Commission (''Commission'') a proposal for the NASDAQ Options Market (''NOM'') to eliminate Exchange Direct Orders. Specifically, NASDAQ proposes to delete Chapter VI, Section 1(e)(7) and Section 6(a)(2), to delete Exchange Direct Orders from its rules. The Exchange proposes to eliminate this order type, effective November 30, 2011, as explained further below.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* 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, 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate Exchange Direct Orders due to the new requirements of the recently adopted Market Access Rule.[3] Exchange Direct Orders, defined in Chapter VI, Section 1(e)(7), are orders that are directed to an exchange other than NOM as directed by the entering party without checking the NOM book. If unexecuted, the order (or unexecuted portion thereof) shall be returned to the entering party. This order type may only be used for orders with time-in-force parameters of IOC. NASDAQ proposes to delete this definition as well as a reference to Exchange Direct Orders in Chapter VI, Section 6(a)(2).

In adopting the Exchange Direct Order type, NASDAQ explained that Exchange Direct Orders are routed by its affiliate, NASDAQ Options Services LLC (''NOS''). NOS is a broker-dealer and member of NASDAQ as well as other exchanges.[4] The specific functions of NOS, as a facility of NASDAQ and its affiliates, have been approved by the Commission. On November 30, 2011, certain requirements of the Market Access Rule (Rule 15c3–5 under the Act) [5] become operative, such that broker-dealers like NOS become subject to those provisions. Specifically, the Commission extended the deadline for compliance with Rule 15c3–5(c)(1)(i),[6] which requires the implementation of risk management controls and supervisory procedures that are reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, because the type of controls required by the Rule are not currently in place at many broker-dealers, and developing and implementing appropriate controls in this area can be a complex exercise. NASDAQ and NOS have determined that the adoption of these controls and procedures exceeds the scope of NOS' current functions and, therefore, NOS would cease accepting Exchange Direct Orders, because the acceptance of those

[3] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) (File No. S7–03–10).

[4] *See* Securities Exchange Act Release No. 59420 (February 19, 2009), 74 FR 8597 (February 25, 2011) (SR–NASDAQ–2009–011).

[5] 17 CFR 240.15c3–5.

[6] *See* Securities Exchange Act Release No. 64748 (June 27, 2011), 76 FR 38293 (June 30, 2011) (File No. S7–03–10).

orders subjects NOS to the requirements of Rule 15c3–5(c)(1)(i).

NASDAQ has provided notice to its membership of its intent to discontinue Exchange Direct Orders.[7] Although NOM did receive such orders, they do not represent significant volume, such that NASDAQ does not believe that it will have a significant impact on its participants to eliminate this order type.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest, because the Exchange is not required to make this order type available and has made a decision to eliminate it, as explained above. Moreover, in order to comply with the Market Access Rule, this order type is being eliminated rather than implementing the extensive necessary changes. Furthermore, because this order type was not widely used, NASDAQ does not believe that market quality will be impacted by its elimination.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and operative upon filing with the Commission. The Commission believes the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because eliminating Exchange Directed Orders will allow the Exchange's broker-dealer affiliate, NOS, to be in timely compliance with SEC Rule 15c3–5.[12] In addition, the Exchange represents that the order type is not widely used and its elimination should not have a significant impact on market quality. Therefore, the Commission designates the proposal to be operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*;) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–159 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–159. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–159 and should be submitted on or before December 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31230 Filed 12–5–11; 8:45 am]

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[7] *http://www.nasdaqtrader.com/TraderNews.aspx?id=OTA2011-62.*

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] *See supra,* note 6.

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65859; File No. SR–NYSEArca-2011–84]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Russell Global Opportunity ETF; Russell Bond ETF; and Russell Real Return ETF Under NYSE Arca Equities Rule 8.600

December 1, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''

or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 16, 2011, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following three series of the Russell Exchange Traded Funds Trust under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): Russell Global Opportunity ETF; Russell Bond ETF; and Russell Real Return ETF. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the following Managed Fund Shares [3] (''Shares'') under NYSE Arca Equities Rule 8.600: Russell Global Opportunity ETF; Russell Bond ETF; and Russell Real Return ETF (each, a ''Fund'' and, collectively, ''Funds''). The Funds are series of the Russell Exchange Traded Funds Trust (''Trust'').[4] Each of the Funds is a ''fund of funds,'' which means that each Fund seeks to achieve its investment objective by investing primarily in the retail shares of other exchange-traded funds that are registered under the 1940 Act (''Underlying ETFs'').[5] The Funds also may invest in other types of U.S. exchange-traded products, such as Exchange Traded Notes (''ETNs'') and exchange-traded pooled investment vehicles (collectively, with Underlying ETFs, ''Underlying ETPs'').[6]

Russell Investment Management Company (''Adviser'') is the adviser for the Funds.[7] State Street Bank & Trust Company serves as the custodian, [sic] transfer agent and Russell Fund Services Company as administrator for the Funds.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is affiliated with multiple broker-dealers and has implemented a ''fire wall'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Funds' portfolios. In the event (a) The Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[4] The Commission has previously approved listing and trading on the Exchange of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca-2009–55) (order approving Exchange listing and trading of Dent Tactical ETF); 60717 (September 24, 2009), 74 FR 50853 (October 1, 2009) (SR–NYSEArca-2009–74) (order approving Exchange listing and trading of four Grail Advisors RP ETFs); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEArca-2010–118) (order approving Exchange listing and trading of SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF); 64689 (June 16, 2011), 76 FR 36608 (June 22, 2011) (SR–NYSEArca-2011–18) (order approving Exchange listing and trading of Meidell Tactical Advantage ETF).

[5] The Trust is registered under the 1940 Act. On May 9, 2011, the Trust filed with the Commission Post-Effective Amendment No. 6 under the Securities Act of 1933 (15 U.S.C. 77a) and Amendment No. 9 under the 1940 Act to the Trust's registration statement on Form N–1A relating to the Funds (File Nos. 333–160877 and 811–22320) (''Registration Statement''). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29164 (March 1, 2010) (File No. 812–13815 and 812–13658–01) (''Exemptive Order'').

[6] ''Underlying ETPs,'' which will be listed on a national securities exchange, include the following: Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600); and closed-end funds.

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

material non-public information regarding such portfolio.

With respect to each of the Funds, the Adviser will employ an active investment strategy, meaning that it buys and holds Underlying ETPs for either a long or short period of time depending on the opportunity and replacement opportunities.

Russell Global Opportunity ETF

According to the Registration Statement, the Fund's investment objective will be to seek to provide long-term capital growth. The Fund will be a ''fund of funds,'' which means that the Fund will seek to achieve its investment objective by investing primarily in shares of Underlying ETFs. In pursuing the Fund's investment objective, the Adviser will normally invest the Fund's assets in Underlying ETFs that seek to track various indices.[8] These indices include those that track the performance of equity, fixed income, real estate, commodities, infrastructure or currency markets. There is no maximum limit on the percentage of Fund assets that may be invested in securities of non-U.S. issuers through Underlying ETFs. A minimum of 30% of Fund assets will be invested in securities of non-U.S. issuers through Underlying ETFs. The Fund also may invest in other Underlying ETPs.

The Adviser will employ an asset allocation strategy that seeks to provide exposure to multiple asset classes in a variety of domestic and foreign markets. The Adviser's asset allocation strategy will establish a target asset allocation for the Fund and the Adviser then will implement the strategy by selecting Underlying ETPs that represent each of the desired asset classes, sectors and strategies. The Adviser's strategy also will involve periodic review of the Fund's holdings as markets rise and fall to ensure that the portfolio adheres to the strategic allocation and to add value through tactical allocation that may over or underweight Underlying ETPs around the strategic allocation. The Adviser may modify the strategic allocation for the Fund from time to time based on capital markets research. The Adviser also may modify the Fund's allocation based on tactical factors such as the Adviser's outlook for the economy, financial markets generally and/or relative market valuation of the asset classes, sectors or strategies represented by each Underlying ETP.

The Adviser intends to invest in Underlying ETPs that hold equity securities of large, medium and small capitalization companies across the globe including developed countries and emerging countries. Equity securities may include common and preferred stocks, warrants and rights to subscribe to common stock and convertible securities. The Adviser also intends to invest in Underlying ETPs that (1) Hold U.S. and non-U.S. government issued debt, investment grade corporate bonds, below investment grade bonds (generally referred to as high yield bonds or ''junk''), and mortgage and asset backed securities, and (2) track performance of commodities, real estate, infrastructure and currency markets by investing in energy, metals, agriculture, REITs, utilities, roads and bridges or construction/engineering companies. The Adviser may also, on a limited basis, sell short Underlying ETPs.

The Adviser will select Underlying ETPs based on their potential to represent the underlying asset class, sector or strategy to which the Adviser seeks exposure for the Fund. The Fund will only invest in U.S.-listed Underlying ETPs.

Russell Bond ETF

According to the Registration Statement, the Fund will seek total return. The Fund will be a ''fund of funds,'' which means that the Fund will seek to achieve its investment objective by investing primarily in shares of Underlying ETFs. In pursuing the Fund's investment objective, the Adviser will normally invest the Fund's assets in Underlying ETFs that seek to track various fixed income indices.[9] These indicies include those that track the performance of fixed income securities issued by governments and corporations in the United States, Europe and Asia, as well as other developed and emerging markets. There is no limit on the percentage of Fund assets that may be invested in securities of non-U.S. issuers through Underlying ETFs. The Fund also may invest in other Underlying ETPs.

The Fund will invest, under normal circumstances, such that at least 80% of the value of its net assets are exposed to bonds through Underlying ETPs. The Fund considers bonds to include fixed income equivalent instruments, which may be represented by forwards or derivatives such as options, futures contracts, or swap agreements.

The Adviser will employ an asset allocation strategy that provides exposure to multiple fixed income asset classes or sectors in a variety of U.S. and non-U.S. markets. The Adviser's allocation strategy will establish a target allocation for the Fund and the Adviser then will implement the strategy by selecting Underlying ETPs that represent each of the desired exposures including asset classes or sectors. The Adviser's strategy also will involve periodic review of the Fund's holdings as markets rise and fall to ensure that the portfolio adheres to the strategic allocation and to add value through tactical allocation that may over or underweight Underlying ETPs around the strategic allocation. The Adviser may modify the strategic allocation for the Fund from time to time based on capital markets research. The Adviser also may modify the Fund's allocation based on tactical factors such as the Adviser's outlook for the economy, financial markets generally and/or relative market valuation of the asset classes or sectors represented by each Underlying ETP.

The Adviser intends to invest in Underlying ETPs that hold government-issued debt, investment grade corporate bonds, below investment grade bonds (generally referred to as high yield bonds or ''junk'') and mortgage and asset backed securities. Issuers of debt securities may be U.S. or non-U.S. (including developed and emerging markets countries) governments or corporate issuers. The Adviser also intends to select Underlying ETPs based on their exposure to asset class or sectors and the duration and credit quality of their portfolios within broader sectors of a fixed income market. The Adviser may also, on a limited basis, sell short Underlying ETPs.

The Adviser will select Underlying ETPs based on their potential to represent the underlying asset class or sector to which the Adviser seeks exposure for the Fund. The Fund will only invest in U.S.-listed Underlying ETPs.

Russell Real Return ETF

According to the Registration Statement, the Fund will seek a total return that exceeds the rate of inflation over an economic cycle. The Fund will be a ''fund of funds,'' which means that the Fund will seek to achieve its investment objective by investing primarily in shares of Underlying ETFs. In pursuing the Fund's investment objective, the Adviser will normally invest the Fund's assets in Underlying

[8] The terms ''normally'' and ''under normal circumstances'' as used herein includes, but is not limited to, the absence of extreme volatility or trading halts in the debt or equities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[9] *See* note 8, *supra.*

ETFs that seek to track various indices.[10] These indices include indices that track the performance of equity, fixed income (including Treasury Inflation-Protected Securities or ''TIPS'') and real assets such as real estate, commodities and infrastructure assets. The Fund will invest in Underlying ETFs that invest in U.S. and non-U.S. (including developed and emerging markets) securities. There is no limit on the percentage of Fund assets that may be invested in securities of non-U.S. issuers through Underlying ETFs. The Fund also may invest in other Underlying ETPs.

The Adviser will employ an asset allocation strategy that provides exposure to multiple asset classes in a variety of domestic and foreign markets. The Adviser's allocation strategy will establish a target asset allocation for the Fund and the Adviser will then implement the strategy by selecting Underlying ETPs that represent each of the desired asset classes, sectors or strategies. The Adviser's strategy also will involve periodic review of the Fund's holdings as markets rise and fall to ensure that the portfolio adheres to the strategic allocation and to add value through tactical allocation that may over or underweight Underlying ETPs around the strategic allocation. The Adviser may modify the strategic allocation for the Fund from time to time based on capital markets research. The Adviser also may modify the Fund's allocation based on tactical factors such as the Adviser's outlook for the economy, inflation expectations, financial markets generally and/or relative market valuation of the asset classes, sector or strategies represented by each Underlying ETP.

The Adviser intends to invest in Underlying ETPs that hold equity securities of large, medium and small capitalization companies and fixed income securities, including government issued debt, investment grade corporate bonds, below investment grade bonds and mortgage and asset backed securities issued by companies across the globe including developed countries and emerging countries. The Adviser also intends to invest in Underlying ETPs that hold U.S. inflation-indexed securities and have exposure to commodities, real estate, infrastructure markets and other real assets. A real asset is a tangible or physical asset that typically has intrinsic value. The Adviser may also, on a limited basis, sell short Underlying ETPs.

The Adviser will select Underlying ETPs based on their potential to represent the underlying asset class, sector or strategy to which the Adviser seeks exposure for the Fund. The Fund will only invest in U.S.-listed Underlying ETPs.

Other Investments of the Funds

The Funds will not invest in derivatives. The Underlying ETPs in which the Funds invest may, to a limited extent, invest in derivatives; however, the Funds will not invest in Underlying ETPs that use derivatives as a principal investment strategy unless the Underlying ETP uses futures contracts and related options for bona fide hedging, attempting to gain exposure to a particular market, index or instrument, or other risk management purposes. To the extent an Underlying ETP uses futures and/or options on futures, it will do so in accordance with the Commodity Exchange Act[11] and applicable rules and regulations promulgated by the Commodity Futures Trading Commission and the National Futures Association.

Underlying ETPs may enter into swap agreements including interest rate, index, and credit default swap agreements. An Underlying ETP may invest in commodity-linked derivative instruments, such as structured notes, swap agreements, commodity options, futures and options on futures, to gain exposure to commodities markets. Financial futures contracts may be used by an Underlying ETP during or in anticipation of adverse market events such as interest rate changes. An Underlying ETP may purchase a put and/or sell a call option on a stock index futures contract instead of selling a futures contract in anticipation of an equity market decline.

Money market instruments, including repurchase agreements, or funds that invest exclusively in money market instruments, including affiliated money market funds (subject to applicable limitations under the 1940 Act), convertible securities, variable rate demand notes, or commercial paper may be used by a Fund in seeking to meet its investment objective and in managing cash flows.

The Funds expect to invest almost entirely in Underlying ETPs but may also invest in, among other investments, common stocks; sponsored American Depositary Receipts (''ADRs''), American Depositary Shares (''ADSs'') and European Depositary Receipts (''EDRs''), Global Depositary Receipts (''GDRs''); short-term instruments (including money market instruments); U.S. Government Securities; TIPS; commercial paper; and other debt instruments described in the Registration Statement. The Funds and the Underlying ETPs may enter into repurchase and reverse repurchase agreements.

Investment Policies and Restrictions

Each Fund will seek to qualify for treatment as a regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.[12]

Each Fund may invest up to an aggregate amount of 15% of its net assets in (a) Illiquid securities, and (b) Rule 144A securities. This limitation is applied at the time of purchase. The Commission staff has interpreted the term ''illiquid'' in this context to mean a security that cannot be sold or disposed of within seven days in the ordinary course of business at approximately the amount at which a Fund has valued such security.[13]

[10] *See* note 8, *supra.*

[11] 7 U.S.C. 1.

[12] 26 U.S.C. 151. One of several requirements for RIC qualification is that a Fund must receive at least 90% of the Fund's gross income each year from dividends, interest, [sic] payments with respect to securities loans, gains from the sale or other disposition of stock, securities or foreign currencies, or other income derived with respect to the Fund's investments in stock, securities, foreign currencies and net income from an interest in a qualified publicly traded partnership (''90% Test''). A second requirement for qualification as a RIC is that a Fund must diversify its holdings so that, at the end of each fiscal quarter of the Fund's taxable year: (a) At least 50% of the market value of the Fund's total assets is represented by cash and cash items, U.S. Government securities, securities of other RICs, and other securities, with these other securities limited, in respect to any one issuer, to an amount not greater than 5% of the value of the Fund's total assets or 10% of the outstanding voting securities of such issuer; and (b) not more than 25% of the value of its total assets are invested in the securities (other than U.S. Government securities or securities of other RICs) of any one issuer or two or more issuers which the Fund controls and which are engaged in the same, similar, or related trades or businesses, or the securities of one or more qualified publicly traded partnership [sic] (''Asset Test'').

[13] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 8901 (March 11, 2008), 73 FR 14617 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the ETF. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

Each Fund may invest in securities of other investment companies, including ETFs, closed end funds and money market funds, subject to applicable limitations under Section 12(d)(1) of the 1940 Act or exemptions granted thereunder.

A Fund may not:

1. (i) With respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer.[14]

2. Invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in a particular industry or group of industries; except that, to the extent the underlying index selected for a particular passive Underlying ETF is concentrated in a particular industry or group of industries, the Funds will necessarily be concentrated in that industry or group of industry [sic].[15] This limitation does not apply to investments in securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies, including the Underlying ETPs.

Underlying ETPs will be listed and traded in the U.S. on a national securities exchange. While the Underlying ETPs may hold non-U.S. equity securities, the Funds will not invest in non-U.S. listed equity securities. Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. The Funds will not hold leveraged, inverse and inverse leveraged Underlying ETPs. Consistent with the Exemptive Order, the Funds will not invest in options contracts, futures contracts or swap agreements.

Creations and Redemptions of Shares

The Funds will offer and issue Shares at their net asset value (''NAV'') only in aggregations of a specified number of Shares (each, a ''Creation Unit''). The Funds generally will offer and issue Shares in exchange for shares of specified Underlying ETPs (''Deposit Securities'') together with the deposit of a specified cash payment (''Cash Component''). The Trust will reserve the right to permit or require the substitution of a ''cash in lieu'' amount to be added to the Cash Component to replace any Deposit Security. The Shares will be redeemable only in Creation Unit aggregations, and generally in exchange for portfolio securities and a specified cash payment. A Creation Unit of the Funds will consist of 50,000 Shares.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Trust will be in compliance with Rule 10A–3 under the Exchange Act,[16] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time.

Availability of Information

The Funds' Web site (*www.russelletfs.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Funds that may be downloaded. The Funds' Web site will include additional quantitative information updated on a daily basis, including, for the Funds, (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''),[17] 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 Funds will disclose on their Web site the Disclosed Portfolio that will form the basis for the Funds' calculation of NAV at the end of the business day.[18] The Web site information will be publicly available at no charge.

On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Funds the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange (''NYSE'') via the National Securities Clearing Corporation. The basket will represent one Creation Unit of each Fund.

The NAV of each Fund will normally be determined as of the close of the regular trading session on the NYSE (ordinarily 4 p.m. Eastern Time) on each business day.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), Shareholder Reports and Form N–CSR. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR 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 Consolidated Tape Association (''CTA'') high-speed line. The intra-day and closing values of Underlying ETPs also will be disseminated by the U.S. exchange on which they are listed. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during

[14] The diversification standard is contained in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80e).

[15] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[16] 17 CFR 240.10A–3.

[17] The Bid/Ask Price of the Funds will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Funds' NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

[18] Under accounting procedures followed by the Funds, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

the Core Trading Session.[19] The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Funds on a daily basis and to provide a close estimate of that value throughout the trading day.

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 Funds 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 Funds.[20] Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[21] The Exchange, therefore, will be able to obtain surveillance information from the exchanges trading the Underlying ETPs.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[22] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Underlying ETPs will be listed and traded in the U.S. on a national securities exchange. While the Underlying ETPs may hold non-U.S. equity securities, the Funds will not invest in non-U.S. registered equity securities. Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. The Funds will not invest in derivatives, including options, swaps or futures.

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 Adviser is affiliated with multiple broker-dealers and has implemented a ''fire wall'' with

[19] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values published on CTA or other data feeds.

[20] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[21] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[22] 15 U.S.C. 78f(b)(5).

respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Funds' portfolios. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. The Funds' portfolio holdings will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the Portfolio Indicative 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. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their Web site the Disclosed Portfolio that will form the basis for the Funds' calculation of NAV at the end of the business day. 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, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Fund [sic] will include a form of the prospectus for the Funds 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 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, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the Portfolio Indicative Value, the Disclosed Portfolio, 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 actively-managed exchange-traded product 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, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–84 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2011–84. 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–2011–84 and should be submitted on or before December 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31263 Filed 12–5–11; 8:45 am]

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[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65852; File No. SR–Phlx–2011–156]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Period To Allow Cabinet Trading To Take Place Below $1 per Option Contract

November 30, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 2011, 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 through June 1, 2012, 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose is to extend through June 1, 2012, the pilot program in Commentary .02 of Exchange Rule 1059, Accommodation Transactions, which sets forth specific procedures for engaging in cabinet trades.[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 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]

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 for an additional six months through June 1, 2012 so that the procedures can continue without interruptions while the Exchange further considers whether to seek permanent approval of the temporary procedure.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and with Section 6(b)(5) of the Act,[11] in particular, in that the

[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.

[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] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

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 permit both the Exchange and 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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Such waiver will allow the benefits of the pilot program to continue uninterrupted, thereby avoiding any investor confusion that could result from a temporary interruption in the pilot program, while the Exchange considers whether to seek permanent approval of the temporary procedures. Therefore, the Commission designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–156 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–156. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2011–156 and should be submitted on or before December 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65853; File No. SR–Phlx–2011–157]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Active Specialized Quote Feed Port Fee

November 30, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 17, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fee Schedule to modify the Active Specialized Quote Feed (''SQF'') Port Fee.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov/and* at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Active SQF Port Fee in Section VI of the Exchange's Fee Schedule, titled ''Access Service, Cancellation, Membership, Regulatory and Other Fees.'' SQF is an interface that enables specialists, SQTs and Remote Streaming Quote Traders (''RSQTs'') [3] to connect and send quotes into Phlx XL.[4] Active SQF ports are ports that receive inbound quotes at any time within that month.[5] The Exchange intends to amend the tier structure, eliminate the $500 per month cap applicable to certain member organization and establish a new monthly cap now that all firms have transitioned from SQF 5.0 to SQF 6.0. The Exchange proposes these amendments to recoup fees.

The Exchange currently has a tiered Active SQF Port Fee as follows:

Number of Active SQF Ports	Cost per port per month
0–4	$350
5–18	1,250
19–40	2,350
41 and over	3,000

Today, the Exchange caps Active SQF Ports at $500 per month for member organizations that meet the following criteria: (i) Are not members of another national securities exchange (''Phlx Only Members''); and (ii) have 50 or less Streaming Quote Trader (''SQT'') [6] assignments [7] affiliated with the member organization. Also, Active SQF Port Fees are capped at $40,000 per month (''Cap'') until December 30, 2011 for all member organizations other than those member organizations who meet the requirements of the $500 per month cap. The purpose of the Cap was to ensure member organizations were not assessed fees in excess of the Active SQF Port Fees while they transitioned from SQF 5.0 to SQF 6.0 ports.[8] The Cap is not in effect beyond December 30, 2011.[9]

The Exchange is proposing to amend the four SQF tiers to three SQF tiers and assess the following Active SQF Port Fees:

Number of Active SQF Ports	Cost per port per month
0–4	$350
5–18	1,350
19 and over	2,500

The Exchange also proposes to eliminate the $500 per month cap that was applicable to certain member organizations that met the above listed criteria and replace the $40,000, per month cap that is set to expire after December 30, 2011, with a $41,000 monthly cap. The Exchange will also remove the restriction that it will not assess the Active SQF Port Fee for the use of active SQF 5.0 ports to the extent that the member organization is paying for the same (or greater) number of active SQF 6.0 ports.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4) of the Act [11] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that it is reasonable to modify the Active SQF Fee to amend the tiers and remove the caps because the release of SQF 6.0 is complete [12] and the Exchange believes it has provided members ample opportunity to transition to SQF 6.0.[13] The Exchange believes that the new tier structure is reasonable because the lower tier fee (0–4 ports) will remain the same and only the next two tiers, 5–18 and 19 and over, will increase. SQF 6.0 offers users increased efficiency by allowing them to access in a single feed, rather than through accessing multiple feeds, information such as execution reports and other relevant data.[14] In

[3] A RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[4] *See* Securities Exchange Act Release No. 63034 (October 4, 2010), 75 FR 62441 (October 8, 2010) (SR–Phlx–2010–124).

[5] The current version, SQF 6.0, allows member organizations to access, information such as execution reports, execution report messages, auction notifications, and administrative data through a single feed. Other data that is available on SQF 6.0 includes: (1) Options Auction Notifications (*e.g.,* opening imbalance, market exhaust, PIXL or other information currently provided on SQF 5.0) ;(2) Options Symbol Directory Messages (currently provided on SQF 5.0); (3) System Event Messages (*e.g.,* start of messages, start of system hours, start of quoting, start of opening); (4) Complex Order Strategy Auction Notifications (COLA); (5) Complex Order Strategy messages; (6) Option Trading Action Messages (*e.g.,* trading halts, resumption of trading); and (7) Complex Strategy Trading Action Message (*e.g.,* trading halts, resumption of trading).

[6] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[7] *See* Exchange Rules 1014(b) and 507 for qualifications relating to assignments.

[8] *See* Securities Exchange Release No. 65046 (August 5, 2011), 76 FR 49821 (August 5, 2011) (SR–Phlx–2011–105).

[9] *See* Securities Exchange Release No. 65046 (August 5, 2011), 76 FR 49821 (August 5, 2011) (SR–Phlx–2011–105).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] The Exchange released SQF 6.0 on October 11, 2010.

[13] The Exchange anticipated that member organizations would utilize both SQF 5.0 and SQF 6.0 for a period of time. The Exchange believes that by January 3, 2012 all members should have transitioned and ample time was provided in 2011 to complete the transition.

[14] *See* Securities Exchange Act Release No. 63034 (October 4, 2010), 75 FR 62441 (October 8, 2010) (SR–Phlx–2010–124). Data proposed for SQF 6.0 includes the following: (1) Options Auction Notifications (*e.g.,* opening imbalance, market exhaust, PIXL or other information currently provided on SQF 5.0); (2) Options Symbol Directory Messages (currently provided on SQF 5.0); (3)

addition, non quoting firms that would like to receive the relevant information available over SQF will be allowed to connect to the SQF interface, but not send quotes.[15] The tiers are designed to recoup costs associated with the ports while providing increased efficiency with the new release.

The Exchange also believes that it is reasonable to eliminate the $500 per month cap for Phlx Only Members that have 50 or less SQT assignments affiliated with member organizations because there are no members today which meet the criteria for this cap.

The Exchange believes that the amended tiers, which are increased for two categories, are equitable and not unfairly discriminatory because the features of SQF 6.0 are available to all participants. In addition, the member organizations with the greater number of ports, and therefore the greater system usage, will experience the increase.

The Exchange believes that eliminating the $500 per month cap for the smaller organizations, defined as Phlx Only Members with 50 or less SQT assignments, is equitable and not unfairly discriminatory because there are no member organizations that will be impacted today by the elimination of this cap. There are no member organizations today that are eligible for the cap.

The Exchange believes that adopting a $41,000 monthly cap is equitable and not unfairly discriminatory because all members utilizing SQF 6.0 ports may take advantage of the $41,000 cap without limitation. The Exchange believes that the member organizations with the greatest number of ports will benefit from the proposed $41,000 monthly cap. These are also the member organizations with the greatest system usage and therefore the largest costs.

Finally, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to discontinue the practice of only billing member organizations for the use of active SQF 5.0 ports to the extent the member organization was paying is paying the same (or greater) number of active SQF 6.0 ports. As mentioned herein, the Exchange believes that it has provided member organizations ample time to transition and this practice is no longer necessary as there should be no member organizations utilizing SQF 6.0 [sic] by January 3, 2012.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[16] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–Phlx–2011–157 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2011–157. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2011–157 and should be submitted on or before December 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31204 Filed 12–5–11; 8:45 am]

BILLING CODE 8011–01–P

System Event Messages (*e.g.,* start of messages, start of system hours, start of quoting, start of opening); (4) Complex Order Strategy Auction Notifications (COLA); (5) Complex Order Strategy messages; (6) Option Trading Action Messages (*e.g.,* halts, resumes); and (7) Complex Strategy Trading Action Message (*e.g.,* halts, resumes).

[15] *See* Securities Exchange Act Release No. 63034 (October 4, 2010), 75 FR 62441 (October 8, 2010) (SR–Phlx–2010–124).

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7709]

Privacy Act; System of Records: State–78, Risk Analysis and Management Records

SUMMARY: Notice is hereby given that the Department of State proposes to create a system of records, Risk Analysis and Management Records, State–78, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, Appendix I.

DATES: This system of records will be effective on January 17, 2012, unless we receive comments that will result in a contrary determination.

ADDRESSES: Any persons interested in commenting on the new system of

records may do so by writing to the Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street NW.; Washington, DC 20522–8001.

FOR FURTHER INFORMATION CONTACT: Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street NW.; Washington, DC 20522–8001.

SUPPLEMENTARY INFORMATION: The Department of State proposes that the new system will be ''Risk Analysis and Management Records.'' The proposed system will support the vetting of directors, officers, or other employees of organizations who apply for Department of State contracts, grants, cooperative agreements, or other funding. The information collected from these organizations and individuals is specifically used to conduct screening to ensure that Department funds are not used to provide support to entities or individuals deemed to be a risk to U.S. national security interests. The records may contain criminal investigation records, investigatory material for law enforcement purposes, and confidential source information.

The Department's report was filed with the Office of Management and Budget. The new system description, Risk Analysis and Management (RAM) Records, State 78, will read as set forth below.

Dated: November 16, 2011.

Keith D. Miller,

Director, Office of Operations, Bureau of Administration, U.S. Department of State.

STATE–78

SYSTEM NAME:

Risk Analysis and Management (RAM) Records.

SECURITY CLASSIFICATION:

Classified and Unclassified.

SYSTEM LOCATION:

Department of State, 2201 C Street NW., Washington, DC 20520; other Department of State annexes, posts and missions abroad; and the United States Agency for International Development (USAID), Office of Security, 1300 Pennsylvania Avenue NW., Washington, DC 20523.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system covers key personnel of organizations who have applied for contracts, grants, cooperative agreements or other funding from the Department of State. These individuals may include but are not limited to principal officers or directors, program managers, chief of party for the program, and other individuals employed by the organization.

CATEGORIES OF RECORDS IN THE SYSTEM:

Unclassified information in this system includes, but is not limited to: name, aliases, date and place of birth, gender (as shown in a government-issued foreign or U.S. photo ID), citizenship(s), government-issued identification information (including but not limited to Social Security number if U.S. citizen or Legal Permanent Resident, passport number, or any other numbers originated by a government that specifically identifies an individual), mailing address, telephone number(s), fax number, email address, current employer and job title. The type of grant, U.S. dollar value of contract/grant, the contract/grant start and end date, and the purpose of the contract/grant are also contained in the system.

Classified information in this system includes, but is not limited to: results generated from the screening of individuals covered by this Notice; intelligence and law enforcement information related to national security; and national security vetting and terrorism screening information provided to the Department by other agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 2339A, 2339B, 2339C; 22 U.S.C. 2151 et seq.; Executive Orders 13224, 13099 and 12947; and Homeland Security Presidential Directive–6.

PURPOSE:

The information in the system supports the vetting of directors, officers, or other employees of organizations who apply for Department of State contracts, grants, cooperative agreements, or other funding. The information collected from these organizations and individuals is specifically used to conduct screening to ensure that Department funds are not used to provide support to entities or individuals deemed to be a risk to U.S. national security interests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the United States Agency for International Development (USAID) and to federal government agencies for vetting programs.

The Department of State periodically publishes in the **Federal Register** its standard routine uses which apply to all of its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement. These standard routine uses apply to State–78, Risk Analysis and Management Records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored in both paper and electronic format.

RETRIEVABILITY:

Records are retrieved by name, date and place of birth, government-issued identifying numbers (such as Social Security numbers or passport numbers), and solicitation number.

SAFEGUARDS:

The records are maintained in an authorized security container with access limited to authorized government personnel and authorized contractors. Physical security protections include guards and locked facilities requiring badges. Only authorized government personnel and authorized contractors can access records within the system. The Department mandates and certifies that physical and technological safeguards appropriate for classified and Sensitive but Unclassified systems are used to protect the records against unauthorized access. All authorized government personnel and authorized contractors with access to the system must hold an appropriate security clearance, sign a non-disclosure agreement, and undergo both privacy and security training.

Classified and Sensitive but Unclassified paper records are kept in an approved security container. Access to these records is limited to those authorized government personnel and authorized contractors who have a need for the records in the performance of their official duties.

Electronic records are kept in a secure database. Access to the records is restricted to those authorized government personnel and authorized contractors with a specific role in the vetting process as part of the performance of their official duties. The RAM database is housed on and accessed from a Sensitive but Unclassified computer network. Vetting requests, analyses, and results will be stored separately on a classified computer network. Both computer networks and the RAM database require a user identification name and password and approval from the Office of Security. An audit trail is maintained and periodically reviewed to monitor access to the system. When it is determined that a user no longer needs access, the user account is disabled.

Authorized government personnel and authorized contractors assigned roles in the vetting process are provided role-specific training to ensure that they are knowledgeable in how to protect personally identifiable information. Access to the Department of State records within the system will be controlled by the network firewall configuration.

Within the Department of State, all users are given cyber security awareness training which covers the procedures for handling Sensitive but Unclassified information, including personally identifiable information (PII). Annual refresher training is mandatory. In addition, all Foreign Service and Civil Service employees and those Locally Engaged Staff who handle PII are required to take the FSI distance learning course instructing employees on privacy and security requirements, including the rules of behavior for handling PII and the potential consequences if it is handled improperly. Before being granted access to RAM records, a user must first be granted access to the Department of State computer system.

Remote access to the Department of State network from non-Department owned systems is authorized only through a Department-approved access program. Remote access to the network is configured with the Office of Management and Budget Memorandum M–07–16 security requirements, which include but are not limited to two-factor authentication and time out function. All Department of State employees and contractors with authorized access have undergone a thorough background security investigation.

RETENTION AND DISPOSAL:

Records are retired in accordance with published Department of State Records Disposition Schedules as approved by the National Archives and Records Administration (NARA). More specific information may be obtained by writing the Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street, NW., Washington, DC 20522–8001.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Risk Analysis and Management, Department of State, Washington, DC, 2201 C St. NW., Washington, DC 20520.

NOTIFICATION PROCEDURE:

Individuals who have cause to believe that Risk Analysis and Management Records might have records pertaining to them should write to the Director; Office of Information Programs and Services, A/GIS/IPS, Department of State, SA–2; 515 22nd Street NW., Washington, DC 20522–8001. The individual must specify that he/she wishes the records of the Risk Analysis and Management Records to be checked. At a minimum, the individual must include: name; date and place of birth; current mailing address and zip code; signature; and the approximate dates of application for a contract, grant or other funding.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of Information Programs and Services (address above).

CONTESTING RECORD PROCEDURES:

(See above.)

RECORD SOURCE CATEGORIES:

Information in this system is obtained from the application form completed and submitted by an organization or individual applying for a contract, grant, cooperative agreement, or other funding from the Department of State. In the case of applications submitted by an individual in his/her own capacity, the information will be collected directly from the individual applicant. Information in this system may also be obtained from public sources, agencies conducting national security screening law enforcement and intelligence agency records, and other government databases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2), records in this system may be exempt from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G), (H), and (I), (e)(5) and (8), (f), (g) and (h) of the Privacy Act. Pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), records in this system may be exempt from subsections 5 U.S.C. 552a(c)(3),(d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act.

If a record contains information from other exempt systems of records, the Department of State will rely on the exemptions claimed for those systems.

[FR Doc. 2011–31270 Filed 12–5–11; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0089]

Petition for Waiver of Compliance

In accordance with part 211 of title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated November 9, 2011, the Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA) have petitioned the Federal Railroad Administration (FRA) on behalf of their members for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 231, Safety Appliance Standards. FRA assigned the petition Docket Number FRA–2011–0089.

Specifically, AAR and ASLRRA are requesting relief from section 49 CFR Section 231.27(b)(3), which requires that end platforms on boxcars be ''centered on each end of car between inner ends of handholds not more than eight (8) inches above top of center sill.'' The AAR and ASLRRA request relief for a group of boxcars that have end platforms that may exceed the 8-inch maximum by as much as 2 inches. AAR and ASLRRA stated that more than 18,000 cars and 20 different car owners are affected. The cars were manufactured between 1977 and 2001 as provided in an attachment to the petition. AAR and ALSRRA assert that in order to correct the end platform variance, many cars would require extensive modifications that are costly and labor intensive. Additionally, AAR and ASLRRA stated that one issue is whether the cars in question actually violate 49 CFR 231.27(b)(3) based on the specific method used to measure the sill step relationship to the platform height. AAR and ASLRRA believe that waiver would resolve any end platform variance created by the ambiguous wording contained in 49 CFR 231.27(b)(3). AAR and ASLRRA also stated that they are unaware of any personal injuries or other incidents arising from the height of the end platforms. AAR and ASLRRA believe a permanent waiver would be appropriate instead of the granting of a traditional 5-year waiver.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket

Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

• *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Fax:* (202) 493–2251.

• *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by January 20, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on November 30, 2011.

Brenda J. Moscoso,

Director, Office of Safety Analysis, Risk Reduction, and Crossing/Trespasser Programs.

[FR Doc. 2011–31224 Filed 12–5–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0091]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated November 15, 2011, New Jersey Transit (NJT) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety laws or regulations contained at Title 49 U.S.C. Section 20302. FRA assigned the petition Docket Number FRA–2011–0091.

Specifically, NJT is seeking relief from 49 U.S.C. 20302(1)(B). FRA has determined that NJT has incorrectly sought relief from the statute, which does not apply specifically to this issue. The correct areas that NJT should be seeking relief from are 49 CFR 231.1(e), *Ladders;* and 49 CFR 238.230(b), *Welded safety appliances.* FRA has modified the application to reflect the correct citations and will proceed with the waiver application as modified.

The side door access ladders of the series ALP 46, ALP 46A, and ALP 45DP locomotives consist of a frame assembly incorporating welded joints in the fabrication. The assembly is then bolted to the side sill of the locomotive. NJT has stated that the ALP 46 and ALP 46A locomotives have been in use for 9 years with no history of structural failure or reported injuries associated with this ladder design.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

• *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Fax:* (202) 493–2251.

• *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received by January 20, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on November 30, 2011.

Brenda J. Moscoso,

Director, Office of Safety Analysis, Risk Reduction, and Crossing/Trespasser Programs.

[FR Doc. 2011–31227 Filed 12–5–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0130]

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment

period was published on September 8, 2011 [FR Doc. 2010–0130–0001].

DATES: Comments must be submitted on or before January 5, 2012.

FOR FURTHER INFORMATION CONTACT: Mike Joyce, Marketing Specialist, Office of Communications and Consumer Information (NPO–520), National Highway Traffic Safety Administration, 1200 New Jersey Ave. SE., W52–238, Washington, DC 20590. Mike Joyce's phone number is (202) 366–5600 and his email address is *Mike.Joyce@dot.gov.*

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, NHTSA published a 60-day notice for public comment on September 8, 2011 announcing the intent to conduct consumer research. All comments received were reviewed and taken into consideration when preparing the final ICR for OMB review. This notice announces that the ICR, abstracted below, has been forwarded to OMB requesting review and comment. The ICR describes the nature of the information collection and its expected burden. This is a request for new collection.

Title: Monroney Label Consumer Research.

OMB Number: Not Assigned.

Type of Request: New collection.

Abstract: The National Highway Traffic Safety Administration (NHTSA) was established by the Highway Safety Act of 1970 (23 U.S.C. 101) to carry out a Congressional mandate to reduce the mounting number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. In support of this mission, NHTSA proposes to conduct a limited number of focus group sessions with members of the general public to help inform future revisions to the Monroney label and guide the development of a consumer education program. In this collection of information, NHTSA is requesting to explore how consumers evaluate the Monroney label, and comprehension of the 5-Star Safety Ratings and understand the potential tradeoffs consumers make among the items included on the Monroney label. The research will also consider the location and size of the safety rating label and compare with other areas of the Monroney label and explore adding the advanced crash avoidance safety information to the safety rating label. Additional areas of exploration will be evaluated, including:

(i) Vehicle purchase decision-making criteria;

(ii) Sources of vehicle safety information;

(iii) Monroney label content, comprehension and potential tradeoffs; and,

(iv) New changes to the safety rating section of the Monroney label to help inform future revisions.

Description of the Need for the Information and the Proposed Use of the Information: NHTSA must explore how safety information impacts vehicle purchase decisions, where consumers look for safety information and how consumers use safety and other information located on the Monroney label in their purchase decisions, which will help inform future revisions to the Monroney label. Additionally, NHTSA will use this research to discuss potential communication channels in order to guide the development of a consumer education program.

Affected Public: Passenger vehicle consumers.

Estimated Total Annual Burden: 180 hours.

Number of Respondents: 80.

NHTSA will conduct two research phases. For the first phase, which this notice addresses, NHTSA will conduct one type of qualitative research. This research project will consist of two (2) focus groups in five (5) cities for a maximum of ten (10) focus group sessions, lasting 120 minutes and will be held with eight (8) participants in each session. Participation by all respondents would be voluntary, and respondents will receive $75 for their participation. For recruiting of these participants, however, a total of 120 potential participants (12 per group) will be recruited via telephone screening calls, which are estimated to take 10 minutes per call. Based on experience, it is prudent to recruit up to 12 people per group in order to ensure at least 8 will actually appear at the focus group facility at the appointed time. Thus, the total burden per person actually participating in the group discussions is estimated to be 130 minutes (10 minutes for the screening/recruiting telephone call plus 120 minutes in the focus group discussion session). Additionally, the total burden per person recruited (but not participating in the discussions) is 10 minutes.

Comments Are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Issued in Washington, DC, on: November 29, 2011.

Gregory A. Walter,

Senior Associate Administrator, Policy and Operations.

[FR Doc. 2011–31197 Filed 12–5–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Additional Individual Pursuant to Executive Order 13413

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one individual whose property and interests in property are blocked pursuant to Executive Order 13413 of October 27, 2006, ''Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of Congo.''

DATES: The designation by the Director of OFAC of the individual identified in this notice, pursuant to Executive Order 13413, is effective November 30, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave. NW. (Treasury Annex), Washington, DC 20220, Tel.: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: (202) 622–0077.

Background

On October 27, 2006, the President signed Executive Order 13413 (the ''Order'' or ''E.O. 13413'') pursuant to,

inter alia, the International Emergency Economic Powers Act (50 U.S.C. 1701 *et. seq.*), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c), and section 301 of title 3, United States Code. In the Order, the President found that the situation in the Democratic Republic of the Congo constitutes and unusual and extraordinary threat to the foreign policy of the United States and imposed sanctions to address that threat. The President identified seven individuals in the Annex to the Order as subject to these economic sanctions.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of the persons listed by the President in the Annex to the Order, and those persons determined by the Secretary of the Treasury, after consultation with the Secretary of State, to meet any of the criteria set forth in subparagraphs (a)(ii)(A)–(a)(ii)(G) of Section 1.

On November 30, 2011, the Director of OFAC, after consultation with the Department of State, designated, pursuant to one or more of the criteria set forth in Section 1 of the Order, the individual listed below, whose property and interests in property therefore are blocked pursuant to E.O. 13413.

The listing of the blocked individual appears as follows:

1. SHEKA, Ntabo Ntaberi; DOB 4 Apr 1976; POB Walikale Territory, Democratic Republic of the Congo; nationality Congo, Democratic Republic of the; Commander in Chief, Nduma Defense of Congo, Mayi Mayi Sheka group (individual) [DRCONGO].

Dated: November 30, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–31209 Filed 12–5–11; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

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Part II

Department of Labor

Employee Benefits Security Administration

29 CFR Parts 2520, and 2977

Proposed Revision of the Form M–1; Proposed Revision of Annual Information Return/Reports; Filings Required of Multiple Employer Welfare Arrangements and Certain Other Related Entities; Ex parte Cease and Desist and Summary Seizure Orders—Multiple Employer Welfare Arrangements; Proposed Rules and Notices

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2520

RIN 1210–AB51

Filings Required of Multiple Employer Welfare Arrangements and Certain Other Related Entities

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Proposed rule.

SUMMARY: This document contains a proposed rule under title I of the Employee Retirement Income Security Act (ERISA) that, upon adoption, would implement reporting requirements for multiple employer welfare arrangements (MEWAs) and certain other entities that offer or provide health benefits for employees of two or more employers. The proposal amends existing reporting rules to incorporate new provisions enacted as part of the Patient Protection and Affordable Care Act (Affordable Care Act) to more clearly address the reporting obligations of MEWAs that are ERISA plans. This regulation is designed to impose the minimal amount of burden on legally compliant MEWAs and entities claiming exception (ECEs) while implementing the Secretary's authority to take enforcement action against fraudulent or abusive MEWAs included in the Affordable Care Act and working to protect health benefits for businesses and their employees. This proposed rule implements the new provisions while preserving the filing structure and provisions of the 2003 regulations which direct plan MEWAs and non-plan MEWAs to report annually and file upon registration or origination.

Elsewhere in this edition of the **Federal Register,** the Employee Benefits Security Administration (EBSA) is publishing a Notice of Proposed Rulemaking related to the Secretary's new enforcement authority with respect to MEWAs and Notices of proposed revisions of the Form M–1 and the Form 5500.

DATES: *Written comments on the proposed regulations should be submitted to the Department of Labor on or before* March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Suzanne Bach or Kevin Horahan, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335. This is not a toll-free number.

ADDRESSES: Written comments may be submitted to the address specified below. All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously.

Department of Labor. Comments to the Department of Labor, identified by RIN 1210–AB51, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: E-HPSCAMEWARegistration.EBSA@dol.gov.*
- *Mail or Hand Delivery:* Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N–5653, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, *Attention:* RIN 1210–AB51; MEWA Registration Proposed Regulation.

Comments received by the Department of Labor will be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and made available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

I. Background

The Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191, 110 Stat. 1936) (1996)) (HIPAA) amended ERISA to provide for, among other things, improved portability and continuity of health insurance coverage. HIPAA also added section 101(g) to ERISA, 29 U.S.C. 1021(g), providing the Secretary with the authority to require, by regulation, annual reporting by MEWAs that are not ERISA-covered plans. Section 6606 of the Patient Protection and Affordable Care Act (Affordable Care Act), Pub. L. 111–148, 124 Stat. 119 (2010), amended section 101(g) of ERISA to require that such MEWAs register with the Department prior to operating in a State. Specifically, this section now provides that multiple employer welfare arrangements providing benefits consisting of medical care (within the meaning of section 733(a)(2) of ERISA, 29 U.S.C. 1191b(a)(2)) which are not ERISA-covered group health plans must register with the Secretary prior to operating in a State. The Secretary may also, by regulation, direct such multiple employer welfare arrangements to report, not more frequently than annually, in such form and such manner as the Secretary specifies for the purpose of determining the extent to which the requirements of part 7 of subtitle B of title I of ERISA are being carried out in connection with such benefits.

The term ''multiple employer welfare arrangement'' is defined in section 3(40) of ERISA, 29 U.S.C. 1002(40) in pertinent part, as an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing medical benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements, by a rural electric cooperative, or by a rural telephone cooperative association. For purposes of this definition, two or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group. The term ''control group'' means a group of trades or businesses under common control, and the determination of whether a trade or business is under ''common control'' with another trade or business shall be determined under regulations of the Secretary applying principles similar to the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer under section 4001(b) of ERISA, 29 U.S.C. 1301(b), except that, for purposes of this paragraph, common control shall not be based on an interest of less than 25 percent.[1]

The original MEWA reporting requirement created under HIPAA was enacted in response to a 1992 General

[1] This provision was added to ERISA by section 302(b) of the Multiple Employer Welfare Arrangement Act of 1983, Public Law 97–473, 96 Stat. 2611, 2612 which also amended section 514(b) of ERISA, 29 U.S.C. 1144(a). Section 514(a) of ERISA provides that State laws that relate to employee benefit plans are generally preempted by ERISA. Section 514(b) sets forth several exceptions to the general rule of section 514(a) and subjects employee benefit plans that are MEWAs to various levels of State regulation depending on whether the MEWA is fully insured. Sec. 302(b), Public Law 97–473, 96 Stat. 2611, 2613 (29 U.S.C. 1144(b)(6)).

Accounting Office (GAO) report.[2] In the report, the GAO detailed a history of MEWA fraud and abuse.[3] The GAO recommended that the Department develop a mechanism to help States identify MEWAs. The Secretary exercised the authority under the HIPAA provision by creating the Form M–1 under a 2000 interim final rule and 2003 final rule,[4] which generally require non-plan and ERISA-covered MEWAs (and certain other entities that offer or provide group health benefits to the employees of two or more employers) to file the Form M–1 annually with the Secretary. The final rule generally directed the administrator of a MEWA, whether or not an ERISA-covered group health plan, (and certain other entities that offer or provide health benefits to the employees of two or more employers) to file the Form M–1 with the Secretary. The purpose of this form is to allow the Department to determine whether the requirements of part 7 are being met. Part 7 of ERISA includes statutory amendments made by HIPAA and other statutes for which MEWAs must annually report compliance. These include, but are not limited to, the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148, 124 Stat. 119), and the Health Care and Education Reconciliation Act (Pub. L. 111–152, 124 Stat. 1029) (these are collectively known as the ''Affordable Care Act''), the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Div. C, title V, Subtitle B of Pub. L. 110–343, 122 Stat. 3881), and the Genetic Information Nondiscrimination Act of 2008 (Pub. L. 110–233, 122 Stat. 881).

Despite the reporting rules, many of the MEWA abuses discussed in the GAO report persist today. MEWAs frequently are marketed by unlicensed entities that avoid State insurance reserve, contribution, and consumer protection requirements. By avoiding these requirements, such entities often are able to market insurance coverage at rates substantially lower than licensed insurers, making them particularly attractive to some small employers that find it difficult to obtain affordable health insurance for their employees. Unfortunately, due to insufficient funding and inadequate reserves, and in some situations, excessive administrative fees and fraud, some MEWAs have become insolvent and unable to pay medical benefit claims. Therefore, affected employees and their dependents have become financially responsible for paying medical claims they presumed were covered by insurance after paying health insurance premiums to MEWAs that become insolvent. The unfortunate reality is that currently, the Department often does not find out about insolvent or fraudulent MEWAs until significant harm has occurred to employers and participants. Furthermore, while the Department—often working with State insurance departments—has had some success with both civil and criminal cases against MEWA operators, the monetary judgments are often uncollectible leaving the employers and/or individual participants without coverage for claims that are sometimes very large. This proposal implements the statutory requirements in a way that limits the burden on legitimate MEWAs but gives the Secretary, employers, and the participants and beneficiaries of the plans those employers sponsor additional information about these entities and a stronger enforcement scheme. Having this information will aid the enforcement and prevention of fraudulent and insolvent MEWAs.[5]

Pursuant to the Affordable Care Act's change to section 101(g) of ERISA, this proposed rule would amend the 2003 final rule, as well as the rules related to annual reports required of MEWAs that are group health plans, and solicit comments regarding the restructured reporting requirements. Specifically, the Affordable Care Act amended section 101(g) of ERISA to require MEWAs that provide benefits consisting of medical care (within the meaning of section 733(a)(2) of ERISA) which are not group health plans to register with the Secretary prior to their operating in a State, in addition to reporting annually regarding their compliance with part 7 of ERISA including the Public Health Service Act (PHS Act) market reforms incorporated by reference in section 715 of ERISA. These proposed regulations implement the 101(g) MEWA registration provision which directs MEWAs to report compliance with the part 7 rules including the PHS Act sections 2701 through 2728. By requiring MEWAs to register with the Department before operating in a State by filing the Form M–1 to provide additional information, this proposed rule would enhance the State and Federal governments' joint mission to prevent and take enforcement action against fraudulent and abusive MEWAs and limit the losses suffered by American workers, their families, and businesses in instances when abusive MEWAs become insolvent and fail to reimburse medical claims.

The Affordable Care Act reorganizes, amends, and adds to the provisions in part A of title XXVII of the PHS Act, 42 U.S.C. 300gg–1 *et seq.,* relating to group health plans and health insurance issuers in the group and individual markets. The term ''group health plan'' is defined in title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code and includes both insured and self-insured group health plans. The Affordable Care Act adds section 715(a)(1) to ERISA, 29 U.S.C. 1185d(a)(1), and section 9815(a)(1) to the Internal Revenue Code (the Code), 26 U.S.C. 9815(a)(1), to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and make them applicable to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans. The PHS Act sections incorporated by this reference are sections 2701 through 2728. PHS Act sections 2701 through 2719A are substantially new, though they incorporate some provisions of prior law. PHS Act sections 2722 through 2728 are sections of prior law renumbered, with some, mostly minor, changes. Section 1251 of the Affordable Care Act, as modified by section 10103 of the Affordable Care Act and section 2301 of the Reconciliation Act, 42 U.S.C. 18011, specifies that certain plans or coverage existing as of the date of enactment (*i.e.,* grandfathered health plans) are only subject to certain provisions.

[2] *See, Employee Benefits: States Need Labor's Help Regulating Multiple Employer Welfare Arrangements,* March 1992, GAO/HRD–92–40.

[3] For example, the 1992 GAO report indicated that between 1988 and 1991, MEWAs left at least 398,000 participants and beneficiaries with over $123 million in unpaid claims. Meanwhile more than 600 MEWAs failed to comply with State insurance laws. *See* supra note 2.

[4] 65 FR 715 (02/11/2000) and 68 FR 17494 (04/09/2003). The Form M–1 has been updated and is reissued each year in December by the Department and modified periodically to address changes to the statutory provisions in part 7 of ERISA.

[5] *See, United States* v. *Edwards,* plea agreement, 1:05CR 265 (M.D.N.C. 2006) (In 2005, a MEWA operator, whom the Department showed collected over 36 million dollars in healthcare insurance premiums and failed to obtain health insurance coverage for its employer clients which resulted in thousands of uncovered employees and approximately $8 million in unpaid claims) *see also Solis* v. *W.I.N. Ass'n, L.L.C., et. al.,* slip op. 4:11–cv–00616 (S.D. Tex. 2011) (the Department investigated a MEWA which failed to make payments on health care claims, charged excessive fees, engaged in self-dealing, and failed to disclose fees to the client employers in the plan. The Department obtained a Consent Judgment and Order against the MEWA operators for leaving hundreds of participants without coverage and permanently enjoining them from acting as fiduciaries in the future. Also, the court authorized the Secretary to bring a collection action for the plan losses against one of the MEWA operators relative to his ability to restore those plan losses.)

II. Overview of Proposal

A. Proposed Amendment to 29 CFR § 2520.101–2 Under ERISA Section 101(g)

These proposed rules would amend existing filing rules for MEWAs and ECEs in order to implement changes made to ERISA section 101(g) in the Affordable Care Act. Like the 2003 regulations, ECEs and MEWAs are treated largely the same for filing purposes. The main distinction in filing requirements is that ECEs are only subject to annual M–1 filings for the first three years following an origination event. We preserved this special rule included in the 2003 regulations for ECEs as well as e the special filing events applicable to MEWAs. In keeping with this structure, we propose to extend the new filing events prescribed by the Affordable Care Act provision to MEWAs and ECEs alike.

Paragraph (a) of the proposal sets forth section 101(g) of ERISA that directs MEWAs that provide benefits consisting of medical care (within the meaning of section 733(a)(2) of ERISA) to register with the Secretary prior to operating in a State, and to report annually regarding compliance with part 7 of ERISA. While the language in section 101(g) of ERISA only applies to MEWAs that are not group health plans (''non-plan MEWAs''), the proposal preserves the structure promulgated as part of the final 2003 regulations, which required both MEWAs that are group health plans (''plan MEWAs'') and non-plan MEWAs to file the Form M–1, based on authority found in sections 505 and 734 of ERISA. 29 U.S.C. 1135 and 1191c. Section 505 of ERISA states that the Secretary may prescribe such regulations as she finds necessary or appropriate to carry out the provisions of Title I of ERISA. Section 734 of ERISA allows the Secretary to promulgate such regulations as may be necessary or appropriate to carry out the provisions of part 7 of ERISA.

Paragraph (b) defines the terms used in the proposal, with some additions and modifications from the 2003 final rule. Amended paragraph (c) sets forth the requirement that, with certain exceptions, all MEWAs and certain entities that claim not to be a MEWA solely due to the exception in section 3(40)(A)(i) of ERISA (referred to as Entities Claiming Exception or ECEs) file reports with the Department.

Paragraph (d) describes how MEWAs and ECEs will comply with the proposed rule by filing the Form M–1, and the conditions under which the Secretary may reject a filing.

Paragraph (e) sets forth the times when MEWAs and ECEs will file the Form M–1. Paragraph (f) directs that the Form M–1 be filed electronically. In addition to minimizing errors and providing faster access to reported data, electronic filing will also be less burdensome on the filer. Once information about the MEWA or ECE is entered into the system, filers will have the option of allowing the system to copy information provided on a past filing into a new filing. This transfer of past information provides filers an easy way to update or verify information. The information provided through Form M–1 filings will then be accessible by the public and other interested parties such as State regulators.

Paragraph (g) explains the civil penalties that may result from a failure to comply with the proposed rule. Civil penalties for failure to file a report required by ERISA section 101(g) or § 2520.101–2 have been applicable for non-plan MEWAs under ERISA section 502(c)(5) since May 1, 2000. Under these proposed regulations, the Department has extended similar civil penalties for a failure to file an annual report by plan MEWAs under ERISA section 502(c)(2).

Also, new criminal penalties were added by the Affordable Care Act under ERISA section 519 for any person who knowingly submits false statements or false representations of fact in filing reports required under the proposal. See paragraph 2 below for these changes that are being proposed to §§ 2520.103–1, 104–20, and 104–41 to further enhance the Department's ability to enforce these provisions with regard to MEWAs that are group health plans.

1. Basis and Scope

These proposed regulations set forth rules implementing section 101(g) of ERISA, as amended by section 6606 of the Affordable Care Act, which directs MEWAs that are not group health plans to register with the Secretary prior to operating in a State. These proposed regulations also update the existing requirement in section 101(g) of ERISA that MEWAs, which are group health plans, and certain other entities claiming an exception, file the Form M–1 upon the occurrence of specified events as well as annually.

2. Definitions

a. Operating. Paragraph (b)(8) of the proposed rule adds a definition of ''operating,'' and defines it as any activity including but not limited to marketing, soliciting, providing, or offering to provide benefits consisting of medical care. This definition, which includes marketing and administrative activities, governs registration and origination filing events for the Form M–1 filing for MEWAs and ECEs.

b. Origination. In order to implement the Affordable Care Act amendment to ERISA section 101(g), the Department amended the 2003 filing rules. The rule is meant to apply equally to MEWAs and ECEs. The 2003 rules treated MEWAs and ECEs equally for purposes of special filings by having a combined rule for both of these entities to determine if special filings were necessary which relied on the origination definition. The Department concluded it to be more responsive to the change in the section 101(g) statutory language to now refer to special filings by MEWAs as a registration. The effect of this is that MEWAs and ECEs are no longer collectively referencing the term origination, but now have separate origination and registration terms—albeit subject to the same special filing events.

The proposed rule first indicates events which require a special filing in the definition of origination. A special filing is required when (in the case of an ECE):

''(i) The ECE first begins operating (within the meaning of (b)(8) of this section) with regard to the employees of two or more employers (including one or more self-employed individuals); (ii) The ECE, while required to report pursuant to paragraph (c)(1)(ii) of this section, begins operating in any additional State; (iii) The ECE begins operating following a merger with another ECE (unless all of the ECEs that participate in the merger previously were last originated at least three years prior to the merger); (iv) The number of employees receiving coverage for medical care under the ECE is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless the increase is due to a merger with another ECE under which all ECEs that participate in the merger were last originated at least three years prior to the merger); or (v) The ECE experiences a material change in the information reported on the most recently filed Form M–1 as defined by the Form M–1 instructions. Event (i) Was modified to comply with the new statutory requirement that filings be made prior to operating in a State. Events (ii) and (v) are new special filing events which were added to instruct entities to re-file with the Department so that it has the most up-to-date information.

c. Reporting. The proposed rule adds a definition of ''reporting.'' ''Reporting''

or ''to report'' means to file the Form M–1 as required pursuant to section 101(g) of ERISA; § 2520.101–2; or the instructions to the Form M–1. The term ''reporting'' is used in order to correspond to the terminology of § 2560.502c–5 which uses the generic term ''report'' to describe the Form M–1 filing process, including the annual report, registration, and origination filings.

d. State. The proposed rule adds a definition of ''State'' and defines the term by reference to § 2590.701–2. This definition was added because MEWAs must register, and ECEs must make an origination filing, prior to operating in a State.

3. Persons Required To Report

Paragraph (c) of the proposed rule sets forth the persons required to report under the proposed rule. As under the 2003 final rule, the proposed rule directs the administrator of a MEWA that provides benefits consisting of medical care, whether or not the MEWA is a group health plan, to file the Form M–1. It also requires filing by the administrator of an ECE that offers or provides coverage consisting of medical care during the first three years after the ECE is originated.

4. Information To Be Reported

Paragraph (d) of the proposed rule clarifies that the reporting requirements of § 2520.101–2 will only be satisfied by filing a completed copy of the Form M–1, including any additional statements pursuant to the Form M–1 Instructions.

5. Reporting Requirements and Timing

Paragraph (e) of the proposed rule retains from the 2003 final rule's standards that both MEWAs and ECEs must file the Form M–1 annually, with ECEs only having to file annually for the first 3 years following an origination.

As mentioned previously, MEWAs and ECEs are also subject to special filings in certain circumstances. Special filing events were included in the 2003 regulation, but have been relabeled and expanded to implement statutory language under the proposed rules. To clarify the new section 101(g) registration standard for MEWAs and make parallel changes to the origination events for ECEs, the proposed rule contains five registration and origination events for MEWAs and ECEs, only one of which is new (a second filing event existed in the 2003 rules but has been modified).

The 2003 regulation generally requires a special filing when a MEWA or ECE (1) Begins operating or providing coverage for medical care to employees of two or more employers; (2) begins offering or providing coverage for medical care to employees of two or more employers after a merger with another MEWA or ECE; or (3) increases the number of employees receiving medical care under the MEWA or ECE by at least 50 percent over the number of employees on the last day of the previous calendar year. These filing events are generally preserved in the proposed rules. However, the first event was modified to conform to the statutory language under ERISA section 101(g) directing MEWAs to register with the Secretary by filing a Form M–1 prior to operating in any State. Additionally, the proposed rule directs that a filing be made in the event a MEWA or ECE expands its operations into additional States or experiences a material change as defined in the Form M–1 instructions. This filing event was added to direct an entity to update its Form M–1 filing in the event that it experiences changes in its financial or custodial information. In the event an entity experiences a material change, the online filing system will allow them to log on to the online filing system, give them the option of importing data from its most recent completed filing, and make the necessary changes. The Department is particularly interested in receiving comments on this requirement. Consistent with the 2003 regulations, while this rule directs MEWAs to submit filings for the duration of their existence, ECEs are only required to file during the three year period following an origination event that is not a material change. ECEs that experience a material change must file during this period but are not required to file beyond that three year period.

The proposed rule also applies new timing standards on MEWAs and ECEs for these special filings. Under the 2003 regulations, MEWAs and ECEs file the Form M–1 within 90 days of the occurrence of a special filing event. The proposed rule directs entities to file 30 days prior to or within 30 days of the event, depending on the type. The timing requirements implement section 6606 of the Affordable Care Act which says that the filling must happen ''prior to operating in a State'' and will also facilitate the Department's timely receipt of information related to the other special filing events described above.

A provision is included in the proposed rule to discourage ''blanket filings,'' *i.e.,* registration or origination filings that cover multiple States, unless the filer expects to begin operating in all the named States in the near future. Blanket filings that list States where the filer has no immediate intent to operate could frustrate the law's goal of gathering and maintaining timely and accurate information on MEWAs. Under this provision, a filing is considered lapsed with respect to a State if benefits consisting of medical care are not offered or provided in the State (or States) during the calendar year immediately following the filing. A new filing would be submitted if the filer intends to continue to operate in that State.

To minimize the burden of compliance, we propose to permit MEWAs and ECEs to make a single filing to satisfy multiple filing events so long as the filing is timely for each filing.

As in the 2003 rule, filing extensions are available in this proposal. Any filing deadline that is a Saturday, Sunday, or federal holiday is automatically extended to the next business day. A more substantial extension is available for MEWAs and ECEs that request such an extension following the procedure outlined in the Instructions to the Form M–1.

6. Electronic Filing

Paragraph (f) of the proposed rule eliminates the option to file a paper copy of the completed Form M–1. As is now the case for all Form 5500 Annual Report filings, and consistent with the goals of E-government, as recognized by the Government Paperwork Elimination Act[6] and the E-Government Act of 2002,[7] we propose that the Form M–1 be filed electronically. Electronic filing of benefit plan information, among other program strategies, would facilitate EBSA's achievement of its Strategic Goal to ''assure the security of the retirement, health and other workplace related benefits of American workers and their families.'' EBSA's strategic goal directly supports the Secretary of Labor's Strategic Goal to ''secure health benefits.''[8] A cornerstone of our enforcement program is the collection, analysis, and disclosure of benefit plan information. Electronic filing will minimize errors and provide faster access to reported data, assisting EBSA in its enforcement, oversight, and disclosure roles and ultimately enhancing the security of plan benefits. Electronic filing of the M–1 would also reduce the paperwork burden and costs

[6] Title XVII, Public Law 105–277, 112 Stat. 2681 (Oct. 21, 1998).

[7] Public Law 107–347, 116 Stat. 2899 (Dec. 17, 2002).

[8] For further information on the Department of Labor's Strategic Plan and EBSA's relationship to it, see *http://www.dol.gov/_sec/stratplan/.*

related to printing and mailing forms and, with the use of secure account access, allow updating of previously reported information to facilitate simplified future reporting. Finally, consistent with current practice, the information would be available for reference by participants, beneficiaries, participating employers, and other interested parties such as State regulators.

7. Penalties

a. Civil penalties and procedures. The proposed rule retains the references to section 502(c)(5) of ERISA, 29 U.S.C. 1132(c)(5) and § 2560.502c–5 regarding civil penalties and procedures.

b. Criminal penalties and procedures. The Affordable Care Act section 6601 added ERISA section 519 which prohibits a person from making false statements or representations of fact in connection with a MEWAs financial condition, the benefits it provides, or its regulatory status as it relates to marketing or sale of a MEWA. The Affordable Care Act also amended ERISA section 501(b) to impose criminal penalties on any person who is convicted of violating the prohibition in ERISA section 519. The proposed rule adds a cross-reference to section 501(b) and 519 of ERISA, 29 U.S.C. 1131 and 1149 for the purpose of implementing these new rules as they relate to filing a Form M–1 prior to operating in a State or other registration and origination filings.

c. Cease and desist and summary seizure and procedures. Section 6605 of the Affordable Care Act adds section 521 to ERISA, which authorizes the Secretary to issue cease and desist orders, without prior notice or a hearing, when it appears to the Secretary that the alleged conduct of a MEWA is ''fraudulent, or creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.'' This section also allows the Secretary to issue an order to seize the assets of a MEWA that the Secretary determines to be in a financially hazardous condition. The regulation providing guidance on the cease and desist orders and summary seizure rules published elsewhere in this **Federal Register** also include regulatory guidance on the procedural rules for this process. A cease and desist order containing a prohibition against transacting business with any MEWA or plan would prevent the MEWA or a person from avoiding the cease and desist order by shutting the MEWA down and re-establishing it in a new location or under a new identity.

As such, the proposed rule adds a cross-reference to section 521 of ERISA and § 2560.521 regarding the Secretary's authority to issue cease and desist and summary seizure orders.

B. Proposed Amendment to Regulations Under ERISA Section 104(a)(1), 29 U.S.C. 1024(a)(1)

Additional changes are being proposed to further enhance the Department's ability to enforce § 2520.101–2. The primary change is the addition of a new paragraph (f) to § 2520.103–1 regarding the content of the annual report. As part of this proposal, existing paragraph (f) of § 2520.103–1 would be redesignated paragraph (g), but would be otherwise unchanged. New § 2520.103–1(f) would apply to all MEWAs that are ERISA-covered plans and that are subject to the requirements of § 2520.101–2. This change provides that all such MEWAs must prove compliance with § 2520.101–2 (filing the Form M–1) in order to satisfy the annual reporting requirements of § 2520.103–1. Pursuant to ERISA section 502(c)(2), 29 U.S.C. 1132(c)(2), a plan administrator who fails to file a Form 5500 Annual Return/Report with a proof of compliance with § 2520.101–2 may be subject to a civil penalty of up to $1,100 a day (or higher amount if adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended) for each day a plan administrator fails or refuses to file a complete report. Although ERISA sections 505 and 734 give the Secretary the authority to require MEWAs that are group health plans to comply with the requirements of § 2520.101–2, there is, however, no corresponding ERISA civil penalty for a failure to comply with those requirements. These proposed changes to the Form 5500 annual reporting requirements for MEWAs that are group health plans will enhance the Department's ability to enforce the Form M–1 requirements and ensure that MEWAs are subject to the same rules under the law.

Conforming changes adding references to new § 2520.103–1(f) are proposed for §§ 2520.103–1(a)(2), (b), (c) and § 2520.104–41. A corresponding change is also proposed for § 2520.104–20 to eliminate the limited filing exemption for insured or unfunded, fully insured, or combination unfunded/fully insured plan MEWAs with fewer than 100 participants. It is important to note that while the addition of § 2520.103–1(f) and the change to § 2520.104–20 would eliminate the annual reporting exemption for such plan MEWAs with fewer than 100 participants, these plan MEWAs are subject to the existing (and proposed) standards of § 2520.101–2. Moreover, the impact of satisfying the annual reporting would be substantially less burdensome because in addition to being eligible for the simplified annual reporting for small welfare plans, these plan MEWAs would be exempt under § 2520.104–44 from completing Schedule I (Financial Information).[9] Thus, these changes give the Secretary an important enforcement tool while imposing minimal burden on plan MEWAs. Because it is not clear that there are any unfunded/fully insured plan MEWAs with fewer than 100 participants, the Department does not believe this is overly burdensome but rather ensures that all MEWAs are treated the same. Nonetheless, the Department is particularly interested in receiving comments regarding any undue burden this elimination may create.

III. Regulatory Impact Analysis

A. Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a ''significant regulatory action'' is an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering

[9] These plan MEWAs would only need to file Form 5500 annual return/report and, if applicable, Schedule A (Insurance Information) and Schedule G, Part III (nonexempt transactions). They would not be eligible to file the Form 5500–SF (Short Form 5500 Annual Return/Report of Small Employee Benefit Plan) under § 2520.104–41 and § 2520.103–1(c)(2)(ii). The Form 5500–SF does not include Schedule A insurance information and the Department believes that plan MEWAs subject to this proposal that claim to provide insured benefits should be required to complete the Schedule A so that enforcement officials and the public have information about the insurance policy and insurance company through which the MEWA is providing insurance coverage. In addition, an unrelated technical correction to § 2520.104–41 is being included in this rulemaking to add an express reference to the Form 5500–SF.

the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this action is not economically significant within the meaning of section 3(f)(1) of the Executive Order but is significant under section 3(f)(4) of the Executive Order, because it raises novel legal or policy issues arising from the President's priorities.

The Department estimates that the total cost of this proposed rule would be approximately $124,300 in the first year, or an average of approximately $272 for each of the 457 entities expected to file the Form M–1. These costs are all associated with the information collection request contained in this proposal and, therefore, are discussed in the Paperwork Reduction Act Section, below.

1. Summary and Need for Regulatory Action

As discussed earlier in this preamble, section 6606 of the Affordable Care Act amended section 101(g) of ERISA to require the Secretary of Labor to promulgate regulations requiring MEWAs providing medical care benefits (within the meaning of section 733(a)(2) of ERISA) that are not ERISA-covered group health plans (non-plan MEWAs) to register with the Secretary before operating in a State.

Before this proposed amendment, ERISA section 101(g) permitted the Secretary to establish an annual reporting requirement on non-plan MEWAs that provide medical care benefits to determine whether such MEWAs comply with the requirements of Part 7 of ERISA. The Secretary exercised this authority by creating the Form M–1 under a 2000 interim final rule and 2003 final rule.[10]

The original MEWA reporting requirement was enacted by Congress as part of the Health Insurance Portability and Accountability Act of 1996 in response to a 1992 General Accounting Office (GAO) recommendation contained in a GAO report.[11] As discussed above, the GAO recommended that the Department develop a mechanism to help States identify fraudulent and abusive MEWAs. The HIPAA provision led to the Department's creation of the Form M–1, which generally requires non-plan and ERISA-covered MEWAs (and certain other entities that offer or provide group health benefits to the employees of two or more employers) to file Form M–1 annually with the Secretary.

In addition to amending the Department's MEWA reporting regulation to require MEWAs to register with the Secretary before operating in a State, these proposed rules also direct Form M–1 filers to provide additional information regarding the MEWA or ECE and apply new timing standards for the special filings that are made when a MEWA's or ECE's status changes. These amendments will aid the Department in its oversight of MEWAs consistent with its expanded authority provided by the Affordable Care Act[12] and allow it to provide critical information to State insurance departments that coordinate their investigations and enforcement actions against fraudulent and abusive MEWAs with the Department.

Over the last several years, the Department has observed a downward trend in the number of MEWAs that file the Form M–1, raising concerns that some existing MEWAs are not filing the form. Under the 2003 regulations, the Department has the ability to impose penalties on ERISA-covered MEWAs that fail to file the M–1 only in limited circumstances and if a determination regarding plan status were made by the Secretary. To address this issue and encourage compliance with the M–1 filing requirement, the Department also is proposing as part of this regulatory action to amend the Form 5500 annual reporting standards by requiring all ERISA-covered MEWAs, including MEWAs with less than 100 participants,[13] to file Form 5500 and provide on the form proof of a timely filed Form M–1 in order for the plan administrator to avoid the Department's imposition of ERISA section 502(c)(2) penalties.[14]

These proposed amendments to the Department's MEWA reporting standards would provide a cost effective means to implement the expanded MEWA reporting as enacted in the Affordable Care Act. As stated above, the Department estimates that the average cost for each entity that the Department expects to file the revised form would average approximately $272.

2. Benefits of Proposed Rule

As discussed earlier in this preamble, section 6606 of the Affordable Care Act amended section 101(g) of ERISA directing the Secretary of Labor to promulgate regulations requiring MEWAs providing medical care benefits (within the meaning of section 733(a)(2) of ERISA) that are not ERISA-covered group health plans (non-plan MEWAs) to register with the Secretary before operating in a State. By implementing this statutory amendment, the Department would receive prior notice of a MEWA's intention to commence operations in a State. Such notification would help the Department and State insurance commissioners to ensure that MEWAs are being lawfully operated and that sufficient insurance has been purchased or adequate reserves established to pay benefit claims before the MEWAs begin operating[15] in a State. The proposed rule would improve MEWA compliance and deter fraudulent and abusive MEWA practices, thereby protecting and securing the benefits of participants and beneficiaries by ensuring that MEWA assets are preserved and benefits timely paid. These potential benefits have not been

[10] 65 FR 715 (02/11/2000) and 68 Fed. Reg. 17494 (04/09/2003). The Form M–1 has been updated and is reissued each year in December by the Department and modified periodically to address changes to the statutory provisions in part 7 of ERISA.

[11] *See, Employee Benefits: States Need Labor's Help Regulating Multiple Employer Welfare Arrangements,* March 1992, GAO/HRD–92–40.

[12] As part of the Affordable Care Act, Congress also enacted ERISA section 521, which authorized the Secretary to issue cease and desist orders, without prior notice or a hearing, when it appears to the Secretary that a MEWA's alleged conduct is fraudulent, creates an immediate danger to the public safety or welfare, or causes or can reasonably be expected to cause significant, imminent, and irreparable public injury. Section 521 also authorizes the Secretary to issue a summary order to seize the assets of a MEWA that the Secretary determines to be in financially hazardous condition. The Department also is proposing rules for these provisions, which are published elsewhere in today's **Federal Register**.

[13] The proposal would remove the small welfare plan filing exemption under § 2520.104–20. Currently, under § 2520.104–20, small insured or unfunded welfare benefit plans, including small plan MEWAs, are exempt from certain reporting and disclosure provisions, including the requirement to file an annual Form 5500. By removing this exemption, all plan MEWAs will now be required to file a Form 5500 with a proof of filing a timely Form M–1 filing in order to satisfy the annual reporting requirements under ERISA Sections 103 and 104. However, small insured and unfunded plan MEWAs would be exempt under § 2520.104–44 from completing Schedule I (Financial Information). As with other small welfare benefit plans subject to the annual reporting requirements, small plan MEWAs would be required to complete Schedule A (Insurance Information), if applicable.

[14] If a MEWA fails to prove that it filed the M–1 on its Form 5500, it could be subject to a civil penalty of up to $1,000 a day for each day the plan administrator fails or refuses to file a complete report.

[15] Section 2520.101–2(b)(8) of the proposed rule provides that the term ''operating'' means any activity including but not limited to marketing, soliciting, providing, or offering to provide medical care benefits.

quantified, but the Department expects that they will more than justify their costs.

3. Costs of Proposed Rule

The costs of the proposed rule are associated with the amendments to the Form M–1 and Form 5500 reporting requirements and are therefore discussed in the Paperwork Reduction Act section, below.

B. Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Department is soliciting comments concerning the proposed information collection request (ICR) included in this proposed rule. A copy of the ICR may be obtained by contacting the individual identified below in this notice. The Department has submitted a copy of the proposed information collection to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; *Attention:* Desk Officer for the Employee Benefits Security Administration. Although comments may be submitted through February 6, 2012. Address requests for copies of the ICR to G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N 5647, Washington, DC 20210. Telephone (202) 219–8410; *Fax:* (202) 219–4745. These are not toll free numbers.

Between 2006 and 2009, an average of 457 entities filed Form M–1 with the Department (a high of 508 in 2006 and a low of 397 in 2009). Of the total filings, on average, 197 were submitted via mail and 260 were submitted electronically through the Form M–1 electronic filing system provided by the Department via the Internet. The fraction filing electronic returns has been increasing and reached nearly 65 percent in 2009. This proposed rule will require all filings to be submitted electronically.

As discussed above and pursuant to section 6606, the proposed rule would amend the information required to be disclosed on the Form M–1 by adding new data elements. Therefore, the Department assumes that all MEWA plan administrators that file the Form M–1 in-house (an estimated 10 percent of filers) would spend two hours familiarizing themselves with the changes to the form that would be made by the proposed regulation. This would result in a total hour burden of 92 hours (46 MEWAs * 2 hours). The Department estimates that Part I of the Form (the identifying information) would require five minutes to complete. The time required to complete Part II would vary based on the number of States in which the entity provides coverage, and the Department estimates that this would require 60 minutes for single-State filers and 120 minutes for multi-State filers. The Department expects the time required to complete Part III would be 15 minutes for fully-insured filers and 30 minutes for self-insured filers. Table 1 below summarizes the estimates of time required to complete each part of the form. Based on the foregoing, the Department estimates that the total hour burden for MEWAs to file the Form M–1 using in-house resources would be 178 hours in the first year with an equivalent cost of $16,200 assuming all work will be performed by an employee benefits professional at $91.21 per hour.[16] The cost to submit electronic filings would be negligible.

The Department estimates that the annual hour burden for Form M–1 filings prepared in-house in subsequent years would be approximately 94 hours as summarized in Table 2.[17] The Department estimate is based on the assumption that approximately 41 new MEWAs[18] will file the Form M–1 each year, and thus, approximately four new MEWAs will prepare Form M–1 in-house. The Department estimates that it would take two hours for these administrators, resulting in an hour burden of eight hours. The Department estimates that MEWAs preparing the form in-house would spend four hours completing part I, 68 hours completing Part II, and 15 hours completing part III. The equivalent cost of this annual hour burden is estimated to be $8,600, assuming a $91.21 hourly labor rate for an employee benefits professional.

TABLE 1—TIME TO FILL OUT FORM

[Minutes]

	Fully-insured		Self-insured	
	One State	Multi States	One State	Multi States
New Filing	120	120	120	120
Part I	5	5	5	5
Part II	60	120	60	120

[16] EBSA estimates of labor rates include wages, other benefits, and overhead based on the National Occupational Employment Survey (May 2009, Bureau of Labor Statistics) and the Employment Cost Index (October 2010, Bureau of Labor Statistics).

[17] These are rounded values. The totals may differ slightly as a result.

[18] There were 46 MEWA originations in 2006, 52 originations in 2007 and 26 originations in 2008. This averages to 41 originations per year.

TABLE 1—TIME TO FILL OUT FORM—Continued

[Minutes]

	Fully-insured		Self-insured	
	One State	Multi States	One State	Multi States
Part III	15	15	30	30

TABLE 2—HOUR BURDEN TO PREPARE FORM M–1, IN-HOUSE PREPARATION

	Fully-insured		Self-insured		Total
	One State	Multi States	One State	Multi States	
Number of MEWAs	16	17	8	5	46
Review: Year 1	32	34	16	10	92
New Filing: Subsequent Years	3	3	1	1	8
Part I	1	1	1	0.5	4
Part II	16	33	8	11	68
Part III	4	4	4	3	15
Total Time: Year 1	53	73a	29	24	178
Total Time: Subsequent Years	24	41	14	15	94

1. Cost Burden

The Department assumes that 90 percent of the 457 MEWAs (411 MEWAs) that will file the Form M–1 will use third-party service providers to complete and submit the Form M–1.[19] Because the Department is proposing to add additional data elements to the form, the Department assumes that in the year of implementation, all service providers would spend additional time familiarizing themselves with the changes. The Department estimates that MEWAs that use third party service providers would incur the cost of one hour for service providers to review the new rule as service providers likely will provide this service for multiple MEWAs and therefore spread this burden across multiple MEWAs. This results in a one-time cost burden of $37,500 (411 MEWAs * 1 hour * $91.21).

The total estimated cost burden for preparing the form is arrived at by multiplying the number of filers (found in Table 3) by the amount of time required to prepare the documents (Table 1) and multiplying this result by the hourly cost of an employee benefits professional ($91.21 dollars an hour). Based on the foregoing, the total cost burden for MEWAs that use purchased third-party resources to file the M–1 form is $108,100 hours in the first year and $70,700 in later years. Table 3 summarizes the estimates of the cost burden.

TABLE 3—COST BURDEN TO PREPARE FORM M–1, THIRD-PARTY PREPARATION

	Fully-insured		Self-insured		Total
	One State	Multi States	One State	Multi States	
Number of MEWAs	140	149	73	49	411
Review: Year 1	$12,800	$13,600	$6,700	$4,500	$37,500
New Filing: Subsequent Years	$0	$0	$0	$0	$0
Part I	$1,100	$1,100	$600	$400	$3,100
Part II	$12,800	$27,100	$6,600	$8,900	$55,400
Part III	$3,200	$3,400	$3,300	$2,200	$12,100
Total Time: Year 1	$29,800	$45,200	$17,200	$15,900	$108,100
Total Time: Subsequent Years	$17,100	$31,600	$10,500	$11,500	$70,700

Note: The displayed numbers are rounded to the nearest hundred and therefore may not add up to the totals.

The proposed regulations direct an ERISA-covered plan MEWA that is subject to Form M–1 requirements to include proof of filing the Form M–1 as part of the Form 5500. Accordingly, the Department is proposing to add a new Part III to the Form 5500, which would ask for information regarding whether the employee welfare benefit plan is a MEWA subject to the Form M–1 requirements, and if so, whether the plan is currently in compliance with the Form M–1 requirements under § 2520.101–2. Plan administrators that indicate the plan is a MEWA subject to the Form M–1 requirements also would be required to enter the receipt confirmation code for the most recent Form M–1 filed with the Department. Failure to answer the Form M–1 compliance questions will result in rejection of the Form 5500 Annual Return/Report as incomplete and civil penalties may be assessed pursuant to ERISA section 502(c)(2). The Department believes that the burden associated with this revision would be

[19] This assumption is made in connection with EBSA's principal reporting form, the Form 5500, and was validated through a filer survey.

de minimis, because plan administrators would know whether the plan MEWA is subject to and in compliance with the Form M–1 requirements and they would have the receipt confirmation code for the most recent Form M–1 filing readily available.

The proposed regulations also would remove the exemption from filing the Form 5500 for ERISA-covered MEWAs that are unfunded or insured and have fewer than 100 participants. Following the methodology used to calculate the burden in the Form 5500 regulations, the Department estimates that small ERISA-covered MEWAs filing a Form 5500 and completing Schedule A and Part III of Schedule G would incur an annual cost of $450 to engage a third-party service provider to prepare the form and schedules for submission. The Department does not have sufficient data to determine the number of small, ERISA-covered MEWAs that would be required to file the Form 5500 under the proposed rule, but believes that the number of such MEWAs would be small, because 90 percent of MEWAs that file Form M–1 with the Department cover more than 100 participants.

2. Cost to the Government

The Department estimates that the cost to the Federal government to process Form M–1s is approximately $7,200. This includes the cost to process online submissions and maintain the processing system, and was estimated by the offices within EBSA that are responsible for overseeing these activities.

TABLE 4—*Cost of Federal Government of Form M–1*

Processing of M1 Forms:	
Online	$2,200
Maintenance of System	5,000
Total	7,200

These paperwork burden estimates are summarized as follows:

Type of Review: Revised collection.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: MEWA Form M–1.

OMB Control Number: 1210–0116.

Affected Public: Business or other for-profit; not-for-profit institutions.

Estimated Number of Respondents: 457 (first year); 457 (three-year average).

Estimated Number of Responses: 457 (first year); 457 (three-year average).

Frequency of Response: Annually.

Estimated Annual Burden Hours: 178 (first year); 122 (three-year average).

Estimated Annual Burden Cost: $108,100 (first year); $83,200 (three-year average).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations and governmental jurisdictions.

The Department does not have data regarding the total number of MEWAs that currently exist. The best information the Department has to estimate the number of MEWAs is based on filing of the Form M–1, which is an annual report that MEWAs and certain collectively bargained arrangements file with the Department. Nearly 400 MEWAs filed the Form M–1 with the Department in 2009, the latest year for which data is available.

The Small Business Administration uses a size standard of less than $7 million in average annual receipts as the cut off for small business in the finance and insurance sector.[20] While the Department does not collect revenue information on the Form M–1, it does collect data regarding the number of participants covered by MEWAs that file Form M–1 and can use participant data and average premium data to determine the number of MEWAs that are small entities, because their revenues do not exceed the $7 million threshold. For 2009, the average single coverage annual premium was $4,717 and the average annual family coverage premium was $12,696.[21] Combining these premium estimates with estimates of the ratio of policies to the covered population from the Current Population Survey at employers with less than 500 workers (0.309 for single coverage and 0.217 for family coverage), the Department estimates that 60 percent of MEWAs (243 MEWAs) are small entities.

While this number is a relatively large fraction of all MEWAs, it is about 7 percent when expressed as a fraction of all participants covered by MEWAs. In addition, the Department notes that the reporting burden that would be imposed on all MEWAs by the proposed rule is estimated as an average cost of $272 for each MEWA filing Form M–1. For all but the smallest MEWAs (less than 15 participants), this represents less than one-half of one percent of revenues.

The proposed regulations also would remove the exemption from filing the Form 5500 for ERISA-covered MEWAs that are unfunded or insured, fully insured, or combination unfunded/fully insured covering fewer than 100 participants. As discussed in the PRA section above, the Department estimates that these small ERISA-covered MEWAs would incur an annual cost of $450 to engage a third-party service provider to prepare the form and schedules for submission. The Department does not have sufficient data to determine the number of small plan MEWAs that would be required to file the Form 5500 under the proposed rule. About 10 percent (48) of MEWAs filing Form M–1 in 2009 had less than 100 participants. However, the 2009 Form M–1 lacks information on the source of funding to determine which of these small MEWAs would be subject to the proposed rule.

Accordingly, the Department hereby certifies that this proposed regulation would not have a significant economic impact on a substantial number of small entities. The Department invites public comments regarding this finding.

D. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*), as well as Executive Order 12875, this proposed rule does not include any federal mandate that may result in expenditures by State, local, or tribal governments, or the private sector, which may impose an annual burden of $100 million.

E. Executive Order 13132

When an agency promulgates a regulation that has federalism implications, Executive Order 13132 (64 FR 43255, August 10, 1999), requires the Agency to provide a federalism summary impact statement. Pursuant to section 6(c) of the Order, such a statement must include a description of the extent of the agency's consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the

[20] U.S. Small Business Administration, ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes,'' *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.*

[21] Kaiser Family Foundation and Health Research Educational Trust ''Employer Health Benefits, 2009 Annual Survey.'' The reported numbers are from Exhibit 1.2 and are for the category Annual, all Small Firms (3–199 workers).

need to issue the regulation, and a statement of the extent to which the concerns of the State have been met.

This regulation has federalism implications, because the States and the Federal government share dual jurisdiction over MEWAs that are employee benefit plans or hold plan assets. Generally, States are primarily responsible for overseeing the financial soundness and licensing of MEWAs under State insurance laws. The Department enforces ERISA's fiduciary responsibility provisions against MEWAs that are ERISA plans or hold plan assets.

Over the years, the Department and State insurance departments have worked closely and coordinated their investigations and other actions against fraudulent and abusive MEWAs. For example, EBSA regional offices have met with State officials in their regions and supported their enforcement efforts to shut down fraudulent and abusive MEWAs. By requiring MEWAs to register with Department before operating in a State by filing Form M–1 and to provide additional information, this proposed rule would enhance the State and Federal governments' joint mission to take enforcement action against fraudulent and abusive MEWAs and limit the losses suffered by American workers, their families, and businesses when abusive MEWAs become insolvent and fail to reimburse medical claims.

List of Subjects in 29 CFR Part 2520

Accounting, Employee benefit plans, Pensions, Reporting and recordkeeping requirements.

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Chapter XXV

For the reasons set out in the preamble, part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2520—[AMENDED]

1. The authority for part 2520 is revised to read:

Authority: 29 U.S.C. 1021–1024, 1027, 1029–31, 1059, 1134 and 1135; Secretary of Labor's Order 3–2010, 75 FR 55354 (September 10, 2010). Sec. 2520.101–2 also issued under 29 U.S.C. 1181–1183, 1181 note, 1185, 1185a–d, and 1191–1191c. Sec. 2520.103–1 also issued under 26 U.S.C. 6058 note. Sec. 2520.101–6 also issued under § 502(a)(3), 120 Stat. 780, 940 (2006); Secs. 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–d, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788;

2. Section 2520.101–2 is revised to read as follows:

§ 2520.101–2 Filing by Multiple Employer Welfare Arrangements and Certain Other Related Entities.

(a) *Basis and scope.* Section 101(g) of the Employee Retirement Income Security Act (ERISA), as amended by the Patient Protection and Affordable Care Act, requires the Secretary of Labor (the Secretary) to establish, by regulation, a requirement that multiple employer welfare arrangements (MEWAs) providing benefits that consist of medical care (as described in paragraph (b)(6), below), which are not group health plans, register with the Secretary prior to operating in a State. Section 101(g) also permits the Secretary to require, by regulation, such MEWAs to report, not more frequently than annually, in such form and manner as the Secretary may require, for the purpose of determining the extent to which the requirements of part 7 of subtitle B of title I of ERISA (part 7) are being carried out in connection with such benefits. Section 734 of ERISA provides that the Secretary may promulgate such regulations as may be necessary or appropriate to carry out the provisions of part 7. This section sets out requirements for reporting by MEWAs that provide benefits that consist of medical care and by certain entities that claim not to be a MEWA solely due to the exception in section 3(40)(A)(i) of ERISA (referred to in this section as Entities Claiming Exception or ECEs). The reporting requirements apply regardless of whether the MEWA or ECE is a group health plan.

(b) *Definitions.* As used in this section, the following definitions apply:

(1) *Administrator* means—(i) The person specifically so designated by the terms of the instrument under which the MEWA or ECE is operated;

(ii) If the MEWA or ECE is a group health plan and the administrator is not so designated, the plan sponsor (as defined in section 3(16)(B) of ERISA); or

(iii) In the case of a MEWA or ECE for which an administrator is not designated and a plan sponsor cannot be identified, jointly and severally, the person or persons actually responsible (whether or not so designated under the terms of the instrument under which the MEWA or ECE is operated) for the control, disposition, or management of the cash or property received by or contributed to the MEWA or ECE, irrespective of whether such control, disposition, or management is exercised directly by such person or persons or indirectly through an agent, custodian, or trustee designated by such person or persons.

(2) *Entity Claiming Exception (ECE)* means an entity that claims it is not a MEWA on the basis that the entity is established or maintained pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements within the meaning of section 3(40)(A)(i) of ERISA and § 2510.3–40.

(3) *Excepted benefits* means *excepted benefits* within the meaning of section 733(c) of ERISA and § 2590.701–2.

(4) *Group health plan* means a *group health plan* within the meaning of section 733(a) of ERISA and § 2590.701–2.

(5) *Health insurance issuer* means a *health insurance issuer* within the meaning of section 733(b)(2) of ERISA and § 2590.701–2.

(6) *Medical care* means *medical care* within the meaning of section 733(a)(2) of ERISA and § 2590.701–2.

(7) *Multiple employer welfare arrangement (MEWA)* means a *multiple employer welfare arrangement* within the meaning of section 3(40) of ERISA.

(8) *Operating* means any activity including but not limited to marketing, soliciting, providing, or offering to provide benefits consisting of *medical care.*

(9) *Origination* means the occurrence of any of the following events (and an ECE is considered to have been *originated* when any of the following events occurs)—

(i) The ECE begins operating with regard to the employees of two or more employers (including one or more self-employed individuals);

(ii) The ECE, while required to report pursuant to paragraph (c)(1)(ii) of this section, begins operating in any additional State;

(iii) The ECE begins operating following a merger with another ECE (unless all of the ECEs that participate in the merger previously were last originated at least three years prior to the merger);

(iv) The number of employees receiving coverage for medical care under the ECE is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless the increase is due to a merger with another ECE under which all ECEs that participate in the merger were last originated at least three years prior to the merger); or

(v) The ECE, during the three-year period following an event described in (b)(9)(i)–(iv) above, experiences a

material change as defined in the Form M–1 instructions.

(10) *Reporting or to report* means to file the Form M–1 as required pursuant to sections 101(g); § 2520.101–2; or the instructions to the Form M–1.

(11) *State* means *State* within the meaning of § 2590.701–2.

(c) *Persons required to report*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, the following persons are required to report under this section:

(i) The administrator of a MEWA regardless of whether the entity is a group health plan; and

(ii) The administrator of an ECE during the three year period following an event described in (b)(9)(i)–(iv).

(2) *Exceptions*—(i) Nothing in this paragraph (c) shall be construed to require reporting under this section by the administrator of a MEWA or ECE described under this paragraph (c)(2)(i).

(A) A MEWA or ECE licensed or authorized to operate as a health insurance issuer in every State in which it offers or provides coverage for medical care to employees;

(B) A MEWA or ECE that provides coverage that consists solely of excepted benefits, which are not subject to part 7. If the MEWA or ECE provides coverage that consists of both excepted benefits and other benefits for medical care that are not excepted benefits, the administrator of the MEWA or ECE is required to report under this section;

(C) A MEWA or ECE that is a group health plan not subject to ERISA, including a governmental plan, church plan, or a plan maintained solely for the purpose of complying with workmen's compensation laws, within the meaning of sections (4)(b)(1), 4(b)(2), or 4(b)(3) of ERISA, respectively; or

(D) A MEWA or ECE that provides coverage only through group health plans that are not covered by ERISA, including governmental plans, church plans, or plans maintained solely for the purpose of complying with workmen's compensation laws within the meaning of sections 4(b)(1), 4(b)(2), or 4(b)(3) of ERISA, respectively (or other arrangements not covered by ERISA, such as health insurance coverage offered to individuals other than in connection with a group health plan, known as individual market coverage);

(ii) Nothing in this paragraph (c) shall be construed to require reporting under this section by the administrator of an entity that would not constitute a MEWA or ECE *but for* the following circumstances under this paragraph (c)(2)(ii).

(A) The entity provides coverage to the employees of two or more trades or businesses that share a common control interest of at least 25 percent at any time during the plan year, applying the principles similar to the principles of section 414(c) of the Internal Revenue Code;

(B) The entity provides coverage to the employees of two or more employers due to a change in control of businesses (such as a merger or acquisition) that occurs for a purpose other than avoiding Form M–1 filing and is temporary in nature. For purposes of this paragraph, ''temporary'' means the MEWA or ECE does not extend beyond the end of the plan year following the plan year in which the change in control occurs; or

(C) The entity provides coverage to persons (excluding spouses and dependents) who are not employees or former employees of the plan sponsor, such as non-employee members of the board of directors or independent contractors, and the number of such persons who are not employees or former employees does not exceed one percent of the total number of employees or former employees covered under the arrangement, determined as of the last day of the year to be reported or, determined as of the 60th day following the date the MEWA or ECE began operating in a manner such that a filing is required pursuant to paragraph (e)(2)(ii), (iii), or (iv) of this section.

(3) *Examples.* The rules of this paragraph (c) are illustrated by the following examples:

Example 1. (i) *Facts.* MEWA *A* begins operating by offering coverage to the employees of two or more employers on January 1, 2012. MEWA *A* is licensed or authorized to operate as a health insurance issuer in every State in which it offers coverage for medical care to employees.

(ii) *Conclusion.* In this *Example 1,* the administrator of MEWA *A* is not required to report via Form M–1. MEWA *A* meets the exception to the filing requirement in paragraph (c)(2)(i)(A) of this section because it is licensed or authorized to operate as a health insurance issuer in every State in which it offers coverage for medical care to employees.

Example 2. (i) *Facts.* Company *B* maintains a group health plan that provides benefits for medical care for its employees (and their dependents). Company *B* establishes a joint venture in which it has a 25 percent stock ownership interest, determined by applying the principles under section 414(c) of the Internal Revenue Code, and transfers some of its employees to the joint venture. Company *B* continues to cover these transferred employees under its group health plan.

(ii) *Conclusion.* In this *Example 2,* the administrator is not required to file the Form M–1 because Company *B's* group health plan meets the exception to the filing requirement in paragraph (c)(2)(ii)(A) of this section. This is because Company *B's* group health plan would not constitute a MEWA but for the fact that it provides coverage to two or more trades or businesses that share a common control interest of at least 25 percent.

Example 3. (i) *Facts.* Company *C* maintains a group health plan that provides benefits for medical care for its employees. The plan year of Company *C's* group health plan is the fiscal year for Company *C,* which is October 1st–September 30th. Therefore, October 1, 2012–September 30, 2013 is the 2013 plan year. Company *C* decides to sell a portion of its business, Division *Z,* to Company *D.* Company *C* signs an agreement with Company *D* under which Division *Z* will be transferred to Company *D,* effective September 30, 2013. The change in control of Division *Z* therefore occurs on September 30, 2013. Under the terms of the agreement, Company *C* agrees to continue covering all of the employees that formerly worked for Division *Z* under its group health plan until Company *D* has established a new group health plan to cover these employees. Under the terms of the agreement, it is anticipated that Company *C* will not be required to cover the employees of Division *Z* under its group health plan beyond the end of the 2014 plan year, which is the plan year following the plan year in which the change in control of Division *Z* occurred.

(ii) *Conclusion.* In this *Example 3,* the administrator of Company *C's* group health plan is not required to report via Form M–1 on March 1, 2014 for fiscal year 2013 because it is subject to the exception to the filing requirement in paragraph (c)(2)(ii)(B) of this section for an entity that would not constitute a MEWA but for the fact that it is created by a change in control of businesses that occurs for a purpose other than to avoid filing the Form M–1 and is temporary in nature. Under the exception, ''temporary'' means the MEWA does not extend beyond the end of the plan year following the plan year in which the change in control occurs. The administrator is not required to file the 2013 Form M–1 because it is anticipated that Company *C* will not be required to cover the employees of Division *Z* under its group health plan beyond the end of the 2014 plan year, which is the plan year following the plan year in which the change in control of businesses occurred.

Example 4. (i) *Facts.* Company *E* maintains a group health plan that provides benefits for medical care for its employees (and their dependents) as well as certain independent contractors who are self-employed individuals. The plan is therefore a MEWA. The administrator of Company *E's* group health plan uses calendar year data to report for purposes of the Form M–1. The administrator of Company *E's* group health plan determines that the number of independent contractors covered under the group health plan as of the last day of calendar year 2012 is less than one percent of the total number of employees and former employees covered under the plan determined as of the last day of calendar year 2012.

(ii) *Conclusion.* In this *Example 4,* the administrator of Company *E's* group health plan is not required to report via Form M–

1 for calendar year 2012 (a filing that is otherwise due by March 1, 2013) because it is subject to the exception to the filing requirement provided in paragraph (c)(2)(ii)(C) of this section for entities that cover a very small number of persons who are not employees or former employees of the plan sponsor.

(d) *Information to be reported*— (1) Any reporting required by this section shall consist of a completed copy of the Form for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs) (Form M–1) and any additional statements required pursuant to the Instructions to the Form M–1.

(2) *Rejected filings.*—The Secretary may reject any filing under this section if the Secretary determines that the filing is incomplete, in accordance with § 2560.502c–5.

(3) If the Secretary rejects a filing under paragraph (d)(2) of this section, and if a revised filing satisfactory to the Secretary is not submitted within 45 days after the notice of rejection, the Secretary may bring a civil action for such relief as may be appropriate (including penalties under section 502(c)(5) of ERISA and § 2560.502c–5).

(e) *Reporting requirements and timing*—(1) *Period for which reporting is required.* A completed copy of the Form M–1 is required to be filed for each calendar year during all or part of which the MEWA or ECE is operating.

(2) *Filing deadline*—(i)(A) *General March 1 filing due date for annual filings.* Except as provided in paragraph (e)(2)(i)(B) of this section, a completed copy of the Form M–1 is required to be filed on or before each March 1 that follows a period for which reporting is required (as described in paragraph (e)(1) of this section).

(B) *Exception.* Paragraph (e)(2)(i) of this section does not apply to ECEs and MEWAs if, between October 1 and December 31, they experience an origination or registration event and make the subsequent, timely filing. Thus, no annual report is due in March if a MEWA has a registration event or an ECE has an origination event between October 1 and December 31. However the exception applies only if the MEWA or ECE makes a timely filing pursuant to paragraph (e)(2)(ii), (iii), or (iv) of this section.

(ii) *Special rule requiring an Origination Filing when an ECE is originated*—(A) *In general.* Except as provided in paragraph (e)(2)(ii)(B) of this section, when an ECE is originated, the administrator of the ECE is also required to file a completed copy of the Form M–1 30 days prior to the origination date.

(B) *Exception.* Paragraph (e)(2)(ii)(A) of this section does not apply to ECEs that experience an origination as described in paragraphs (b)(9)(iii), (iv), or (v) of this section. Such entities are required to file a completed copy of the Form M–1 by the 30th day following the origination date.

(iii) *Special rule requiring that a MEWA register with the Secretary prior to operating in a State*—(A) *In general.* Except as provided in paragraph (e)(2)(iii)(B) of this section, the administrator of the MEWA is required to register with the Secretary by filing a completed Form M–1 30 days prior to operating in any State.

(B) *Exception.* Paragraph (e)(2)(iii)(A) of this section does not apply to MEWAs that, prior to the effective date of this section, were already in operation in a State (or States). Such entities are required to submit an annual filing pursuant to annual reporting rules described in paragraph (e)(2)(i) of this section for that State (or those States).

(iv) *Special rule requiring MEWAs to make additional registration filings.* Subsequent to registering with the Secretary pursuant to paragraph (e)(2)(iii)(A), the administrator of a MEWA shall make an additional registration filing:

(A) 30 days prior to operating in any additional State or States that were not indicated on a previous report filed pursuant to paragraph (e)(2)(i) or (e)(2)(iii)(A);

(B) Within 30 days of the MEWA operating with regard to the employees of an additional employer (or employers, including one or more self-employed individuals) after a merger with another MEWA;

(C) Within 30 days of the date the number of employees receiving coverage for medical care under the MEWA is at least 50 percent greater than the number of such employees on the last day of the previous calendar year; or

(D) Within 30 days of experiencing a material change as defined in the Form M–1 instructions.

(v) *Anti-abuse rule.* If a MEWA or ECE neither offers nor provides benefits consisting of medical care within a State during the calendar year immediately following the year in which an origination filing is made by the ECE pursuant to paragraph (e)(2)(ii) (due to an event described in paragraph (b)(9)(ii)) or a registration filing is made by the MEWA pursuant to (e)(2)(iii)(A) or (e)(2)(iv)(A), with respect to operating in such State, such filing will be considered to have lapsed.

(vi) *Multiple filings not required in certain circumstances.* If multiple filings are required under this paragraph (e)(2), a single filing will satisfy this section so long as the filing is timely for each required filing.

(vii) *Extensions.* (A) An extension may be granted for filing a report required by paragraph (e)(2)(i)(A) of this section, if the administrator complies with the extension procedure prescribed in the Instructions to the Form M–1.

(B) If the filing deadline set forth in this paragraph (e)(2) is a Saturday, Sunday, or federal holiday, the form must be filed no later than the next business day.

(3) *Examples.* The rules of this paragraph (e) are illustrated by the following examples:

Example 1. (i) *Facts.* MEWA *A* began offering coverage for medical care to the employees of two or more employers on July 1, 2003 (and continues to offer such coverage). MEWA *A* has satisfied all filing requirements to date.

(ii) *Conclusion.* In this *Example 1,* the administrator of MEWA *A* must continue to file a completed Form M–1 each year by March 1 but the administrator is not required to register with the Secretary because MEWA *A* meets the exception to the registration requirement in paragraph (e)(2)(iii)(B) of this section and has not experienced any event described in paragraph (e)(2)(iv) that would require registering with the Secretary.

Example 2. (i) *Facts.* As of February 22, 2012, MEWA *B* is preparing to operate in States *Y* and *Z.* MEWA *B* is not licensed or authorized to operate as a health insurance issuer in any State and does not meet any of the other exceptions set forth in paragraph (c)(2) of this section.

(ii) *Conclusion.* In this *Example 2,* the administrator of MEWA *B* is required to register with the Secretary by filing a completed Form M–1 30 days prior to operating in States *Y* or *Z.* The administrator of MEWA *B* must also report by filing the Form M–1 annually by every March 1 thereafter.

Example 3. (i) *Facts.* As of March 28, 2012, MEWA *C* is operating in States *V* and *W.* MEWA *C* has satisfied the requirements of (e)(2)(iii) with respect to those States. MEWA *C* is not licensed or authorized to operate as a health insurance issuer in any State and does not meet any of the other exceptions set forth in (c)(2) of this section. On April 1, 2012 MEWA *C* begins operating in State *X.*

(ii) *Conclusion.* In this *Example 3,* the administrator of MEWA *C* is required to make an additional registration filing with the Secretary 30 days prior to operating in State *X.* Additionally, the administrator of MEWA *C* must continue to file the Form M–1 annually by every March 1 thereafter.

Example 4. (i) *Facts.* ECE *A* began offering coverage for medical care to the employees of two or more employers on January 1, 2007 and ECE *A* has not been involved in any mergers or experienced any other origination as described in paragraph (b)(9) of this section.

(ii) *Conclusion.* In this *Example 4,* ECE *A* was originated on January 1, 2007 and has not been originated since then. Therefore, the

administrator of ECE *A* is not required to file a Form M–1 on March 1, 2012 because the last time the ECE *A* was originated was January 1, 2007 which is more than 3 years prior to March 1, 2012. Further, the ECE has satisfied its reporting requirements by making 3 timely annual filings after its origination.

Example 5. (i) *Facts.* ECE *B* wants to begin offering coverage for medical care to the employees of two or more employers on July 1, 2012.

(ii) *Conclusion.* In this *Example 5,* the administrator of ECE *B* must file a completed Form M–1 on or before June 1, 2012 (which is 30 days prior to the origination date). In addition, the administrator of ECE *B* must file an updated copy of the Form M–1 by March 1, 2013 because the last date ECE *B* was originated was June 1, 2012 (which is less than 3 years prior to the March 1, 2013 due date). Furthermore, the administrator of ECE *B* must file the Form M–1 by March 1, 2014 and again by March 1, 2015 (because July 1, 2012 is less than three years prior to March 1, 2014 and March 1, 2015, respectively). However, if ECE *B* is not involved in any mergers and does not experience any other origination as described in paragraph (b)(9) of this section, there would not be a new origination date and no Form M–1 is required to be filed after March 1, 2015.

Example 6. (i) *Facts.* ECE *D,* which currently operates in State *A,* is making preparations to operate in State *B* on November 1, 2012 and thus must make an origination filing by October 2, 2012 (30 days prior to the origination date). ECE *D* makes this filing timely.

(ii) *Conclusion.* In this *Example 6,* ECE *D* experiences an origination and makes a timely filing on October 2, 2012. Thus ECE *D* is exempt from the next annual filing due March 1, 2013 pursuant to the filing deadline exception under (e)(2)(i)(B) of this section. However, the ECE must continue to file annual reports for the subsequent years on March 1, 2014 and March 1, 2015.

Example 7. (i) *Facts.* MEWA *E* begins distributing marketing materials on August 31, 2012.

(ii) *Conclusion.* In this *Example 7,* because MEWA *E* began operating on August 31, 2012, the administrator of MEWA *E* must register with the Secretary by filing a completed Form M–1 on or before August 1, 2012 (30 days prior to operating in any State). In addition, the administrator of MEWA *E* must file the Form M–1 annually by every March 1 thereafter.

Example 8. (i) Facts. Same facts as Example 7, but MEWA *E* registers on or before August 1, 2012 by filing a Form M–1 indicating it will begin operating in every State. However, in the calendar year immediately following the filing, MEWA *E* only offered or provided benefits consisting of medical care to participants in State *Z.*

(ii) Conclusion. In this Example 8, the registration for all States (other than State Z) have lapsed under (e)(2)(v) because MEWA *E* only offered or provided benefits consisting of medical care to participants in State *Z* in the calendar year immediately following the filing. If subsequently, MEWA *E* begins offering or providing benefits consisting of medical care to participants in any additional State (or States), it must make a new registration filing pursuant to (e)(2)(iv)(A) of this section.

(f) *Electronic Filing.* A completed Form M–1 is filed with the Secretary by submitting it electronically as prescribed in the Instructions to the Form M–1.

(g) *Penalties*—(1) *Civil penalties and procedures.* For information on civil penalties under section 502(c)(5) of ERISA for persons who fail to file the information required under this section, see § 2560.502c–5. For information relating to administrative hearings and appeals in connection with the assessment of civil penalties under section 502(c)(5) of ERISA, see §§ 2570.90 through 2570.101.

(2) *Criminal penalties and procedures.* For information on criminal penalties under section 519 of ERISA for persons who knowingly make false statements or false representation of fact with regards to the information required under this section, see section 501(b) of ERISA.

(3) *Cease and desist and summary seizure orders.* For information on the Secretary's authority to issue a cease and desist or summary seizure order under section 521 of ERISA, see § 2560.521.

3. Section 2520.103–1 is amended by:

a. Revising paragraphs (a) introductory text, (a)(2), (b) introductory text and (c)(1),

b. Amending paragraph (c)(2)(ii)(C) by removing the reference ''and'' at the end of the paragraph,

c. Removing the period at the end of paragraph (c)(2)(ii)(D) and adding the reference ''and'' at the end of paragraph,

d. Adding a new paragraph (c)(2)(ii)(E),

e. Redesignating paragraph (f) as paragraph (g) and add a new paragraph (f).

The revisions and additions read as follows:

§ 2520.103–1 Contents of the annual report.

(a) *In general.* The administrator of a plan required to file an annual report in accordance with section 104(a)(1) of the Act shall include with the annual report the information prescribed in paragraph (a)(1) of this section or in the simplified report, limited exemption or alternative method of compliance described in paragraph (a)(2) of this section.

* * * * *

(2) Under the authority of subsections 104(a)(2), 104(a)(3) and 110 of the Act, and section 1103(b) of the Pension Protection Act of 2006, a simplified report, limited exemption or alternative method of compliance is prescribed for employee welfare and pension benefit plans, as applicable. A plan filing a simplified report or electing the limited exemption or alternative method of compliance shall file an annual report containing the information prescribed in paragraph (b), paragraph (c), or paragraph (f) of this section, as applicable, and shall furnish a summary annual report as prescribed in § 2520.104b–10.

(b) *Contents of the annual report for plans with 100 or more participants electing the limited exemption or alternative method of compliance.* Except as provided in paragraphs (d) and (f) of this section and in §§ 2520.103–2 and 2520.104–44 the annual report of an employee benefit plan covering 100 or more participants at the beginning of the plan year which elects the limited exemption or alternative method of compliance described in paragraph (a)(2) of this section shall include:

* * * * *

(c) * * *

(1) Except as provided in paragraph (c)(2), (d) and (f) of this section, and in §§ 2520.104–43 and 2520.104a–6, the annual report of an employee benefit plan that covers fewer than 100 participants at the beginning of the plan year shall include a Form 5500 ''Annual Return/Report of Employee Benefit Plan'' and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule SB (Single Employer Defined Benefit Plan Actuarial Information), Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information), Schedule D (DFE/Participating Plan Information), Schedule I (Financial Information—Small Plan), and Schedule R (Retirement Plan Information). See the instructions for this form.

(2) * * *

(ii) * * *

(E) Is not a multiple employer welfare arrangement subject to the filing requirements under § 2520.101–2.

* * * * *

(f) *Plans which are multiple employer welfare arrangements.* The annual report of an employee welfare benefit plan that is a multiple employer welfare arrangement subject to the filing requirements under § 2520.101–2 shall include:

(1)(i) For a plan with 100 or more participants, the information prescribed in paragraph (b) of this section; or

(ii) For a plan with fewer than 100 participants, except as provided in

§ 2520.104–44, the information prescribed in paragraph (c) of this section; and

(2) Any statements or information required by the instructions to the Form 5500 relating to multiple employer welfare arrangements, including information regarding compliance with the filing requirements under § 2520.101–2.

* * * * *

4. Section 2520.104–20 is amended by removing the reference ''and'' in paragraph (b)(2)(iii), removing the period at the end of the sentence and adding the reference ''and'' to the end of the sentence in paragraph (b)(3)(ii), and adding a new paragraph (b)(4) to read as follows:

§ 2520.104–20 Limited exemption for certain small welfare plans.

* * * * *

(b)(4) Which are not multiple employer welfare arrangements subject to the filing requirements under § 2520.101–2.

* * * * *

5. In § 2520.104–41, revise paragraph (c) to read as follows:

§ 2520.104–41 Simplified annual reporting requirements for plans with fewer than 100 participants.

* * * * *

(c) *Contents.* The administrator of an employee pension or welfare benefit plan described in paragraph (b) of this section shall file, in the manner described in § 2520.104a–5, a completed Form 5500 ''Annual Return/Report of Employee Benefit Plan'' or, to the extent eligible, a completed Form 5500–SF ''Short Form Annual Return/Report of Small Employee Benefit Plan,'' and any required schedules or statements prescribed by the instructions to the applicable form, including, if applicable, the information described in § 2520.103–1(f)(2), and, unless waived by § 2520.104–44 or § 2520.104–46, a report of an independent qualified public accountant meeting the requirements of § 2520.103–1(b).

Signed this 28th day of November 2011.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2011–30918 Filed 12–5–11; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2560 and 2571

RIN 1210–AB48

Ex Parte Cease and Desist and Summary Seizure Orders—Multiple Employer Welfare Arrangements

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Proposed rules.

SUMMARY: This document contains two proposed rules under the Employee Retirement Income Security Act of 1974 (ERISA) to facilitate implementation of new enforcement authority provided to the Secretary of Labor by the Patient Protection and Affordable Care Act (Affordable Care Act). The Affordable Care Act authorizes the Secretary to issue a cease and desist order, ex parte (*i.e.* without prior notice or hearing), when it appears that the alleged conduct of a multiple employer welfare arrangement (MEWA) is fraudulent, creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury. The Secretary may also issue a summary seizure order when it appears that a MEWA is in a financially hazardous condition. The first proposed regulation establishes the procedures for the Secretary to issue ex parte cease and desist orders and summary seizure orders with respect to fraudulent or insolvent MEWAs. The second proposed regulation establishes the procedures for use by administrative law judges (ALJs) and the Secretary when a MEWA or other person challenges a temporary cease and desist order.

DATES: *Written comments on the proposed regulations should be submitted to the Department of Labor on or before* March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Stephanie Lewis, Plan Benefits Security Division, Office of the Solicitor, Department of Labor, at (202) 693–5588 or Suzanne Bach, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335. These are not toll-free numbers.

ADDRESSES: Written comments may be submitted to the address specified below. All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously.

Department of Labor. Comments may be submitted to the Department of Labor, identified by RIN 1210–AB48, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: E-OHPSCA521Orders.EBSA@dol.gov.*
- *Mail or Hand Delivery:* Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N–5653, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, *Attention:* RIN 1210–AB48; Section 521 Orders Proposed Regulations.

Comments received by the Department of Labor will be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and made available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

I. Background

Section 6605 of the Patient Protection and Affordable Care Act (Affordable Care Act), Public Law No. 111–148, 124 Stat. 119 adds section 521 to ERISA, which gives the Secretary of Labor new enforcement authority with respect to MEWAs.[1] 124 Stat. 780. This section authorizes the Secretary to issue ex parte cease and desist orders when it appears to the Secretary that the alleged conduct of a MEWA is ''fraudulent, or creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.'' 29 U.S.C. 1151(a). A person that is adversely affected by the issuance of a cease and desist order may request an administrative hearing regarding the order. 29 U.S.C. 1151(b). This section also allows the Secretary to issue an order to seize the assets of a MEWA that the Secretary determines to be in a financially hazardous condition. 29 U.S.C. 1151(e).

ERISA section 521 gives the Secretary legal remedies to address fraudulent and

[1] The term ''multiple employer welfare arrangement'' is defined at ERISA § 3(40), 29 U.S.C. 1002(40).

abusive MEWAs.[2] Although MEWAs that are properly operated provide an option for small employers seeking affordable employee health coverage, some have been marked by fraudulent practices and financial instability.[3] Some self-insured MEWAs, in particular, have been found to have failed to use sound underwriting practices and have paid excessive amounts to operators and service providers. In *Chao* v. *Graf,* 2002 WL 1611122 (D. Nev. 2002), for instance, the evidence indicated that the MEWA set premium rates, not based on sound actuarial analysis, but by setting a premium amount that was less than the average of a sample of rates it selected from the internet. The evidence also indicated that the defendants made unreasonably large payments from plan assets, including for services not rendered at all.

In some cases, the MEWA may have simply lacked sufficient resources or financial and administrative expertise to carry out their contractual and legal obligations. In others, a MEWA's financial instability results from fraud. When such MEWAs become insolvent, they may leave consumers with millions of dollars in unpaid medical bills.[4] The financial impact on employers or employee organizations that have paid premiums or made contributions to the MEWA can be as significant. The ex parte cease and desist and summary seizure order authority will serve as an additional enforcement tool to protect plan participants, plan beneficiaries, employers or employee organizations, or other members of the public against fraudulent, or financially unstable MEWAs.

In addition to addressing the standards for the Secretary to follow in issuing ex parte cease and desist and summary seizure orders under ERISA section 521, these proposed regulations describe the procedures before the Office of Administrative Law Judges (OALJ) when a person seeks an administrative hearing for review of an ex parte cease and desist order. These proposed procedural regulations maintain the maximum degree of uniformity with rules of practice and procedure under 29 CFR part 18 that generally apply to matters before the OALJ. At the same time, they reflect the unique nature of orders issued under ERISA section 521, and are controlling to the extent they are inconsistent with 29 CFR part 18. This preamble summarizes the specific modifications to the rules in 29 CFR part 18 being proposed for adoption in this notice.

II. Overview of the Regulations

A. Ex Parte Cease and Desist and Summary Seizure Order Regulations (29 CFR § 2560.521)

Purpose and definitions

Pursuant to section 6605 of the Affordable Care Act, this proposed rule sets forth procedures for the Secretary to issue ex parte cease and desist orders and summary seizure orders and for administrative review of such cease and desist orders. The proposed rule applies to any cease and desist order and any summary seizure order issued under section 521 of ERISA and sets forth when the Secretary proposes to apply the orders. Paragraph (a) of section 2560.521–1 of the proposed rule specifies that orders may apply to MEWAs and to persons having custody or control of assets of a MEWA, any authority over management of a MEWA, or any role in the transaction of a MEWA's business. It also generally sets forth the criteria under which the Secretary may issue orders.

Paragraph (b) of this section contains key definitions. The new section 521 applies the Secretary's cease and desist and seizure order authority to MEWAs as defined under section 3(40) of ERISA, 29 U.S.C. 1002(40). Reflecting this statutory definition, paragraph (b)(1) provides that a ''multiple employer welfare arrangement'' is an employee welfare benefit plan or other arrangement, which is established or maintained for the purpose of offering or providing welfare plan benefits, including health benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries. 29 U.S.C. 1002(40)(A). A MEWA does not, however, include any plan or arrangement established or maintained (1) Under or pursuant to one or more agreements that the Secretary of Labor finds to be collective bargaining agreements, (2) by a rural electric cooperative, or (3) by a rural telephone cooperative association. 29 U.S.C. 1002(40)(A)(i)–(iii).

For purposes of this definition of a MEWA, two or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group. The term ''control group'' means a group of trades or businesses under common control. The determination of whether a trade or business is under ''common control'' with another trade or business shall be determined under regulations of the Secretary applying principles similar to the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer under section 4001(b), except that for purposes of this paragraph common control shall not be based on an interest of less than 25 percent. 29 U.S.C. 1002(40)(B)(i)–(iii).[5]

In general, ERISA's provisions are limited to employee welfare benefit plans, other than governmental plans, church plans, and plans maintained solely for the purpose of complying with workers' compensation laws (as defined in sections 4(b)(1), 4(b)(2), and 4(b)(3) of ERISA, 29 U.S.C. 1003(b)(1), 1003(b)(2) and 1003(b)(3)). However, Congress did not limit the Secretary's authority to issue cease and desist and seizure orders under section 521 of ERISA to MEWAs that are employee welfare benefit plans (ERISA-covered plans). In concordance with the 2003 final regulations[6] on reporting by MEWAs, the Secretary's authority applies to MEWAs regardless of whether they are group health plans. Most notably, it extends to any arrangements that control the management or the assets of ERISA-covered plans established and maintained by others. Under this proposed rule, a MEWA that is an ERISA-covered plan or that is an arrangement that provides coverage to one or more ERISA-covered plans will be subject to section 521 of ERISA. Section 521 of ERISA applies if the MEWA also provides coverage to others unconnected to an ERISA-covered plan. The statute and this proposed rule are not, however, meant to apply to MEWAs that provide coverage only in connection with governmental plans, church plans, and plans maintained

[2] *See, e.g., Private Health Insurance: Employers and Individuals Are Vulnerable to Unauthorized or Bogus Entities Selling Coverage,* February 2004, GAO–04–312.

[3] In *In re Raymond Palombo, et al,* 2011 WL 1871438 (Bankr. C.D. CA 2011) (*See also Solis* v. *Palombo,* No. 1:08–CV–2017 (N.D. Ga 2009)), for example, the court found that the defendant had, among other things, diverted substantial plan assets for his own benefit. The court also noted that ''when the Fund stopped operating, it had no assets, thousands of unprocessed claims, and no meaningful administrative records. Rather, it had only raw claims and provider invoices stuffed in cardboard boxes at [its] office.'' The court found the defendant liable to the Fund for nearly $3 million.

[4] Kofman, Mila, Bangit, Eliza, and Lucia, Kevin, *MEWAs: The Threat of Plan Insolvency and Other Challenges* (The Commonwealth Fund March 2004).

[5] No regulations have been issued under this provision. In the absence of regulations under section 3(40)(B)(iii), the Department would generally follow ERISA section 4001(b), 29 U.S.C. 1301(b) and therefore the Internal Revenue Code section 414(c) rules, in interpreting ERISA's MEWA preemption provisions. DOL Information Letter to The Honorable Mike Kreidler, dated March 1, 2006.

[6] 68 FR 17494 (04/09/2003).

solely for the purpose of complying with workers' compensation laws. They are also not meant to apply to arrangements that only provide coverage to individuals other than in connection with an employee welfare benefit plan (*e.g.,* individual market coverage).

In addition, a MEWA, as defined in this proposed regulation, does not include an arrangement that is licensed or authorized to operate as a health insurance issuer in every State in which it offers or provides coverage for medical care to employees. However, it includes an arrangement that is not licensed in a State in which it operates even if it is established or maintained by a health insurance issuer that is authorized to operate in the State.

Proposed paragraphs (b)(2)–(4) define the three statutory grounds upon which the Secretary may issue a cease and desist order: (1) Fraudulent conduct; (2) conduct that creates an immediate danger to the public safety or welfare; or (3) conduct that causes or can be reasonably expected to cause significant, immediate, and irreparable injury. In order to apply these statutory standards, these proposed regulations set forth the criteria for determining if it appears that the MEWA or any person acting as an agent or employee of the MEWA has engaged in these forms of alleged conduct.

Proposed paragraph (b)(2) of section 2560.521–1 addresses the statutory standard of fraudulent conduct. Under the proposed rules, fraudulent conduct is an act or omission intended to deceive or to defraud plan participants, plan beneficiaries, employers or employee organizations, or other members of the public, the Secretary, or a State about certain matters described in the paragraphs below.[7] False claims by some MEWAs that they are not subject to State insurance regulation are a matter of longstanding concern to the Secretary.[8] The Secretary, for example, frequently finds MEWA operators making this claim based on the false assertion that the arrangement is established pursuant to a collective bargaining agreement. Collectively bargained arrangements are not subject to State insurance laws, including laws relating to solvency, financial reporting, management, and governance. Other matters of concern to the Department include MEWAs that do not have sufficient funding and reserves for the benefits they promise and fraudulent MEWA operators that misuse assets from the MEWA or the member plans. Misuse of assets comes in many guises. Instead of payment of benefit claims, fraudulent MEWA operators may use plan premiums for many inappropriate expenses including personal overseas travel, improper payments to personal accounts, unreasonable commissions to brokers, and inappropriate food, beverage, and alcohol purchases.[9]

These and similar problems have informed the proposed definition of fraudulent conduct that may give rise to a cease and desist order. Specifically, the proposed regulation focuses on fraudulent acts or omissions related to the financial condition of a MEWA (including its solvency and the management of plan assets), its regulatory status under Federal or State law, and aspects of its operation (*e.g.,* claims review, marketing, *etc.*) that the Secretary determines are material.[10] This standard would therefore reach, for example, a MEWA or any person acting as an employee or agent of the MEWA who fraudulently claims that the MEWA was a collectively bargained plan or arrangement, and thus, exempt from ERISA's definition of MEWA and State insurance regulation.

Proposed paragraph (b)(3) defines the standard in section 521 that provides that the Secretary may issue a cease and desist order if the MEWA's conduct or the conduct of any person acting as an agent or employee of the MEWA creates an immediate danger to the public safety or welfare. Under the proposed rule, conduct meets this standard if it impairs, or threatens to impair, the MEWA's ability to pay claims or otherwise unreasonably increases the risk of nonpayment of benefits to plan participants, plan beneficiaries, employers or employee organizations, or other members of the public. A threatened inability to pay claims, whether it is the result of a serious crime, management inexperience, or neglect poses an immediate and serious danger to plan enrollees, employers, and potentially taxpayers.

This definition addresses MEWAs that fail (or are at risk of failing) to pay claims because of insufficient funding and inadequate reserves. A failure to hold plan assets in trust as required under ERISA, a systematic failure to properly process or pay benefit claims, or a failure to maintain a recordkeeping system that tracks the claims made, processed, or paid also places plan assets at significant risk and threatens a MEWA's ability to pay claims.

Proposed paragraph (b)(4) of section 2560.521–1 describes how the Secretary will determine if a MEWA's conduct causes or can be reasonably expected to cause significant, immediate, and irreparable injury, as provided in section 521 of ERISA. Under the proposed rule, conduct meets this statutory standard if it has, or can be reasonably expected to have, a significant and imminent negative effect that the Secretary reasonably believes cannot be fully rectified on one or more of the following: (a) An employee welfare benefit plan that is, or offers benefits in connection with, a MEWA, (b) plan participants and plan beneficiaries, or (c) employers or employee organizations. Siphoning off a MEWA's resources, and thus depleting the funds available to pay claims and other reasonable plan expenses, by embezzling funds or paying excessive, unwarranted fees are examples of conduct that causes or may be reasonably expected to cause significant, immediate, and irreparable injury.

A single act or omission within the categories of conduct set forth in the regulation may provide the basis for a cease and desist order. However, because the categories set forth in the statute are broad and overlapping, the examples provided in the proposed regulation may provide more than one basis for a cease and desist order.

The new section 521 further expands the Secretary's enforcement options with respect to MEWAs by authorizing the Secretary to issue a summary seizure order to remove plan assets and other property from the management, control, or administration of a MEWA. This authority differs from the Secretary's longstanding ability to petition a United States district court for a temporary restraining order (TRO) freezing a MEWA's assets or removing its operators. To obtain a TRO, the Secretary must present evidence that a

[7] In addition, criminal penalties may apply to such conduct under other federal provisions, including ERISA section 501(b), 29 U.S.C. 1131(b) (knowingly false statements or false representations of fact with regards to certain matters in connection with marketing a MEWA in violation of ERISA section 519, 29 U.S.C. 1149)), 29 U.S.C. 1131(a) (willful violations of ERISA reporting and disclosure requirements), 18 U.S.C. 1001 (knowingly and willfully false statements to the U.S. government), and 18 U.S.C. 1027 (knowingly false statement or knowing concealment of facts in relation to documents required by ERISA).

[8] ERISA section 514(a), 29 U.S.C. 1144(a), provides that state laws that relate to employee benefit plans are generally preempted by ERISA. ERISA section 514(b)(6), 29 U.S.C. 1144(b)(6), provides an exception to this broad preemption provision and allows states to regulate all MEWAs that are ERISA-covered plans at varying levels, depending on if the MEWA is a fully-insured plan.

[9] E.g., *Chao* v. *Crouse,* 346 F.Supp.2d 975, 980–81, 987 (S.D. Ind. 2004).

[10] Similarly, the new section 519 of ERISA, 29 U.S.C. 1149, prohibits false statements and representations by any person, in connection with a MEWA's marketing or sales, concerning the financial condition or solvency of the MEWA, the benefits provided by the MEWA, and the regulatory status of the MEWA.

fiduciary breach has taken place and that the government will likely prevail on the merits. In contrast, the new section 521 of ERISA allows the Secretary to issue a summary seizure order when it appears that the MEWA is in a financially hazardous condition. Proposed paragraph (b)(5) defines when a MEWA meets this standard. It provides that the Secretary may issue a summary seizure order when it has probable cause to believe that a MEWA is, or is in imminent danger of becoming, unable to pay benefit claims as they become due, or that a MEWA has sustained, or is in imminent danger of sustaining, a significant loss of assets. Under the definition, a MEWA may also be in a financially hazardous condition if the Secretary has issued a cease and desist order to a person responsible for the management, control, or administration of the MEWA or plan assets associated with the MEWA. In that circumstance, the Secretary may seek a court-appointed receiver to manage the MEWA during the pendency of a hearing on the order.

Proposed paragraph (b)(6) defines a person, for purposes of this regulation, to be an individual, partnership, corporation, employee welfare benefit plan, association, or other entity or organization.

Cease and Desist Order

Proposed paragraph (c) of section 2560.521–1 addresses the proposed scope of the cease and desist order. Proposed paragraph (c)(2)(i) notes that the Secretary may enjoin a MEWA or person from the conduct that served as the basis for the order and from activities in furtherance of that conduct though a cease and desist order. In addition, the cease and desist order may provide broader relief as the Secretary determines is necessary and appropriate to protect the interest of plan participants, plan beneficiaries, employers or employee organizations, or other members of the public. Proposed paragraph (c)(2)(ii) provides that an order may prohibit a person from taking any specified actions with respect to, or exercising authority over, specified funds of any MEWA or of any welfare or pension plan. Proposed paragraph (c)(2)(iii) provides that an order may also bar a person from acting as a service provider to MEWAs or plans. This proposed provision allows the Secretary to issue an order preventing a person from, for example, performing any administrative, management, financial, or marketing services for any MEWA or any welfare or pension plan. A cease and desist order containing a prohibition against transacting business with any MEWA or plan would prevent the MEWA or a person from avoiding the cease and desist order by shutting the MEWA down and re-establishing it in a new location or under a new identity. Such a prohibition may also be necessary in cases of serious harmful conduct. In such cases it may be contrary to the interests of plan participants, plan beneficiaries, employers or employee organizations, or other members of the public for a person whose conduct gave rise to the order to gain a position with any MEWA or any welfare or pension plan where they could repeat that conduct.

Proposed paragraph (d) of this section preserves the Secretary's existing ability to seek additional remedies under ERISA. For example, when a cease and desist order prohibits a MEWA's management from carrying on its responsibilities, the Secretary may petition the court to appoint a receiver under section 521(e) (relating to summary seizure orders) or section 502(a)(5) of ERISA, 29 U.S.C. 1132(a)(5), so that the MEWA may continue paying claims during the proceedings related to the cease and desist order. In some circumstances, the Secretary may conclude that the public interest is best served through legal proceedings under ERISA sections 502(a)(2) and (a)(5), such as proceedings to recover monetary losses from breaching fiduciaries. Proposed paragraph (d) accordingly makes clear that the issuance of a temporary or final cease and desist order does not foreclose the Secretary from seeking other remedies in court or under ERISA.

Under the new section 521(b) of ERISA, a person who is the subject of a temporary cease and desist order may request an administrative hearing regarding the order. Paragraph (e) of this proposed regulation sets forth the process for doing so. Parties subject to a cease and desist order have 30 days from receiving the order in which to request a hearing before an administrative law judge. If they fail to request the hearing within 30 days, the order becomes final. Proposed paragraphs (e)(3) and (e)(4) state that the hearing shall be held, and an opinion issued, expeditiously.

If a party requests an administrative hearing before an administrative law judge, the provision also clarifies that the Secretary must offer evidence supporting the findings that gave rise to the issuance of a cease and desist order. Pursuant to ERISA section 521(c), 29 U.S.C. 1151(c), the burden of proof is on the party who requested the hearing to show by a preponderance of the evidence that the statutory standards are not satisfied or that a modification of the order would provide sufficient protection to plan participants, plan beneficiaries, employers or employee organizations, and other members of the public. If a party seeks an administrative hearing, the order is not final until the conclusion of the process set forth in 29 CFR 2571. It remains, however, in effect and enforceable throughout the administrative review process.

Summary Seizure Order

The new section 521(e) of ERISA and this proposed rule authorize the Secretary to issue a summary seizure order when it appears that a MEWA is in a financially hazardous condition. Pursuant to the Fourth Amendment of the U.S. Constitution, the Secretary will generally obtain judicial authorization before issuing a summary seizure order. (*Colonnade Catering Corp.* v. *U.S.,* 397 U.S. 72 (1970): ''Where Congress has authorized inspection but made no rules governing the procedures that inspectors must follow, the Fourth Amendment and its various restrictive rules apply.'') Proposed paragraph (f)(2) provides for such judicial authorization. A court's authorization may be sought ex parte when the Secretary determines that prior notice could result in removal, dissipation, or concealment of plan assets. See e.g., *Marshall* v. *Barlow's, Inc.,* 436 U.S. 307, 319 n. 12 and n. 15 (1978) (noting that the Occupational Safety and Health Act authorized the Secretary to seek warrants on an ex parte basis for inspections.) Proposed paragraph (f)(3) clarifies that the Secretary may act on a summary seizure order prior to judicial authorization, however, if the Secretary reasonably believes that delay in issuing the order will result in the removal, dissipation, or concealment of assets. Under these circumstances, the Secretary will promptly seek judicial authorization after service of the order.

Proposed paragraphs (f)(4) and (f)(5) of this section describe the proposed general scope of a seizure order.[11] Under paragraph (f)(4), the Secretary may seize books, documents, and other records of the MEWA. It may also seize the premises, other property, and financial accounts for the purpose of transferring such property to a court-appointed receiver. In addition, the order may prohibit the MEWA and its operators from transacting any business or disposing of any property of the MEWA. This proposed paragraph also

[11] The scope of the summary seizure order in this proposed rule is similar to that provided for in section 201(B) in the National Association of Insurance Commissioners (NAIC) Insurer Receivership Model Act (October 2007).

clarifies that the order also may be directed to any person holding plan assets that are the subject of the order, including banks or other financial institutions.

The principal purpose of a seizure order is to preserve the assets of an employee welfare benefit plan that is a MEWA and any employee welfare benefit plans under the control of a MEWA that are in a hazardous financial condition so that such assets are available to pay claims and other legitimate expenses of the MEWA and its participating plans. The Secretary will also issue summary seizure orders to prevent abusive operators from illegally using or acquiring plan assets. Seized assets are not placed in the U.S. Treasury. Instead they are managed by a court-appointed receiver or independent fiduciary. Proposed paragraph (f)(5) states that following a seizure the Secretary must pursue judicial proceedings to, among other things, obtain court appointment of a receiver to perform any necessary functions of the MEWA, and court authorization for further actions in the best interest of plan participants, plan beneficiaries, employers or employee organizations, or other members of the public, including the liquidation and winding down of the MEWA, if appropriate.

Effective Date of Orders

Paragraph (g) of section 2560.521–1 provides that orders issued under this rule are effective upon service and remain in effect unless and until modified or set aside by the Secretary or a reviewing court.

Notice and Service

Paragraph (h) of this section describes the manner in which the cease and desist and summary seizure orders will be served. Under paragraph (h)(1), service of an order may be accomplished by: (1) Delivering a copy to the person who is the subject of the order; (2) delivering a copy at the principal office, principal place of business, or residence of such person; or (3) mailing a copy to the last known address of such person. A person's attorney may accept service on behalf of such person. Proposed paragraph (h)(2) makes clear that service is complete upon mailing if service is made by certified mail. Service is complete upon receipt if made by regular mail.

Disclosure

The Secretary has determined that it is in the public interest for plan participants, plan beneficiaries, employers or employee organizations, policymakers, and other citizens to be aware of the existence of any MEWA or person that has engaged in misconduct resulting in a final cease and desist or summary seizure order. Proposed section 2560.521–2(a) provides that the Secretary shall make issued orders available to the public as well as modifications and terminations of such final orders.

In addition, other federal agencies and the States have been instrumental partners in the Secretary's enforcement efforts against unscrupulous MEWAs. Paragraph (b) of section 2560.521–2 provides that the Secretary may disclose the issuance of any order (whether temporary or final) and any information and evidence of any proceedings and hearings related to the order with other Federal, State, or foreign authorities. Paragraph (c) provides that the sharing of such documents, material, or other information and evidence under this paragraph does not constitute a waiver of any applicable privilege or claim of confidentiality.

Effect on Other Enforcement Authority

Section 521 is not the only enforcement tool available to the Secretary with respect to the conduct of MEWAs or any persons acting as agents or employees of MEWAs. Section 2560.521–3 states that any other enforcement tool available to the Secretary prior to the enactment of section 521 remains available. This regulation shall not be construed as limiting the Secretary's ability to exercise its investigatory and enforcement authority under any other provision of title I of ERISA. The enforcement tools in this proposed rule are designed to prevent or address imminent, serious harm to plan participants, beneficiaries, employers, employee organizations, and other members of the public, and will be used judiciously and as necessary and appropriate to achieve these ends. In addition to the use of her investigatory and enforcement tools, the Secretary remains committed to helping MEWAs and plan officials comply with legal requirements and serve plan participants and beneficiaries properly and working closely with State regulators to help detect and prevent fraud, abuse, and financial insolvency.

Cross-Reference

Proposed section 2560.521–4 contains a cross-reference for proposed rules for administrative hearings.

In addition, elsewhere in this issue of the **Federal Register** is a separate proposed regulation to amend 29 CFR 2520–101.2, 2520.103–1, 2520.104–20, and 2520.104–41 to implement section 101(g), as amended by the Affordable Care Act, and to enhance the Department's ability to enforce requirements under 29 CFR 2520–101.2.

B. Procedures for Administrative Hearings on the Issuance of Cease and Desist Orders Regulation (29 CFR Part 2571)

Purpose and Definitions

These proposed procedural rules apply only to adjudicatory proceedings before ALJs of the U.S. Department of Labor. Under these procedural rules, an adjudicatory proceeding before an ALJ is commenced only after a person who is the subject of a temporary cease and desist order requests a hearing and files an answer showing cause why the temporary order should be modified or set aside.

The definitional section of this proposed rule incorporates the basic adjudicatory principles set forth at 29 CFR part 18, but includes terms and concepts of specific relevance to proceedings under ERISA section 521.

Proceedings Before the Administrative Law Judge

The party that is subject to a cease and desist order issued under ERISA section 521 has the burden to initiate an adjudicatory proceeding before an ALJ. Proposed section 2571.3 governs the service of documents necessary to initiate ALJ proceedings by such a party on the Secretary of Labor and the OALJ. This proposed section would apply in such cases in lieu of 29 CFR 18.3.

The proposed section 2571.4 on the designation of parties also differs somewhat from its counterpart under 29 CFR part 18.10. This proposed rule specifies that the respondent in these proceedings will be the party who is challenging the temporary cease and desist order.

Proposed section 2560.521–1(h), governs the Secretary's service of the temporary cease and desist order on the affected parties. Under proposed section 2560.521–1(e) a person who is subject to an order must request a hearing within 30 days after service of the order. Section 2571.5 of the instant proposed rule provides that a failure by a person on whom the order is served to request a hearing and file a timely answer shall be deemed a waiver of the right to appear and contest the temporary cease and desist order and an admission of the facts alleged in the temporary order. Proposed section 2571.5 also makes clear that, in the event of a failure to timely request a hearing and file an answer the temporary cease and desist

order becomes final agency action within the meaning of 5 U.S.C. 704.

With respect to consent orders or settlements, proposed section 2571.6 provides that the ALJ's decision shall include the terms and conditions of any consent order or settlement which has been agreed to by the parties. Under this section, the decision of the ALJ which incorporates the consent order shall become the final agency action within the meaning of 5 U.S.C. 704. This section of the proposed rule also sets forth the process for when there is a settlement that does not include all the parties that are subject to a cease and desist order.

Section 2571.7 of this proposed rule states that the ALJ may order discovery only upon a showing of good cause by the party seeking discovery. In addition, the ALJ must expressly limit the scope and terms of discovery to the circumstances for which good cause has been shown. To the extent that an ALJ's discovery order does not specify rules for the conduct of discovery, the rules governing the conduct of discovery from 29 CFR part 18 are to be applied in these proceedings under ERISA section 521. For example, if the discovery order permits interrogatories only on certain subjects, the rules under 29 CFR part 18 concerning the servicing and answering of the interrogatories shall apply. The procedures under 29 CFR part 18 for the submission of facts to the ALJ during the hearing will also apply in proceedings under ERISA section 521.

This proposed section 2571.7 also clarifies that any evidentiary privileges, including the attorney-client privilege and work product privilege, apply in proceedings under this rule. Further, it makes clear that the fiduciary exception to such privileges also applies. Consequently, communications between an attorney and a plan administrator or other fiduciary or work product that fall under the fiduciary exception are not protected from discovery.

Proposed section 2571.8 authorizes an ALJ to issue a summary decision which may become a final order when there are no genuine issues of material fact in a case arising under ERISA section 521. Proposed section 2571.9 states that the ALJ's decision shall become a final agency action unless a timely appeal is filed.

Review by the Secretary

The procedures for appeals of ALJ decisions under ERISA section 521 are governed solely by the rules set forth in proposed sections 2571.10 through 2571.12 and without any reference to the appellate procedures contained in 29 CFR part 18. Proposed section 2571.10 establishes the time within which a party must file a notice of appeal, the manner in which the issues for appeal are determined, and the procedures for making the entire record before the ALJ available to the Secretary for review. Proposed section 2571.11 provides that review by the Secretary (or a designee) shall be on the record before the ALJ without an opportunity for oral argument. Proposed section 2571.12 sets forth the procedure for establishing a briefing schedule for appeals and states that the decision of the Secretary on an appeal shall be the final agency action within the meaning of 5 U.S.C. 704.

The authority of the Secretary with respect to the appellate procedures has been delegated to the Assistant Secretary for the Employee Benefits Security Administration pursuant to Secretary's Order 3–2010. The Assistant Secretary has redelegated this authority to the Director of the Office of Policy and Research of the Employee Benefits Security Administration. As required by the Administrative Procedure Act (5 U.S.C. 552(a)(2)(A)) all final decisions of the Department under section 521 of ERISA shall be compiled in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210.

III. Economic Impact and Paperwork Burdens

A. Summary

These proposed regulations implement amendments made by section 6605 of the Affordable Care Act, which added ERISA section 521. As discussed earlier in this preamble, ERISA section 521 provides the Secretary of Labor with new enforcement authority over MEWAs. Specifically, ERISA section 521(a) authorizes the Secretary to issue cease and desist orders, without prior notice or a hearing, when it appears to the Secretary that a MEWA's alleged conduct is fraudulent, creates an immediate danger to the public safety or welfare, or causes or can be reasonably expected to cause significant, imminent, and irreparable public injury. This section also authorizes the Secretary to issue a summary order to seize the assets of a MEWA the Secretary determines to be in a financially hazardous condition. These proposed regulations implement ERISA section 521(a) by setting forth procedures the Secretary will follow to issue ex parte cease and desist and summary seizure orders.

ERISA section 521(b), as added by Affordable Care Act section 6605, provides that a person that is adversely affected by the issuance of a cease and desist order may request an administrative hearing regarding the order. These proposed regulations also implement the requirements of ERISA section 521(b) by describing the procedures before the Office of Administrative Law Judges (OALJ) that will apply when a person seeks an administrative hearing for review of a cease and desist order. These regulations maintain the maximum degree of uniformity with rules of practice and procedure under 29 CFR part 18 that generally apply to matters before the OALJ. At the same time, these proposed regulations reflect the unique nature of orders issued under ERISA section 521, and are controlling to the extent they are inconsistent with 29 CFR part 18.

B. Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Department has determined that these regulatory actions are not economically significant within the meaning of section 3(f)(1) of the Executive Order. However, OMB has determined that the actions are significant within the meaning of section 3(f)(4) of the Executive Order, and the Department accordingly provides the following assessment of their potential benefits and costs.

1. Need for Regulatory Action

Properly structured and managed MEWAs that are licensed to operate in a State provide a viable option for some employers to purchase affordable health insurance coverage. However, some MEWAs are marketed by unlicensed entities attempting to avoid State insurance reserve, contribution, and consumer protection requirements. By avoiding these requirements, such entities often are able to market insurance coverage at lower rates than licensed insurers, making them particularly attractive to some small employers that find it difficult to obtain affordable health insurance coverage for their employees. Due to insufficient funding and inadequate reserves, and in some situations, fraud, some MEWAs have become insolvent and unable to pay benefit claims. Therefore, affected employees and their dependents have become financially responsible for paying medical claims they presumed were covered by insurance after paying health insurance premiums to MEWAs.[12] The financial impact on individuals and families can be devastating when MEWAs become insolvent.

Before the enactment of ERISA section 521, the Department's primary enforcement tool against fraudulent and abusive MEWAs was court-ordered injunctive relief. In order to obtain this relief, the Department must present evidence to a federal court that an ERISA fiduciary breach occurred and that the Department is likely to prevail based on the merits of the case. Gathering sufficient evidence to prove a fiduciary breach is time-consuming and labor-intensive, in most cases, because the Department's investigators must work with poor or nonexistent financial records and uncooperative parties. As a result, the Department has been unable to shut down fraudulent and abusive MEWAs quickly enough to preserve their assets and ensure that outstanding benefit claims are timely paid. States also encountered problems in their enforcement efforts against MEWAs in the absence of federal authority to shut down fraudulent and abusive MEWAs nationally. When one State succeeded in shutting down an abusive MEWA, in some cases, its operators continued operating in another State.[13] ERISA section 521 provides the Department with stronger legal remedies to combat fraudulent and abusive MEWAs.

ERISA section 521(f) provides the Secretary of Labor with the authority to promulgate regulations that may be necessary and appropriate to carry out the Department's authority under ERISA section 521. These proposed regulations are necessary, because they set forth standards and procedures the Department would use to implement this new enforcement authority. They also are necessary to provide procedures that a person who is adversely affected by the issuance of a cease and desist order may follow to request an administrative hearing regarding the order pursuant to ERISA section 521(b).

2. ERISA Section 521(a), Ex Parte Cease and Desist and Summary Seizure Orders—Multiple Employer Welfare Arrangements (29 CFR 2560.521–1)

a. Benefits of Proposed Rule

As discussed earlier in this preamble, ERISA section 521(a) authorizes the Secretary to issue a an ex parte cease and desist order if it appears to the Secretary that the alleged conduct of a MEWA is fraudulent, or creates an immediate danger to the public safety or welfare, or is causing or can reasonably be expected to cause, significant, imminent, and irreparable public injury. ERISA section 521(e) allows the Secretary to issue a summary seizure order if it appears that a MEWA is in a financially hazardous position. The proposed regulation implements the Department's enhanced enforcement authority under these provisions setting forth the standards and procedures the Department would follow in issuing cease and desist and summary seizure orders. It also defines important statutory terms and clarifies the scope of the Department's authority under ERISA sections 521(a) and (e).

The Department expects that proposed regulations will improve MEWA compliance and deter abusive practices of fraudulent MEWAs, lessening the need for these provisions in the first place. When that fails, as a result of these provisions, the Department would be able to take enforcement action against fraudulent and abusive MEWAs much more quickly and efficiently than under prior law. This will benefit participants and beneficiaries by helping them avoid the financial hardship and potential delayed health care that result from unpaid health claims. They also will allow the Department to fulfill its critical mission of protecting the security of participants and beneficiaries by ensuring that MEWA assets are preserved and benefits timely paid. These benefits have not been quantified.

b. Costs of the Proposed Rule

As discussed earlier in this preamble, the proposed rules would provide standards and procedures the Department would follow to issue ex parte cease and desist and summary seizure orders with respect to MEWAs. The Department does not expect the rule to impose any significant costs, because it does not require any action or impose any requirements on MEWAs as defined in ERISA section 3(40). Therefore, the Department concludes that the proposed rule would provide benefits by enhancing the Department's ability to take immediate action against fraudulent and abusive MEWAs without imposing major costs.

3. ERISA Section 521(b), Procedures for Administrative Hearings on the Issues of Cease and Desist Orders—Multiple Employer Welfare Arrangements (29 CFR 2571.1 Through 2571.12)

a. Benefits of Proposed Rule

The Department expects that administrative hearings held pursuant to ERISA section 521(b) and the procedures set forth in the proposed regulation would benefit the Department and parties requesting a hearing. The Department foresees improved efficiencies through use of administrative hearings, because such hearings should allow the parties involved to obtain a decision in a more timely and efficient manner than is customary in federal court proceedings, which would be the alternative adjudicative forum. The Department expects that this proposed rule setting forth the standards and procedures the Department would use to implement its cease and desist authority under ERISA section 521 will allow it to take action against fraudulent and abusive MEWAs much more quickly and efficiently than under prior law. These benefits have not been quantified.

To access the benefit of improved efficiencies that would result from an administrative proceeding, the Department compared the cost of contesting a cease and desist order under the proposed regulation to the cost of contesting an action taken against a MEWA by the Department before the enactment of the Affordable Care Act. The Department's primary enforcement tool against fraudulent and abusive MEWAs before Congress enacted ERISA section 521 was court-ordered injunctive relief. In order to obtain this relief, the Department must present evidence to a court that an ERISA fiduciary breach occurred and that the Department likely would prevail based on the merits of the case.

[12] GAO Report, *supra* note 2.

[13] *Id.*

Gathering sufficient evidence to prove a fiduciary breach is very time-consuming and labor-intensive, in most cases, because the Department's investigators must work with poor or nonexistent financial records and uncooperative parties.

The Department believes that an administrative hearing should result in cost savings compared with the baseline cost of litigating in federal court. Because the procedures and evidentiary rules of an administrative hearing generally track the Federal Rules of Civil Procedure and Evidence, document production will be similar for both an administrative hearing and a federal court proceeding. It is unlikely that any additional cost will be incurred for an administrative hearing than would be required to prepare for federal court litigation. Moreover, certain administrative hearing practices and other new procedures initiated by this regulation are expected to result in cost savings over court litigation. For example, parties may be more likely to appear pro se; the prehearing exchange is expected to be short and general; a motion for discovery only will be granted upon a showing of good cause; the general formality of the hearing may vary, particularly depending on whether the petitioner is appearing pro se; and the ALJ would be required to make its decision expeditiously after the conclusion of the ERISA section 521 proceeding. The Department cannot with certainty predict that any or all of these conditions will exist nor that any of these factors represent a cost savings, but it is likely that an ALJ's knowledge of federal law should facilitate an expeditious hearing, reduce costs, and introduce a consistent legal standard to the proceeding. The Department invites public comments on the comparative cost of a federal court proceeding versus an administrative hearing.

b. Costs of Proposed Rule

The Department estimates that the cost of the proposed regulation would total approximately $177,000 annually. The total hour burden is estimated to be approximately 20 hours, and the dollar equivalent of the hour burden is estimated to be approximately $540. The data and methodology used in developing these estimates are described more fully in the Paperwork Reduction Act section, below.

C. Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

This issuance of cease and desist order proposed regulation is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), because it does not contain a ''collection of information'' as defined in 44 U.S.C. 3502(3).

Currently, the Department is soliciting comments concerning the proposed information collection request (ICR) included in this Proposed Rule on Procedures for Administrative Hearings Regarding the Issuance of Cease and Desist Orders under ERISA section 521—Multiple Employer Welfare Arrangements. A copy of the ICR may be obtained by contacting the individual identified below in this notice. The Department has submitted a copy of the proposed information collection to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; *Attention:* Desk Officer for the Employee Benefits Security Administration. Although comments may be submitted through February 6, 2012, OMB requests that comments be received within 30 days of publication of the Notice of Proposed Rulemaking to ensure their consideration. Address requests for copies of the ICR to G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N 5647, Washington, DC 20210. Telephone (202) 219–8410; *Fax:* (202) 219 4745. These are not toll free numbers.

This proposed regulation establishes procedures for hearings and appeals before an Administrative Law Judge (ALJ) and the Secretary when a MEWA or other person challenges a temporary cease and desist order. As stated in the Regulatory Flexibility Act analysis below, the Department estimates that, on average, a maximum of 10 MEWAs would initiate an adjudicatory proceeding before an ALJ to revoke or modify a cease and desist order.[14] Most of the factual information necessary to prepare the petition should be readily available to the MEWA and is expected to take approximately two hours of clerical time to assemble and forward to legal professionals resulting in an estimated total hour burden of approximately 20 hours.

The Department believes that MEWAs will hire outside attorneys to prepare and file the appeal, which is estimated to require 40 hours at $442 per hour.[15] The majority of the attorney's time is expected to be spent drafting motions, petitions, pleadings, briefs, and other documents relating to the case. Based on the foregoing, the total estimated legal cost associated with the information collection would be approximately $18,000 per petition filed. Additional costs material and mailing costs are

[14] As stated in the Departments April 2010 Fact Sheet on MEWA Enforcement, the Department has filed 97 civil complaints against MEWAs since 1990, which averages approximately five complaints per year. With the expanded enforcement authority provided to the Department under the Affordable Care Act, the number of civil complaints brought against MEWAs by the Department could increase. Therefore, for purposes of this Paperwork Reduction Act analysis, the Department assumes that twenty complaints will be filed as an upper bound. The Department is unable to estimate the number of cease and desist orders that will be contested; therefore, for purposes of this analysis it assumes that half of the MEWAs will contest cease and desist orders. The Department's fact sheet on MEWA enforcement can be found on the EBSA Web site at *http://www.dol.gov/ebsa/newsroom/fsMEWAenforcement.*

[15] The Department's estimate for the attorney's hourly rate is taken from the Laffy Matrix which provides an estimate of legal service for court cases in the DC area. It can be found at *http://www.laffeymatrix.com/see.html.* The estimate is an average of the 4–7 and 8–10 years of experience rates.

estimated at approximately $50.00 per petition.

Type of Review: New.

Agency: Employee Benefits Security Administration.

Title: Proposed Rule on Procedures for Administrative Hearings Regarding the Issuance of Cease and Desist Orders under ERISA section 521—Multiple Employer Welfare Arrangements.

OMB Number: 1210–NEW.

Affected Public: Business or other for profit; not for profit institutions; State government.

Respondents: 10.

Responses: 10.

Estimated Total Burden Hours: 20 hours.

Estimated Total Burden Cost (Operating and Maintenance): $177,100.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) applies to most Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). Unless an agency certifies that such a rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations and governmental jurisdictions.

The Department does not have data regarding the total number of MEWAs that currently exist. The best information the Department has to estimate the number of MEWAs is based on filing of the Form M–1, which is an annual report that MEWAs and certain collectively bargained arrangements file with the Department. Nearly 400 MEWAs filed the Form M–1 with the Department in 2009, the latest year for which data is available.

The Small Business Administration uses a size standard of less than $7 million in average annual receipts to determine whether businesses in the finance and insurance sector are small entities.[16] While the Department does not collect revenue information on the Form M–1, it does collect data regarding the number of participants covered by MEWAs that file Form M–1 and can use average premium data to determine the number of MEWAs that are small entities because they do not exceed the $7 million dollar threshold. For 2009, the average annual premium for single coverage was $4,717 and the average annual premium for family coverage was $12,696.[17] Combining these premium estimates with estimates from the Current Population Survey regarding the fraction of policies that are for single or family coverage at employers with less than 500 workers, the Department estimates that about 60 percent of MEWAs (240 MEWAs) are small entities.

In order to develop an estimate of the number of MEWAs that could become subject to a cease and desist order, the Department examined the number of civil claims the Department filed against MEWAs since FY 1990. During this time, the Department filed 99 civil complaints against MEWAs, an average of approximately five complaints per year. For purposes of this analysis, the Department believes that an average of twenty complaints a year is a reasonable upper bound estimate of the number of MEWAs that could be subject to a cease and desist order [18] and that half this number, or an average of ten complaints a year, is a reasonable upper bound estimate of the number of MEWAs that could be expected to request an administrative hearing in a year.

Based on the foregoing, the Department estimates that the greatest number of MEWAs likely to be subject to a cease and desist order represents (8.3 percent) and that the greatest number of MEWAs likely to petition for an administrative hearing (4.2 percent) represents a small fraction of the total number of small MEWAs.

Accordingly, the Department hereby certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities and invites public comments regarding this finding.

E. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*), as well as Executive Order 12875, these proposed rules do not include any federal mandate that may result in expenditures by State, local, or tribal governments, or the private sector, which may impose an annual burden of $100 million.

F. Executive Order 13132

When an agency promulgates a regulation that has federalism implications, Executive Order 13132 (64 FR 43255, August 10, 1999), requires the Agency to provide a federalism summary impact statement. Pursuant to section 6(c) of the Order, such a statement must include a description of the extent of the agency's consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State have been met.

This regulation has federalism implications, because the States and the Federal Government share dual jurisdiction over MEWAs that are employee benefit plans or hold plan assets. Generally, States are primarily responsible for overseeing the financial soundness and licensing of MEWAs under State insurance laws. The Department enforces ERISA's fiduciary responsibility provisions against MEWAs that are ERISA plans or hold plan assets.

Over the years, the Department and State insurance departments have worked closely and coordinated their investigations and other actions against fraudulent and abusive MEWAs. For example, EBSA regional offices have met with State officials in their regions and provided information necessary for States to obtain cease and desist orders to stop abusive and insolvent MEWAs. The Department also has relied on States to obtain cease and desist orders against MEWAs in individual States while it pursued investigations to gather sufficient evidence to obtain injunctive relief in the federal courts to shut down MEWAs nationally. By providing procedures and standards the Department would follow to issue ex parte cease and desist and summary seizure orders and providing procedures for use by ALJs and the Secretary of Labor when a MEWA or other person challenges a temporary cease and desist order, these proposed rules would enhance the State and Federal

[16] U.S. Small Business Administration, ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes.'' *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.*

[17] Kaiser Family Foundation and Health Research Educational Trust ''Employer Health Benefits, 2009 Annual Survey.'' The reported numbers are from Exhibit 1.2 and are for the category Annual, all Small Firms (3–199 workers).

[18] With the expanded enforcement authority provided to the Department under the Affordable Care Act, the number of civil complaints brought against MEWAs by the Department could increase. Therefore, for purposes of this analysis, the Department assumes that twenty complaints will be filed as an upper bound. The Department is unable to estimate the number of cease and desist orders that will be contested; therefore, it assumes that half the MEWAs will contest cease and desist orders.

Government's joint mission to take immediate action against fraudulent and abusive MEWAs and limit the losses suffered by American workers and their families when abusive MEWAs become insolvent and fail to reimburse medical claims.

List of Subjects

29 CFR Part 2560

Administrative practice and procedure, Employee welfare benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions, Multiple employer welfare arrangements, Cease and desist, Seizure.

29 CFR Part 2571

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Multiple employer welfare arrangements, Law enforcement, Cease and desist.

For the reasons set out in the preamble, 29 CFR Chapter XXV, Subchapter G is amended as follows:

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

1. The authority citation for part 2560 is revised to read as follows:

Authority: 29 U.S.C. §§ 1002(40), 1132, 1133, 1134, 1135, and 1151; and Secretary of Labor's Order 3–2010, 75 FR 55354 (September 10, 2010).

2. Add § 2560.521–1 to read as follows:

§ 2560.521–1 Cease and desist and seizure orders under section 521.

(a) *Purpose.* Section 521(a) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1151(a), authorizes the Secretary of Labor to issue an ex parte cease and desist order if it appears to the Secretary that the alleged conduct of a multiple employer welfare arrangement (MEWA) under section 3(40) of ERISA is fraudulent, or creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury. Section 521(e) of ERISA authorizes the Secretary to issue a summary seizure order if it appears that a MEWA is in a financially hazardous condition. An order may apply to a MEWA or to persons having custody or control of assets of the subject MEWA, any authority over management of the subject MEWA, or any role in the transaction of the subject MEWA's business. This section sets forth standards and procedures for the Secretary to issue ex parte cease and desist and summary seizure orders and for administrative review of the issuance of such cease and desist orders.

(b) *Definitions.* When used in this section, the following terms shall have the meanings ascribed in this paragraph (b).

(1) *Multiple employer welfare arrangement* (MEWA) is an arrangement as defined in section 3(40) of ERISA that either:

(i) Is an employee welfare benefit plan subject to Title I of ERISA or

(ii) Offers benefits in connection with one or more employee welfare benefit plans subject to Title I of ERISA. For purposes of section 521 of ERISA, a MEWA does not include an arrangement that is licensed or authorized to operate as a health insurance issuer in every State in which it offers or provides coverage for medical care to employees.

(2)(i) *The conduct of a MEWA is fraudulent* when the MEWA or any person acting as an agent or employee of the MEWA commits an act or omission knowingly and with an intent to deceive or defraud plan participants, plan beneficiaries, employers or employee organizations, or other members of the public, the Secretary, or a State regarding:

(A) The financial condition of the MEWA (including the MEWA's solvency and the management of plan assets);

(B) The benefits provided by or in connection with the MEWA;

(C) The management, control, or administration of the MEWA;

(D) The existing or lawful regulatory status of the MEWA under Federal or State law; or,

(E) Any other material fact, as determined by the Secretary, relating to the MEWA or its operation.

(ii) Fraudulent conduct includes:

(A) Any false statement regarding any of paragraphs (b)(2)(i) (A) through (E) that is made with knowledge of its falsity or that is made with reckless indifference to the statement's truth or falsity, and

(B) The knowing concealment of material information regarding any of paragraphs (b)(2)(i) (A) through (E). Examples of fraudulent conduct include, but are not limited to, misrepresenting the terms of the benefits offered by or in connection with the MEWA or the financial condition of the MEWA or engaging in deceptive acts or omissions in connection with marketing or sales or fees charged to employers or employee organizations.

(3) *The conduct of a MEWA creates an immediate danger to the public safety or welfare* if the conduct of a MEWA or any person acting as an agent or employee of the MEWA impairs, or threatens to impair, a MEWA's ability to pay claims or otherwise unreasonably increases the risk of nonpayment of benefits to an employee welfare benefit plan that is, or offers benefits in connection with, a MEWA, plan participants, plan beneficiaries, employers or employee organizations, or other members of the public. Intent to create an immediate danger is not required for this criterion. Examples of such conduct include, but are not limited to, a systematic failure to properly process or pay benefit claims, including failure to establish and maintain a claims procedure that complies with the Secretary's claims procedure regulations (29 CFR 2560.503–1 and 29 CFR 2590.715–2719), failure to establish or maintain a recordkeeping system that tracks the claims made, paid, or processed or the MEWA's financial condition, a substantial failure to meet applicable disclosure, reporting, and other filing requirements, including the annual reporting and registration requirements under sections 101(g) and 104 of ERISA, failure to establish and implement a policy or method to determine that the MEWA is actuarially sound with appropriate reserves and adequate underwriting, failure to comply with a cease and desist order issued by a government agency or court, and failure to hold plan assets in trust.

(4)*(i) The conduct of a MEWA is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury:* (A) If the conduct of a MEWA, or of a person acting as an agent or employee of the MEWA, is having, or is reasonably expected to have, a significant and imminent negative effect on one or more of the following:

(i) An employee welfare benefit plan that is, or offers benefits in connection with, a MEWA;

(2) The sponsor of such plan or the employer or employee organization that makes payments for benefits provided by or in connection with a MEWA; or

(3) Plan participants and plan beneficiaries; and

(B) If it is not reasonable to expect that such effect may be fully repaired or rectified.

(ii) Intent to cause injury is not required for this criterion. Examples of such conduct include, but are not limited to, conversion or concealment of property of the MEWA; improper disposal, transfer, or removal of funds or other property of the MEWA, including unreasonable compensation or payments to MEWA operators and

service providers (*e.g.* brokers, marketers, and third party administrators); employment by the MEWA of a person prohibited such employment pursuant to section 411 of ERISA, and embezzlement from the MEWA. For purposes of section 521 of ERISA, compensation that would be excessive under 26 CFR 1.162–7 will be considered unreasonable compensation or payments for purposes of this regulation. Depending upon the facts and circumstances, compensation may be unreasonable under this regulation even it is not excessive under 26 CFR 1.162–7.

(5) *A MEWA is in a financially hazardous condition if:* (i) the Secretary has probable cause to believe that a MEWA:

(A) Is, or is in imminent danger of becoming, unable to pay benefit claims as they come due, or

(B) Has sustained, or is in imminent danger of sustaining, a significant loss of assets; or

(ii) A person responsible for management, control, or administration of the MEWA's assets is the subject of a cease and desist order issued by the Secretary.

(6) A *person,* for purposes of this regulation, is an individual, partnership, corporation, employee welfare benefit plan, association, or other entity or organization.

(c) *Temporary Cease and Desist Order.* (1) The Secretary may issue a temporary cease and desist order when the Secretary finds there is reasonable cause to believe that the conduct of a MEWA, or any person acting as an agent or employee of the MEWA, is—

(i) Fraudulent;

(ii) Creates an immediate danger to the public safety or welfare; or

(iii) Is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.

(iv) A single act or omission may be the basis for a temporary cease and desist order.

(2) A temporary cease and desist order may as the Secretary determines is necessary and appropriate to stop the conduct on which the order is based, and to protect the interests of plan participants, plan beneficiaries, employers or employee organizations, or other members of the public—

(i) Prohibit specific conduct or prohibit the transaction of any business of the MEWA;

(ii) Prohibit any person from taking specified actions, or exercising authority or control, concerning funds or property of a MEWA or of any employee benefit plan, regardless of whether such funds or property have been commingled with other funds or property; and,

(iii) Bar any person either directly or indirectly, from providing management, administrative, or other services to any MEWA or to an employee benefit plan or trust,

(d) *Effect of Order on Other Remedies.* The issuance of a temporary or final cease and desist order shall not foreclose the Secretary from seeking additional remedies under ERISA.

(e) *Administrative hearing.* (1) A temporary cease and desist order shall become a final order as to any MEWA or other person named in the order 30 days after such person receives notice of the order unless, within this period, such person requests a hearing in accordance with the requirements of this paragraph (e).

(2) A person requesting a hearing must file a written request and an answer to the order showing cause why the order should be modified or set aside. The request and the answer must be filed in accordance with 29 CFR 2571 and section 18.4 of this title.

(3) A hearing shall be held expeditiously following the receipt of the request for a hearing by the Office of the Administrative Law Judges, unless the parties mutually consent, in writing, to a later date.

(4) The decision of the administrative law judge shall be issued expeditiously after the conclusion of the hearing.

(5) The Secretary must offer evidence supporting the findings made in issuing the order.

(6) If the administrative law judge determines that the Secretary's evidence supports the findings on which the Secretary's order is based, the person requesting the hearing has the burden to show cause why the order should be modified or set aside. To meet this burden, such person must show by a preponderance of the evidence that the order as issued is not necessary to protect the interests of plan participants, plan beneficiaries, employers or employee organizations, or other members of the public.

(7) Any temporary cease and desist order for which a hearing has been requested shall remain in effect and enforceable, pending completion of the administrative proceedings, unless stayed by the Secretary or by a court.

(8) The Secretary may require that the hearing and all evidence be treated as confidential.

(f) *Summary seizure order.* (1) Subject to paragraphs (f)(2) and (3) of this section, the Secretary may issue a summary seizure order when the Secretary finds there is probable cause to believe that a MEWA is in a financially hazardous condition.

(2) Except as provided in paragraph (f)(3) of this section, the Secretary, before issuing a summary seizure order to remove assets and records from the control and management of the MEWA or any persons having custody or control of such assets or records, shall obtain judicial authorization in the form of a warrant or other appropriate form of authorization from a federal court.

(3) If the Secretary reasonably believes that any delay in issuing the order is likely to result in the removal, dissipation, or concealment of plan assets or records, the Secretary may issue and serve a summary seizure order before seeking court authorization. Promptly following service of the order, the Secretary shall seek authorization from a federal court.

(4) A summary seizure order may authorize the Secretary to take possession or control of all or part of the books, records, accounts, and property of the MEWA (including the premises in which the MEWA transacts its business) to protect the benefits of plan participants, plan beneficiaries, employers or employee organizations, or other members of the public, and to safeguard the assets of employee welfare benefit plans. The order may also direct any person having control and custody of the assets that are the subject of the order not to allow any transfer or disposition of such assets except upon the written direction of the Secretary, or of a receiver or independent fiduciary appointed by a court.

(5) Following execution of a summary seizure order, the Secretary shall initiate a civil action under section 502(a) of ERISA, 29 U.S.C. 1132, to—

(i) Secure appointment of a receiver or independent fiduciary to perform any necessary functions of the MEWA;

(ii) Obtain court authorization for the Secretary, the receiver or independent fiduciary to take any other action to seize, secure, maintain, or preserve the availability of the MEWA's assets; and

(iii) Obtain such other appropriate relief available under ERISA to protect the interest of employee welfare benefit plan participants, plan beneficiaries, employers or employee organizations or other members of the public. Other appropriate equitable relief may include the liquidation and winding up of the MEWA's affairs and, where applicable, the affairs of any person sponsoring the MEWA.

(g) *Effective Date of Orders.* Cease and desist and summary seizure orders are effective immediately upon issuance by the Secretary and shall remain effective, except to the extent and until any

provision is modified or the order is set aside by the Secretary or a court.

(h) *Service of orders.* (1) As soon as practicable after the issuance of a temporary or final cease and desist order and no later than five business days after issuance of a summary seizure order, the Secretary shall serve the order either:

(i) By delivering a copy to the person who is the subject of the order. If the person is a partnership, service may be made to any partner. If the person is a corporation, association, or other entity or organization, service may be made to any officer of such entity. If the person is an employee welfare benefit plan, service may be made to a trustee or administrator. A person's attorney may accept service on behalf of such person;

(ii) By leaving a copy at the principal office, place of business, or residence of such person or attorney; or

(iii) By mailing a copy to the last known address of such person or attorney.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is done by regular mail, service is complete upon receipt by the addressee.

(3) Service of a temporary or final cease and desist order and of a summary seizure order shall include a statement of the Secretary's findings giving rise to the order, and, where applicable, a copy of any warrant or other authorization by a court.

3. Add § 2560.521–2 to read as follows:

§ 2560.521–2 Disclosure of order and proceedings.

(a) Notwithstanding § 2560.521–1(e)(8), the Secretary shall make available to the public final cease and desist and summary seizure orders or modifications and terminations of such final orders.

(b) Except as prohibited by applicable law, and at his or her discretion, the Secretary may disclose the issuance of a temporary cease and desist order or summary seizure order and information and evidence of any proceedings and hearings related to an order, to any Federal, State, or foreign authorities responsible for enforcing laws that apply to MEWAs and parties associated with, or providing services to, MEWAs.

(c) The sharing of such documents, material, or other information and evidence under this section does not constitute a waiver of any applicable privilege or claim of confidentiality.

4. Add § 2560.521–3 to read as follows:

§ 2560.521–3 Effect on other enforcement authority.

The Secretary's authority under section 521 shall not be construed to limit the Secretary's ability to exercise his or her enforcement or investigatory authority under any other provision of title I of ERISA. 29 U.S.C. 1001 *et seq.* The Secretary may, in his or her sole discretion, initiate court proceedings without using the procedures in this section.

5. Add § 2560.521–4 to read as follows:

§ 2560.521–4 Cross-reference.

Cross-reference. See 29 CFR 2571.1 through 2571.13 of this chapter for procedural rules relating to administrative hearings under section 521 of ERISA.

6. Add Part 2571 to read as follows:

PART 2571—PROCEDURAL REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

Subpart A—Procedures for Administrative Hearings on the Issuance of Cease and Desist Orders Under ERISA Section 521—Multiple Employer Welfare Arrangements

Sec.

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Authority: 29 U.S.C. 1002(40), 1132, 1135; and 1151, Secretary of Labor's Order 3–2010, 75 FR 55354 (September 10, 2010).

Subpart A—Procedures for Administrative Hearings on the Issuance of Cease and Desist Orders Under ERISA Section 521—Multiple Employer Welfare Arrangements

§ 2571.1 Scope of rules.

The rules of practice set forth in this part apply to ex parte cease and desist order proceedings under section 521 of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The rules of procedure for administrative hearings published by the Department's Office of Administrative Law Judges at part 18 of this Title will apply to matters arising under ERISA section 521 except as modified by this section. These proceedings shall be conducted as expeditiously as possible, and the parties and the Office of the Administrative Law Judges shall make every effort to avoid delay at each stage of the proceedings.

§ 2571.2 Definitions.

For section 521 proceedings, this section shall apply in lieu of the definitions in § 18.2 of this title:

(a) *Adjudicatory proceeding* means a judicial-type proceeding before an administrative law judge leading to an order;

(b) *Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) *Answer* means a written statement that is supported by reference to specific circumstances or facts surrounding the temporary order issued pursuant to 29 CFR 2560.521–1(c);

(d) *Commencement of proceeding* is the filing of an answer by the respondent;

(e) *Consent agreement* means a proposed written agreement and order containing a specified proposed remedy or other relief acceptable to the Secretary and consenting parties;

(f) *Final order* means a cease and desist order that is a final order of the Secretary of Labor under ERISA section 521. Such final order may result from a decision of an administrative law judge or of the Secretary on review of a decision of an administrative law judge, or from the failure of a party to invoke the procedures for a hearing under 29 CFR 2560.521–1 within the prescribed time limit. A final order shall constitute a final agency action within the meaning of 5 U.S.C. 704;

(g) *Hearing* means that part of a section 521 proceeding which involves the submission of evidence, either by oral presentation or written submission, to the administrative law judge;

(h) *Order* means the whole or any part of a final procedural or substantive disposition of a section 521 proceeding;

(i) *Party* includes a person or agency named or admitted as a party to a section 521 proceeding;

(j) *Person* includes an individual, partnership, corporation, employee welfare benefit plan, association, or other entity or organization;

(k) *Petition* means a written request, made by a person or party, for some affirmative action;

(l) *Respondent* means the party against whom the Secretary is seeking to impose a cease and desist order under ERISA section 521;

(m) *Secretary* means the Secretary of Labor or his or her delegate;

(n) *Section 521 proceeding* means an adjudicatory proceeding relating to the issuance of a temporary order under 29 CFR 2560.521–1 and section 521 of ERISA;

(o) *Solicitor* means the Solicitor of Labor or his or her delegate; and

(p) *Temporary order* means the temporary cease and desist order issued by the Secretary under 29 CFR § 2560.521–1(c) and section 521 of ERISA.

§ 2571.3 Service: copies of documents and pleadings.

For section 521 proceedings, this section shall apply in lieu of § 18.3 of this title:

(a) *In General.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, 800 K Street NW., Suite 400, Washington, DC 20001–8002, or to the OALJ Regional Office to which the section 521 proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By Parties.* All motions, petitions, pleadings, briefs, or other documents shall be filed with the Office of Administrative Law Judges with a copy, including any attachments, to all other parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The Secretary shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA Section 521 Proceeding, P.O. Box 1914, Washington, DC 20013 and any attorney named for service of process as set forth in the temporary order. The person serving the document shall certify to the manner of date and service.

(c) *By the Office of Administrative Law Judges.* Service of orders, decisions, and all other documents shall be made in such manner as the Office of Administrative Law Judges determines to the last known address.

(d) *Form of pleadings.* (1) Every pleading or other paper filed in a section 521 proceeding shall designate the Employee Benefits Security Administration (EBSA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Office of Administrative Law Judges and a designation of the type of pleading or paper (*e.g.,* notice, motion to dismiss, *etc.*). The pleading or paper shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size 8½ × 11 inch paper.

(2) Illegible documents, whether handwritten, typewritten, photocopies, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

§ 2571.4 Parties

For section 521 proceedings, this section shall apply in lieu of § 18.10 of this title:

(a) The term ''party'' wherever used in these rules shall include any person that is a subject of the temporary order and is challenging the temporary order under these section 521 proceedings, and the Secretary. A party challenging a temporary order shall be designated as the ''respondent.'' The Secretary shall be designated as the ''complainant.''

(b) Other persons shall be permitted to participate as parties only if the administrative law judge finds that the final decision could directly and adversely affect them or the class they represent, that they may contribute materially to the disposition of the section 521 proceeding and their interest is not adequately represented by the existing parties, and that in the discretion of the administrative law judge the participation of such persons would be appropriate.

(c) A person not named in a temporary order, but wishing to participate as a respondent under this section shall submit a petition to the administrative law judge within fifteen (15) days after the person has knowledge of, or should have known about, the section 521 proceeding. The petition shall be filed with the administrative law judge and served on each person who has been made a party at the time of filing. Such petition shall concisely state:

(1) Petitioner's interest in the section 521 proceeding (including how the section 521 proceedings will directly and adversely affect them or the class they represent and why their interest is not adequately represented by the existing parties);

(2) How his or her participation as a party will contribute materially to the disposition of the section 521 proceeding;

(3) Who will appear for the petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner intends to present witnesses.

(d) Objections to the petition may be filed by a party within fifteen (15) days of the filing of the petition. If objections to the petition are filed, the administrative law judge shall then determine whether petitioners have the requisite interest to be a party in the section 521 proceeding, as defined in paragraph (b) of this section, and shall permit or deny participation accordingly. Where persons with common interest file petitions to participate as parties in a section 521 proceeding, the administrative law judge may request all such petitioners to designate a single representative, or the administrative law judge may designate one or more of the petitioners to represent the others. The administrative law judge shall give each such petitioner, as well as the parties, written notice of the decision on his or her petition. For each petition granted, the administrative law judge shall provide a brief statement of the basis of the decision. If the petition is denied, he or she shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae.

§ 2571.5 Consequences of default.

For section 521 proceedings, this section shall apply in lieu of § 18.5(b) of this title: Failure of the respondent to file an answer to the temporary order within the 30-day period provided by 29 CFR 2560.521–1(e) shall constitute a waiver of the respondent's right to appear and contest the temporary order. Such failure shall also be deemed to be an admission of the facts as alleged in the temporary order for purposes of any proceeding involving the order issued under section 521 of ERISA. The temporary order shall then become the final order of the Secretary, within the meaning of 29 CFR 2571.2(f), 30 days from the date of the service of the temporary order.

§ 2571.6 Consent order or settlement.

For section 521 proceedings, this section shall apply in lieu of § 18.9 of this title:

(a) *In general.* At any time after the commencement of a section 521 proceeding, the parties jointly may move to defer the hearing for a reasonable time in order to negotiate a settlement or an agreement containing findings and a consent order disposing of the whole or any part of the section 521 proceeding. The administrative law judge shall have discretion to allow or deny such a postponement and to determine its duration. In exercising

this discretion, the administrative law judge shall consider the nature of the section 521 proceeding, the requirements of the public interest, the representations of the parties and the probability of reaching an agreement that will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of the section 521 proceeding or any part thereof shall also provide:

(1) That the consent order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which the consent order is based shall consist solely of the notice and the agreement;

(3) A waiver of any further procedural steps before the administrative law judge;

(4) A waiver of any right to challenge or contest the validity of the consent order and decision entered into in accordance with the agreement; and

(5) That the consent order and decision of the administrative law judge shall be final agency action within the meaning of 5 U.S.C. 704.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representatives or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order to the administrative law judge;

(2) Notify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action subject to compliance with the terms of the settlement; or

(3) Inform the administrative law judge that agreement cannot be reached.

(d) *Disposition.* If a settlement agreement containing consent findings and an order, agreed to by all the parties to a section 521 proceeding, is submitted within the time allowed therefor, the administrative law judge shall incorporate all of the findings, terms, and conditions of the settlement agreement and consent order of the parties. Such decision shall become a final agency action within the meaning of 5 U.S.C. 704.

(e) *Settlement without consent of all respondents.* In cases in which some, but not all, of the respondents to a section 521 proceeding submit an agreement and consent order to the administrative law judge, the following procedure shall apply:

(1) If all of the respondents have not consented to the proposed settlement submitted to the administrative law judge, then such non-consenting parties must receive notice and a copy of the proposed settlement at the time it is submitted to the administrative law judge;

(2) Any non-consenting respondent shall have fifteen (15) days to file any objections to the proposed settlement with the administrative law judge and all other parties;

(3) If any respondent submits an objection to the proposed settlement, the administrative law judge shall decide within thirty (30) days after receipt of such objections whether to sign or reject the proposed settlement. Where the record lacks substantial evidence upon which to base a decision or there is a genuine issue of material fact, then the administrative law judge may establish procedures for the purpose of receiving additional evidence upon which a decision on the contested issue may be reasonably based;

(4) If there are no objections to the proposed settlement, or if the administrative law judge decides to sign the proposed settlement after reviewing any such objections, the administrative law judge shall incorporate the consent agreement into a decision meeting the requirements of paragraph (d) of this section; and

(5) If the consent agreement is incorporated into a decision meeting the requirements of paragraph (d) of this section, the administrative law judge shall continue the section 521 proceeding with respect to any non-consenting respondents.

§ 2571.7 Scope of discovery.

For section 521 proceedings, this section shall apply in lieu of § 18.14 of this title:

(a) A party may file a motion to conduct discovery with the administrative law judge. The administrative law judge may grant a motion for discovery only upon a showing of good cause. In order to establish ''good cause'' for the purposes of this section, the moving party must show that the requested discovery relates to a genuine issue as to a fact that is material to the section 521 proceeding. The order of the administrative law judge shall expressly limit the scope and terms of the discovery to that for which ''good cause'' has been shown, as provided in this paragraph.

(b) Any evidentiary privileges apply as they would apply in a civil proceeding in federal district court. For example, legal advice provided by an attorney to a client is generally protected from disclosure. Mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative developed in anticipation of litigation are also generally protected from disclosure. An exception to these privileges, however, exists when an attorney advises a plan fiduciary on matters involving the performance of his or her fiduciary duties (called the ''fiduciary exception''). Consequently, the administrative law judge may not protect from discovery communications between an attorney and a plan administrator or other fiduciary or work product that fall under the fiduciary exception to the attorney-client or work product privileges.

§ 2571.8 Summary decision.

For section 521 proceedings, this section shall apply in lieu of § 18.41 of this title:

(a) *No genuine issue of material fact.* Where the administrative law judge finds that no issue of a material fact has been raised, he or she may issue a decision which, in the absence of an appeal, pursuant to 29 CFR 2571.10 through 2571.12, shall become a final agency action within the meaning of 5 U.S.C. 704.

(b) A decision made under this paragraph, shall include a statement of:

(1) Findings of fact and conclusions of law, and the reasons thereof, on all issues presented; and

(2) Any terms and conditions of the ruling.

(c) A copy of any decision under this paragraph shall be served on each party.

§ 2571.9 Decision of the administrative law judge.

For section 521 proceedings, this section shall apply in lieu of § 18.57 of this title:

(a) *Proposed findings of fact, conclusions, and order.* Within twenty (20) days of the filing of the transcript of the testimony, or such additional time as the administrative law judge may allow, each party may file with the administrative law judge, subject to the judge's discretion, proposed findings of fact, conclusions of law, and order together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the administrative law judge.* The administrative law judge shall make his or her decision expeditiously after the conclusion of the section 521 proceeding. The decision of the administrative law judge shall include findings of fact and conclusions of law with reasons therefore upon each

material issue of fact or law presented on the record. The decision of the administrative law judge shall be based upon the whole record and shall be supported by reliable and probative evidence. The decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704 unless an appeal is made pursuant to the procedures set forth in 29 CFR 2571.10 through 2571.12.

§ 2571.10 Review by the Secretary.

(a) The Secretary may review the decision of an administrative law judge. Such review may occur only when a party files a notice of appeal from a decision of an administrative law judge within twenty (20) days of the issuance of such a decision. In all other cases, the decision of the administrative law judge shall become the final agency action within the meaning of 5 U.S.C. 704.

(b) A notice of appeal to the Secretary shall state with specificity the issue(s) in the decision of the administrative law judge on which the party is seeking review. Such notice of appeal must be served on all parties of record.

(c) Upon receipt of an appeal, the Secretary shall request the Chief Administrative Law Judge to submit to the Secretary a copy of the entire record before the administrative law judge.

§ 2571.11 Scope of review by the Secretary.

The review of the Secretary shall be based on the record established before the administrative law judge. There shall be no opportunity for oral argument.

§ 2571.12 Procedures for review by the Secretary.

(a) Upon receipt of a notice of appeal, the Secretary shall establish a briefing schedule which shall be served on all parties of record. Upon motion of one or more of the parties, the Secretary may, in her discretion, permit the submission of reply briefs.

(b) The Secretary shall issue a decision as promptly as possible after receipt of the briefs of the parties. The Secretary may affirm, modify, or set aside, in whole or in part, the decision on appeal and shall issue a statement of reasons and bases for the action(s) taken. Such decision by the Secretary shall be the final agency action with the meaning of 5 U.S.C. 704.

§ 2571.13 Effective date.

This regulation is effective with respect to all cease and desist orders issued by the Secretary under section 521 of ERISA at any time after [30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE].

Signed at Washington, DC, this 28th day of November 2011.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2011–30921 Filed 12–5–11; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

RIN 1210–AB51

Proposed Revision of the Form M–1

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of proposed form revisions.

SUMMARY: This document announces proposed revisions to the Form M–1, Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs). The revisions can be viewed on the Employee Benefits Security Administration's (EBSA) Web site at *www.dol.gov/ebsa.* The proposed form is substantively different from previous versions of the Form M–1 and may not be used for filing purposes. Elsewhere in this edition of the **Federal Register**, EBSA is publishing a Notice of Proposed Rulemaking. Those rules would amend the existing MEWA regulations to implement the registration requirement added to section 101(g) of Title I of the Employee Retirement Income Security Act of 1974, (ERISA), as amended by the Patient Protection and Affordable Care Act (Affordable Care Act) as well as to enhance compliance, enforcement, and protection of employer-sponsored health benefits. The proposed form and the accompanying instructions would facilitate the filing requirements for MEWAs under ERISA.

DATES: Written comments on the Form M–1 and Instructions should be submitted to the Department of Labor on or before March 5, 2012.

ADDRESSES: Written comments may be submitted to the address specified below. All comments will be made available to the public. *WARNING:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously.

Department of Labor. Comments to the Department of Labor, identified by RIN 1210–AB51, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: E-OHPSCAM-1Revisions.EBSA@dol.gov.*
- *Mail or Hand Delivery:* Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N–5653, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, *Attention:* RIN 1210–AB51; Revision of Form M–1.

Comments received by the Department of Labor will be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and made available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Kevin Horahan or Suzanne Bach, Office of Health Plan Standards and Compliance Assistance, at (202) 693–8335. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

The Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191, 110 Stat. 1936) (HIPAA) amended ERISA to provide for, among other things, improved portability and continuity of health insurance coverage. HIPAA also added section 101(g) to ERISA, 29 U.S.C. 1021(g), providing the Secretary with the authority to require, by regulation, annual reporting by MEWAs that are not ERISA-covered plans. The Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111–148, 124 Stat. 119 (2010), amended section 101(g) of ERISA to require that such MEWAs register with the Department prior to operating in a State. Specifically, this section now provides that the Secretary shall, by regulation, require multiple employer welfare arrangements providing benefits consisting of medical care (within the meaning of section 733(a)(2) of ERISA, 29 U.S.C. 1191b(a)(2)) which are not ERISA-covered group health plans to register with the Secretary prior to operating in a State and may, by regulation, require such multiple employer welfare arrangements to report, not more frequently than annually, in such form and such manner as the Secretary may require for the purpose of determining the extent to which the requirements of part 7 of subtitle B of title I of ERISA are being carried out in connection with such benefits.

The term ''multiple employer welfare arrangement'' is defined in section 3(40) of ERISA, 29 U.S.C. 1002(40) in pertinent part, as an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing medical benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements, by a rural electric cooperative, or by a rural telephone cooperative association. For purposes of this definition, two or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group. The term ''control group'' means a group of trades or businesses under common control, and the determination of whether a trade or business is under ''common control'' with another trade or business shall be determined under regulations of the Secretary applying principles similar to the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer under section 4001(b) of ERISA, 29 U.S.C. 1301(b), except that, for purposes of this paragraph, common control shall not be based on an interest of less than 25 percent.[1]

In 2000, the Department published an interim final rule implementing the MEWA reporting requirement. 65 FR 715 (Feb. 11, 2000). The interim final rule generally required the administrator of a MEWA, whether or not an ERISA-covered group health plan (and certain other entities that offer or provide health benefits to the employees of two or more employers) to file the Form M–1 with the Secretary. The purpose of this form is to allow the Department to determine whether the requirements of part 7 are being met. A final rule implementing the MEWA reporting requirement was published in the **Federal Register** on April 9, 2003 at 68 FR 17494. The original reporting requirement responded to a 1992 recommendation of the General Accounting Office (GAO). See

[1] This provision was added to ERISA by section 302(b) of the Multiple Employer Welfare Arrangement Act of 1983, Public Law 97–473, 96 Stat. 2611, 2612 which also amended section 514(b) of ERISA, 29 U.S.C. 1144(a). Section 514(a) of ERISA provides that state laws that relate to employee benefit plans are generally preempted by ERISA. Section 514(b) sets forth several exceptions to the general rule of section 514(a) and subjects employee benefit plans that are MEWAs to various levels of state regulation depending on whether the MEWA is fully insured. Sec. 302(b), Public Law 97–473, 96 Stat. 2611, 2613 (29 U.S.C. 1144(b)(6)).

''Employee Benefits: States Need Labor's Help Regulating Multiple Employer Welfare Arrangements,'' March 1992, GAO/HRD–92–40. In that report, the GAO detailed a history of fraud and abuse by some MEWAs and recommended that the Department develop a mechanism to help States identify MEWAs. The problems pointed out in that report continued to exist at the time of the publication of the interim final and final reporting rules and by all accounts, as evidenced by the amendments made by the Affordable Care Act to section 101(g) of ERISA, persist to this day. The proposed rules published elsewhere in today's edition of the **Federal Register** would amend the final rule as well as the rules related to annual reports required of MEWAs that are group health plans and solicit comments regarding the restructured reporting requirements.

The Affordable Care Act was enacted on March 23, 2010; the Health Care and Education Reconciliation Act (the Reconciliation Act), Public Law 111–152, 124 Stat. 1029, was enacted on March 30, 2010. The Affordable Care Act and the Reconciliation Act reorganize, amend, and add to the provisions in part A of title XXVII of the Public Health Service Act (PHS Act), 42 U.S.C. 300gg–1 et seq., relating to group health plans and health insurance issuers in the group and individual markets. The term ''group health plan'' includes both insured and self-insured group health plans.[2] The Affordable Care Act adds section 715(a)(1) to ERISA, 29 U.S.C. 1185d(a)(1), and section 9815(a)(1) to the Internal Revenue Code (the Code), 26 U.S.C. 9815(a)(1), to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and make them applicable to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans. The PHS Act sections incorporated by this reference are sections 2701 through 2728. PHS Act sections 2701 through 2719A are substantially new, though they incorporate some provisions of prior law. PHS Act sections 2722 through 2728 are sections of prior law renumbered, with some, mostly minor, changes. Section 1251 of the Affordable Care Act, as modified by section 10103 of the Affordable Care Act and section 2301 of the Reconciliation Act, 42 U.S.C. 18011, specifies that certain plans or coverage existing as of the date of enactment (*i.e.,* grandfathered health plans) are only subject to certain provisions. The Affordable Care Act amended section 101(g) of ERISA to require MEWAs that provide benefits consisting of medical care (within the meaning of section 733(a)(2) of ERISA) which are not group health plans to register with the Secretary prior to their operating in a State, in addition to reporting annually regarding their compliance with part 7 of ERISA including the PHS Act market reforms incorporated by reference in section 715 of ERISA. The Notice of Proposed Rulemaking published elsewhere in today's **Federal Register** implements the 101(g) MEWA registration mandate which requires MEWAs to report compliance with the part 7 rules including the PHS Act sections 2701 through 2728.

In addition to the relevant provisions of HIPAA and the Affordable Care Act, other laws are also set forth in part 7 with which MEWAs must annually report compliance. The Mental Health Parity Act of 1996 (Title VII of Pub. L. 104– 204, 110 Stat. 2944)) (MHPA) amended ERISA to provide parity in the application of annual and lifetime dollar limits for certain mental health benefits with such dollar limits on medical and surgical benefits. The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Div. C, Subtitle B of Pub. L. 110–343, 122 Stat. 3765) amended ERISA by expanding the MHPA rules to include parity for substance use disorders benefits. 29 U.S.C. 1185a. It also required parity in financial requirements and treatment limitations. The Newborns' and Mothers' Health Protection Act of 1996 (Title VI of Pub. L. 104–204, 110 Stat. 2935) amended ERISA to provide new protections for mothers and their newborn children with regard to the length of hospital stays in connection with childbirth. 29 U.S.C. 1185. The Women's Health and Cancer Rights Act of 1998 (Title VII of Pub. L. 105–277, 112 Stat. 2681–436) amended ERISA to provide individuals new rights for reconstructive surgery in connection with a mastectomy. 29 U.S.C. 1185b. The Genetic Information Nondiscrimination Act of 2008 (Pub. L. 110–233, 122 Stat. 881) amended ERISA to prohibit the use of genetic information to adjust group premiums or contributions, prohibit the collection of genetic information, and prohibit requesting individuals to undergo genetic testing. 29 U.S.C. 1182. Michelle's Law (Pub. L. 110–381, 122 Stat. 4081 (2008)) amended ERISA to prohibit group health plans and issuers from terminating coverage for a dependent child, whose enrollment in the plan requires student status at a postsecondary educational institution, if the student status is lost as a result of a medically necessary leave of absence. 29 U.S.C. 1185c.

II. Discussion of the Proposed Revisions

A. Proposed Regulatory Amendments

The Department is simultaneously publishing a Notice of Proposed Rulemaking in today's **Federal Register** that, upon adoption, would amend the existing Form M–1 requirements under § 2520.101–2, propose implementation of new registration requirements enacted by the Affordable Care Act, and propose amendments to the Department's annual reporting regulations to strengthen the Form M–1 requirements for all MEWAs. The new registration requirement is an important new enforcement tool to help Federal and State regulators better identify and monitor MEWAs and gives the Secretary authority to collect additional information than had been collected in previous versions of the Form M–1, including custodial and financial information. To reflect the proposed regulatory amendments to the Form M–1 reporting requirements, the Department is proposing the following revisions.

B. Overview of Form Revisions

This document announces the availability of the proposed revisions to the Form M–1, Form for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs), for comment. The proposed revisions to the Form M–1 may be viewed on EBSA's Web site at *http://www.dol.gov/ebsa.* The proposed revisions result in a Form M–1 that is substantially different from previous versions of the Form M–1.

Part I of the proposed Form M–1 was revised to implement the new statutory and proposed regulatory requirements that MEWAs must register with the Department prior to operating in a State. Filers would be required to indicate the type of filing entity (i.e. plan MEWA, non-plan MEWA, or an ECE) and the type of filing being submitted (i.e. annual report, registration, origination, or request for extension).

Part II of the proposed Form M–1 would require more extensive custodial and financial information than requested in previous versions of the Form M–1. In addition to providing information regarding the entity's administrator and entity sponsor, the

[2] The term ''group health plan'' is used in title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code, and is distinct from the term ''health plan'', as used in other provisions of title I of the Affordable Care Act. The term ''health plan'' does not include self-insured group health plans.

Form M–1 would require an entity to report individuals associated with the entity as follows: agent for service of process or registered agent; members of the Board, officers, trustees, custodians; promoters and/or agents responsible for marketing; any person, financial institution or other entity holding assets; any actuaries providing services; any third party administrator (TPA) with whom the MEWA or ECE has a contract with; any person or entity that has authority or control over the assets of the MEWA or ECE or over assets paid to the entity by plans or employers for the provision of benefits; any person or entity that has discretionary authority control, or responsibility with respect to the administration of the MEWA or ECE or any benefit program offered by it; and information regarding any merger with another filing entity. Additionally, the proposed Form M–1 would require the filing entity to respond to several ''yes or no'' questions with respect to the entity's assets and the fiduciaries responsible for those assets.

Part II of the proposed Form M–1 includes information previously contained in Part III of the Form M–1 and includes several modifications which capture information regarding entities that are operating in a State. Pursuant to the definition of ''operating'' in the proposed regulations published elsewhere in today's edition of the **Federal Register**, these modifications may apply to entities that are not actively providing coverage.

The information collected in Part III of the proposed Form M–1 (previously designated as Part IV) remains generally unchanged, except information regarding legal proceedings is now included in Part II.

Corresponding changes were also made to the Form M–1 Instructions including the line-by-line instructions to reflect these revisions to the Form M–1. More details on filing requirements are available in the Notice of Proposed Rulemaking published elsewhere in this edition of the **Federal Register**. The Self Compliance Tool, which may be used to help assess an entity's compliance with part 7 of ERISA, will continue to be included in the Form M–1 instructions. The current version of that document is available at *http://www.dol.gov/ebsa.* The Self Compliance Tool undergoes changes to reflect the current provisions of part 7 as they become effective. While we are accepting comments on the Form M–1 and the Instructions, which include the Self-Compliance tool, please refrain from commenting on the portion of the instructions referencing the Self Compliance Tool in that regard.

III. Paperwork Reduction Act Statement

According to the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (PRA), no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by the Office of Management and Budget (OMB) under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. *See* 44 U.S.C. 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 44 U.S.C. 3512.

This notice would revise the information collection request (ICR) titled the ''Annual Report for Multiple Employer Welfare Arrangements (Form M–1) approved by OMB under OMB Control Number 1210–0116, which currently is scheduled to expire on March 31, 2013. For the hour and cost burden associated with this revision, please see the proposed regulation titled ''Filings Required of Multiple Employer Welfare Arrangements and Certain Other Entities that Offer or Provide Coverage for Medical Care to the Employees of Two or More Employers,'' which is published elsewhere in today's issue of the **Federal Register**.

Statutory Authority: 29 U.S.C. 1021–1024, 1027, 1029–31, 1059, 1134 and 1135; Secretary of Labor's Order 3–2010, 75 FR 55354 (September 10, 2010). Sec. 2520.101–2 also issued under 29 U.S.C. 1181–1183, 1181 note, 1185, 1185a–d, and 1191–1191c. Sec. 2520.103–1 also issued under 26 U.S.C. 6058 note. Sec. 2520.101–6 also issued under § 502(a)(3), 120 Stat. 780, 940 (2006); Secs. 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–d, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788. Sec. 2520.101–3 is also issued under 29 U.S.C. 1021(i).

Signed at Washington, DC this 28th day of November, 2011.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2011–30920 Filed 12–5–11; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

RIN 1210–AB51

Proposed Revision of Annual Information Return/Reports

AGENCY: Employee Benefits Security Administration, Department of Labor

ACTION: Notice of proposed forms revisions.

SUMMARY: This document contains proposed revisions to the Form 5500 Annual Return/Report filed by administrators of employee benefit plans. The proposed revisions are intended to enhance the Department of Labor's ability to enforce the reporting requirements for multiple employer welfare arrangements (MEWAs) under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA).

DATES: Written comments on the proposed regulations should be submitted to the Department of Labor on or before March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Janet K. Song, Office of Regulations and Interpretations, Employee Benefits Security Administration, Department of Labor, at (202) 693–8523. This is not a toll-free number.

ADDRESSES: Written comments may be submitted to the address specified below. All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously.

Comments may be submitted to the Department of Labor, identified by RIN 1210–AB51, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: e-ORI@dol.gov.*
- *Mail or Hand Delivery:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, *Attention:* RIN 1210–AB51.

Comments received by the Department of Labor will be posted without change to *http://www.regulations.gov* and *http://*

www.dol.gov/ebsa, and made available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

I. Background

Under Titles I and IV of ERISA, and the Internal Revenue Code (Code), as amended, and regulations issued thereunder, pension and welfare benefit plans are generally required to file an annual report concerning, among other things, the financial condition and operation of the plans. Filing the Form 5500 Annual Return/Report of Employee Benefit Plan (Form 5500 Annual Return/Report), including any required attachments and schedules, generally satisfies the annual reporting requirements. The Form 5500 Annual Return/Report is the principal source of information and data concerning the operations, funding and investments of pension and welfare benefit plans. The Form 5500 Annual Return/Report constitutes an integral part of the enforcement, research and policy development programs of the Department of Labor (Department), the Internal Revenue Service, and the Pension Benefit Guaranty Corporation, and is a source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies. The Form 5500 Return/Report also serves as the primary means by which the operations of plans can be monitored by participants, beneficiaries, and the general public.

In addition to filing the Form 5500 Annual Return/Report, certain employee welfare benefit plans that are multiple employer welfare arrangements (MEWAs), as defined in section 3(40) of ERISA, are also subject to the reporting requirements under § 2520.101–2, which is satisfied by filing a Form M–1 Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Other Entities Claiming Exception (ECEs) (Form M–1).

II. Multiple Employer Welfare Arrangements

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191, 110 Stat. 1936) amended ERISA to provide for, among other things, improved portability and continuity of health insurance coverage. HIPAA added section 101(g) to ERISA, providing the Secretary of Labor (Secretary) with the authority to establish, by regulation, annual reporting by MEWAs that are not themselves plans within the meaning of ERISA section 3(3) (non-plan MEWAs). The purpose of the reporting requirement was to determine whether MEWAs were in compliance with the requirements created by HIPAA. The Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111–148, 124 Stat. 119 (2010), amended section 101(g) of ERISA to require non-plan MEWAs to register with the Department prior to operating in a State.

On February 11, 2000, the Department published an interim final rule implementing the Form M–1 regulation under § 2520.101–2. 65 FR 715. On April 9, 2003, the Department published the final rule. 68 FR 17494. ERISA section 101(g) only applies to non-plan MEWAs. In order to effectuate MEWA compliance, however, and based on the authority found in ERISA sections 505 and 734,[1] the 2003 Form M–1 regulation requires the administrators of both plan and non-plan MEWAs, as well as certain other entities that offer or provide health benefits to the employees of two or more employers, to file the Form M–1 with the Secretary.

Although ERISA sections 505 and 734 provided the Secretary with the authority to require plan MEWAs to comply with the Form M–1 reporting requirements of § 2520.101–2, only non-plan MEWAs are subject to civil penalties under ERISA section 502(c)(5) for failure to comply with the Form M–1 requirements.[2]

III. Discussion of the Proposed Revisions

1. Proposed Regulatory Amendments

The Department is simultaneously publishing a Notice of Proposed Rulemaking in today's **Federal Register** that, upon adoption, would amend the existing Form M–1 requirements under § 2520.101–2, propose implementation of new registration requirements enacted by the Affordable Care Act, and propose amendments to the Department's annual reporting regulations to strengthen the Form M–1 requirements for MEWAs. To reflect the proposed regulatory amendments to the Form 5500 reporting requirements, the Department is proposing to revise the Form 5500 Annual Return/Report and instructions as follows.

2. Plan MEWA Filing Requirement

Section 2520.104–20 and the instructions for the Form 5500 and Form 5500–SF provide for exemption from certain reporting and disclosure requirements under Title I of ERISA, including the requirement to file Form 5500 Annual Return/Report, for unfunded, fully insured, or combination unfunded/fully insured welfare plans that cover fewer than 100 participants. Under the proposed amendments to § 2520.103–1(c)(2) and § 2520.104–20, and revisions to the instructions for Form 5500 and Form 5500–SF, all plan MEWAs subject to the Form M–1 requirements would be required to file Form 5500 Annual Return/Report, regardless of the plan size. The limited exemption under § 2520.104–20 would be removed for plan MEWAs subject to the Form M–1 requirements. In addition, such plan MEWAs would not be eligible to file the Form 5500–SF.[3]

As discussed in the Paperwork Reduction Act statement, below, the Department believes that the number of plan MEWAs affected by the proposed removal of the exemption under § 2520.104–20 would be small. Nevertheless, the Department believes that the proposed change is necessary because all MEWAs are subject to the existing (and proposed) Form M–1 requirements under § 2520.101–2, regardless of the size of the entity. Unless all plan MEWAs are required to file the Form 5500 Annual Return/Report (with the proposed questions regarding Form M–1 compliance), the Department would have no way to enforce the Form M–1 requirements against MEWAs that might mischaracterize themselves as being eligible for the exemption under § 2520.104–20.

Moreover, the burden of preparing and filing the Form 5500 Annual Return/Report for the few small unfunded/fully insured plan MEWAs affected by the proposal would be minimized because, in addition to being

[1] In the preamble to the 2000 interim final rule, the Department explained ''[a]n important reason for requiring these groups to file is that the administrator of a MEWA may incorrectly determine that it is a group health plan or that it is established or maintained pursuant to a collective bargaining agreement. A reporting requirement limited only to MEWAs that are not group health plans may not result in reporting by many such MEWAs, thus greatly reducing the value of the data collected.'' *See* 65 FR 7152, 7153, (Feb. 11, 2000).

[2] Pursuant to ERISA section 502(c)(5), a civil penalty of up to $1,100 (or higher amount if adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended) a day may be assessed for each day a non-plan MEWA fails to file a complete Form M–1.

[3] The Form 5500–SF does not include specific Schedule A insurance information, and the Department believes that plan MEWAs subject to this proposal that claim to provide insured benefits should be required to complete the Schedule A so that enforcement officials and the public have information about the insurance policy and insurance company through which the MEWA is providing insurance coverage.

eligible for the simplified annual reporting requirements for small welfare plans provided under § 2520.104–41, these plan MEWAs would be exempt under § 2520.104–44 from completing Schedule I (Financial Information). Thus, these plan MEWAs would only need to file a Form 5500 and, if applicable, Schedule A (Insurance Information) and Schedule G, Part III (to report any nonexempt transactions).

3. Form 5500—New MEWA Information

Under the Notice of Proposed Rulemaking, content of the annual report under § 2520.103–1 would be amended to require a plan MEWA subject to the Form M–1 requirements to include a proof of compliance with § 2520.101–2 (filing the Form M–1) as part of the Form 5500 Annual Return/Report. Accordingly, the Department is proposing to add a new Part III to the Form 5500, which would ask for information regarding whether an employee welfare benefit plan is a MEWA subject to the Form M–1 requirements, and if so, whether the plan is currently in compliance with the Form M–1 requirements under § 2520.101–2. Plan administrators that indicate the plan is a MEWA subject to the Form M–1 requirements will also be required to enter a Receipt Confirmation Code for the most recent Form M–1 filed with the Department. Failure to answer the Form M–1 compliance questions will result in rejection of the Form 5500 Annual Return/Report as incomplete and civil penalties may be assessed pursuant to ERISA section 502(c)(2).

IV. Findings on the Revised Form 5500 Annual Return/Report as a Limited Exemption and Simplified Reporting

Section 104(a)(2)(A) of ERISA authorizes the Secretary to prescribe by regulation simplified reporting for pension plans that cover fewer than 100 participants. Section 104(a)(3) of ERISA authorizes the Secretary to exempt any welfare plan from all or part of the reporting and disclosure requirements of Title I of ERISA or to provide simplified reporting and disclosure if the Secretary finds that such requirements are inappropriate as applied to such plans. Section 110 of ERISA permits the Secretary to prescribe for pension plans alternative methods of complying with any of the reporting and disclosure requirements if the Secretary finds that: (1) The use of the alternative method is consistent with the purposes of Title I of ERISA, provides adequate disclosure to plan participants and beneficiaries, and provides adequate reporting to the Secretary; (2) the application of the statutory reporting and disclosure requirements would increase costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate. For purposes of Title I of ERISA, the filing of a completed Form 5500 Annual Return/Report, including the filing by eligible plans of the Form 5500–SF, in accordance with the instructions and related regulations, generally would constitute compliance with the simplified report, limited exemption and/or alternative method of compliance in § 2520.103–1. In addition, section 505 of ERISA authorizes the Secretary to prescribe such regulations as the Secretary finds necessary or appropriate to carry out the provisions of Title I of ERISA.

In revising the Form 5500 Annual Return/Report and making the amendments to the Department's annual reporting regulations, the Department has attempted to balance the needs of participants and beneficiaries and the Department to obtain information necessary to protect ERISA rights and interests with the costs attendant with the reporting of information to the federal government. The Department finds under sections 104(a)(2)(A) and 104(a)(3) of ERISA that the use of the Form 5500 Annual Return/Report, with the proposed new Form M–1 compliance questions, is consistent with the purposes of Title I of ERISA and provides adequate disclosure to participants and beneficiaries and adequate reporting to the Secretary.

The use of the Form 5500 Annual Return/Report, including the proposed new Form M–1 compliance questions, will relieve plan MEWAs from increased costs and unreasonable administrative burdens by providing a standardized format that facilitates reporting, eliminates duplicative reporting requirements, and simplifies the content of the annual report in general. Taking into account the above, the Department has determined that the proposed revisions to the Form 5500 Annual Return/Report are necessary and appropriate to carry out the provisions of Title I of ERISA. The proposed revised Form 5500 Annual Return/Report provides for the reporting and disclosure of financial and other plan information described in section 103 of ERISA in a uniform, efficient, and understandable manner, thereby facilitating the disclosure of such information to plan participants and beneficiaries.

V. Paperwork Reduction Act Statement

According to the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (PRA), no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by the Office of Management and Budget (OMB) under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. *See* 44 U.S.C. 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 44 U.S.C. 3512.

The Department has filed a revision with OMB regarding the impact this notice would have on the information collection request titled ''Form 5500, Annual Return/Report of Employee Benefit Plan,'' which is approved by OMB under OMB Control Number 1210–0110 and currently scheduled to expire on March 31, 2014. The proposed regulation titled ''Filings Required of Multiple Employer Welfare Arrangements and Certain Other Entities that Offer or Provide Coverage for Medical Care to the Employees of Two or More Employers,'' published elsewhere in today's issue of the **Federal Register**, would revise the content of the Form 5500 Annual Return/Report to require an ERISA-covered plan MEWA that is subject to Form M–1 requirements to include a proof of filing the Form M–1 as part of the Form 5500 Annual Return/Report. Accordingly, the Department is proposing to add a new Part III to the Form 5500, which would ask for information regarding whether the employee welfare benefit plan is a MEWA subject to the Form M–1 requirements, and if so, whether the plan is currently in compliance with the Form M–1 requirements under § 2520.101–2. Plan administrators that indicate the plan is a MEWA subject to the Form M–1 requirements also would be required to enter a Receipt Confirmation Code for the most recent Form M–1 filed with the Department. Failure to answer the Form M–1 compliance questions will result in rejection of the Form 5500 Annual Return/Report as incomplete and civil penalties may be assessed pursuant to ERISA section 502(c)(2). The

Department believes that the burden associated with this revision would be de minimis, because plan administrators would know whether the plan MEWA is subject to and in compliance with the Form M–1 requirements, and they would have the Receipt Confirmation Code for the most recent Form M–1 filing readily available.

The proposed rule also would require all plan MEWAs subject to the Form M–1 requirements to file the Form 5500 Annual Return/Report, regardless of the plan size. The limited exemption for certain small welfare plans under § 2520.104–20 would be removed for plan MEWAs subject to the Form M–1 requirements. In addition, such plan MEWAs would not be eligible to file the Form 5500–SF. Although the Department does not have sufficient data to estimate the number of plan MEWAs that would be affected by this revision, it expects the number to be small, because 90% of MEWAs that file the Form M–1 with the Department cover more than 100 participants. Moreover, as discussed earlier in this notice, the burden of preparing and filing the Form 5500 Annual Return/Report for the few small unfunded/fully insured plan MEWAs affected by the proposal would be minimal, because, in addition to being eligible for the simplified annual reporting requirements for small welfare plans provided under § 2520.104–41, these plan MEWAs would be exempt under § 2520.104–44 from completing Schedule I (Financial Information). Thus, the affected plan MEWAs would only need to file a Form 5500 and, if applicable, Schedule A and Schedule G, Part III (to report any nonexempt transactions). The Department estimates that affected MEWAs would incur a cost of $450 to engage a third-party service provider to prepare the form and schedules for submission.

Appendix A—Proposed Changes to Existing Form 5500—New Part III Added

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Part III	Multiple Employer Welfare Arrangement (MEWA) Information
11a. If the plan provides welfare benefits, is the plan a multiple employer welfare arrangement (MEWA) that is subject to the Form M-1 filing requirements? (*See* instructions and 29 CFR 2520.101-2.) ☐ Yes ☐ No	
If "Yes" is checked, complete lines 11b and 11c.	
11b. Is the plan currently in compliance with the Form M-1 filing requirements? (*See* instructions and 29 CFR 2520.101-2.) ☐ Yes ☐ No	
11c. Enter the Receipt Confirmation Code for the most recent 20XX Form M-1 that was filed in accordance with the Form M-1 filing requirements. (Failure to enter a valid Receipt Confirmation Code will result in rejection of the filing as incomplete.)	_____

Appendix B—Proposed Changes to Form 5500 Instructions

The proposed changes to the instructions to the Form 5500 are as follows:

Section 1: Who Must File

- The following instructions will be added to the instructions for Welfare Benefit Plan:

Plans that are also multiple employer welfare arrangements (MEWAs) required to file a Form M-1, Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs), are not eligible for the filing exemption for small unfunded, fully insured or combination of unfunded/fully insured welfare plans as described below. Such plan MEWAs are required to file the Form 5500 regardless of the plan size or whether the plan is unfunded, fully insured, or a combination of insured and unfunded.

Section 4: What To File

- The following instructions will be added to the instructions for General Schedules,

Schedule I:

Note. A plan that would have been eligible for the filing exemption for small unfunded, fully insured or combination of unfunded/fully insured welfare plans under 29 CFR 2550.104-20 but for the fact that it is a MEWA required to file a Form M-1 is exempt under 29 CFR 2520.104-44(b)(1) from completing a Schedule I.

- The following tip will be added to the instructions for Small Welfare Plan filing

requirements:

An unfunded, fully insured or combination of unfunded/fully insured welfare plan that covered fewer than 100 participants as of the beginning of the plan year and is a multiple employer welfare arrangement (MEWA) required to file a Form M-1, Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs), is exempt from attaching Schedule I if the plan meets the requirements of 29 CFR 2520.104-44. *However, Schedule G, Part III, must be attached to the Form 5500 to report any nonexempt transactions.*

Quick Reference Chart of Form 5500, Schedules, and Attachments (Not Applicable for Form 5500-SF Filers)

- The following sentence will be added at the end of footnote 3:

Plans that are also multiple employer welfare arrangement (MEWA) required to file Form M-1, Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs), must file an annual report regardless of plan size or whether the plan is unfunded, fully insured, or a combination of unfunded/fully insured.

Section 5: Line-by-Line Instructions for the Form 5500 and Schedules

- The following instruction will be added to the instructions for Part I, Line A- Box for Multiple-Employer Plan.

A plan that is a multiple employer welfare arrangement (MEWA) is a multiple-employer plan for purposes of filing the Form 5500.

- The following instructions for new Part III will be added as follows:

Part III – Multiple Employer Welfare Arrangement (MEWA) Information

Line 11a. All plans providing welfare benefits must complete Part III, line 11a by answering either "Yes" or "No." Do not leave the answer blank. If "yes" is checked, you must complete line 11, elements 11b and 11c.

Generally, a plan is a "multiple employer welfare arrangement" (MEWA) subject to the filing requirements of **Form M-1, Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)**, if the plan offers or provides medical benefits to employees of two or more employers, unless it meets any of the exceptions described in the instructions to Form M-1. See the instructions for the Form M-1 on the EBSA website at www.dol.gov/ebsa.

Line 11b. All plans that answered "Yes" in line 11a must complete line 11b by answering either "Yes" or "No." Do not leave the answer blank.

In order for a plan MEWA to be deemed compliant with the Form M-1 filing requirements, a Form M-1 must be filed each year by March 1st following the calendar year in which the plan MEWA operates. Additional Form M-1 filings are necessary when the plan MEWA experiences any of the following registration filing events:

1. The plan MEWA first begins operating with regard to the employees of two or more employers (including one or more self-employed individuals);

2. The plan MEWA begins operating in any additional state;

3. The plan MEWA begins operating following a merger with another MEWA;

4. The number of employees receiving coverage for medical care under the plan MEWA is at least 50 percent greater than the number of such employees on the last day of the previous calendar year; or

5. The plan MEWA experiences a material change as defined by the Form M-1 instructions.

Events 1 and 2 require a Form M-1 filing 30 days prior to the event, while events 3-5 require a Form M-1 filing within 30 days of the event occurring. A plan MEWA may be required to file a Form M-1 more than once during the plan year.

See the instructions for Form M-1 and 29 CFR 2520.101-2 for more information regarding the Form M-1 filing requirements for plan MEWAs.

Line 11c. All plans that answered "Yes" in line 11a must enter a Receipt Confirmation Code for the most recent 20XX Form M-1 filed with the Department in accordance with the Form M-1 filing requirements. If a subsequent Form M-1 has been filed with the Department, enter the Receipt Confirmation Code for the subsequent Form M-1. The Receipt Confirmation Code is a unique code generated by the Form M-1 electronic filing system.

A welfare benefit plan's failure to answer line 11a, line 11b or enter a valid Receipt Confirmation Code in line 11c will result in rejection of the filings as incomplete and civil penalties may be assessed pursuant to ERISA Section 502(c)(2) and 29 CFR 2560.502c-2.

Instructions for Schedule G (Form 5500) *Financial Transaction Schedules*

- The following instructions will be added to the "Caution" paragraph in Part III – Nonexempt

Transactions:

An unfunded, fully insured, or combination unfunded/fully insured welfare plan with fewer than 100 participants that is a multiple employer welfare arrangement (MEWA) exempt under 29 CFR 2520.104-44 from completing Schedule I, must complete Schedule G, Part III, to report nonexempt transactions.

Instructions for Schedule I (Form 5500) *Financial Information – Small Plan*

- The following instructions will be added to the "Exception" paragraph under General

Instructions for Who Must File:

An unfunded, fully insured or combination unfunded/fully insured welfare plan that would have been exempt from filing the Form 5500 but for the fact that it is a multiple employer welfare arrangement (MEWA) required to file a Form M-1, is exempt under 29 CFR 2520.104-44 from completing Schedule I.

Appendix C—Proposed Changes to Existing Form 5500–SF Instructions

General Changes

The instructions to the Form 5500–SF will be updated to clarify that plan MEWAs subject to Form M–1 filing requirements are not eligible to file the Form 5500–SF and must file the Form 5500, with all required schedules and attachments. The proposed changes are as follows:

Who May File

- The following paragraph 6 will be added to the instructions:

6. The plan is not a multiple employer welfare arrangement (MEWA) required to file a Form M-1, Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs).

Specific Line-by-Line Instructions (Form 5500-SF)

- The following paragraph 6 will be added to the instructions for Part II, Line 6:

6. The plan is not a multiple employer welfare arrangement (MEWA) required to file a Form M-1, Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs).

Signed at Washington, DC this 28th day of November, 2011.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2011–30919 Filed 12–5–11; 8:45 am]

BILLING CODE 4510–29–C

FEDERAL REGISTER

Vol. 76 Tuesday,
No. 234 December 6, 2011

Part III

Environmental Protection Agency

40 CFR Part 63
National Emissions Standards for Hazardous Air Pollutants: Primary Aluminum Reduction Plants; Proposed Rule

ENVIRONMENTAL PROTECTION

40 CFR Part 63

[EPA–HQ–OAR–2011–0797; FRL–9491–3]

RIN 2060–AQ92

National Emissions Standards for Hazardous Air Pollutants: Primary Aluminum Reduction Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing amendments to the national emissions standards for hazardous air pollutants for Primary Aluminum Reduction Plants to address the results of the residual risk and technology review that the EPA is required to conduct by the Clean Air Act. If finalized, these proposed amendments would address previously unregulated emissions (*i.e.*, carbonyl sulfide (COS) emissions from new and existing potlines and polycyclic organic matter (POM) emissions from new and existing prebake potlines and existing pitch storage tanks); remove the vertical stud Soderberg one (VSS1) potline subcategory; reduce the MACT limits for POM emissions from horizontal stud Soderberg (HSS) and VSS2 potlines; eliminate the startup, shutdown and malfunction exemption in accordance with recent actions by the United States Court of Appeals for the District of Columbia Circuit; add provisions for facilities to avail themselves of an affirmative defense in the event of a malfunction under certain conditions; and make certain technical and editorial changes. The proposed emissions limits for POM and COS are based on maximum achievable control technology (MACT). While the proposed modifications would result in some reduction in actual emissions of POM from existing pitch storage tanks, reduce the potential emissions of POM from Soderberg potlines, and prevent increases in emissions of COS and sulfur dioxide, the health risks posed by actual emissions from this source category are currently within the acceptable range and would not be reduced appreciably by the proposed modifications.

DATES: Comments must be received on or before January 20, 2012. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of receiving full consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before January 5, 2012.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by December 16, 2011, a public hearing will be held on December 21, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–HQ–OAR–2011–0797, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov*, Attention Docket ID Number EPA–HQ–OAR–2011–0797.
- *Fax:* (202) 566–9744, Attention Docket ID Number EPA–HQ–OAR–2011–0797.
- *Mail:* U.S. Postal Service, send comments to: EPA Docket Center, EPA West (Air Docket), Attention Docket ID Number EPA–HQ–OAR–2011–0797, U.S. Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attn:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004, Attention Docket ID Number EPA–HQ–OAR–2011–0797. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID Number EPA–HQ–OAR–2011–0797. The EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket. The EPA has established a docket for this rulemaking under Docket ID Number EPA–HQ–OAR–2011–0797. 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, is not placed on the Internet and 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 EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Public Hearing. If a public hearing is held, it will begin at 10 a.m. on December 21, 2011 and will be held at the EPA's campus in Research Triangle Park, North Carolina, or at an alternate facility nearby. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held should contact Ms. Virginia Hunt, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, (D243–02), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0832.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Mr. David Putney, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental

Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2016; fax number: (919) 541–3207; and email address: *putney.david@epa.gov.* For specific information regarding the risk modeling methodology, contact Dr. Michael Stewart, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Air Toxics Assessment Group (C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–7524; *fax number:* (919) 541–0840; and *email address: stewart.michael@epa.gov.* For information about the applicability of the proposed or current national emission standards for hazardous air pollutants (NESHAP) for primary aluminum reduction plants to a particular entity, contact the appropriate person listed in Table 1 of this preamble.

TABLE 1—LIST OF EPA CONTACTS FOR THE NESHAP ADDRESSED IN THIS PROPOSED ACTION

NESHAP for:	OECA Contact [1]	OAQPS Contact [2]
Primary Aluminum Reduction Plants	Patrick Yellin, (202) 564–2970, *yellin.patrick@epa.gov*	David Putney, (919) 541–2016, *putney.david@epa.gov*

[1] EPA Office of Enforcement and Compliance Assurance.
[2] EPA Office of Air Quality Planning and Standards.

SUPPLEMENTARY INFORMATION:

Preamble Acronyms and Abbreviations

Several acronyms and terms used to describe industrial processes, data inventories, and risk modeling are included in this preamble. While this may not be an exhaustive list, the following terms and acronyms are defined here for reference:

ADAF age-dependent adjustment factors
AEGL acute exposure guideline levels
AERMOD air dispersion model used by the HEM–3 model
AMOS ample margin of safety
ANPRM advance notice of proposed rulemaking
ATSDR Agency for Toxic Substances and Disease Registry
BACT best available control technology
BLDS bag leak detection system
CAA Clean Air Act
CBI Confidential Business Information
CEMS continuous emissions monitoring system
CFR Code of Federal Regulations
COS carbonyl sulfide
CTE central tendency exposure
EJ environmental justice
EPA Environmental Protection Agency
ERPG Emergency Response Planning Guidelines
ERT Electronic Reporting Tool
HAP hazardous air pollutants
HEM–3 Human Exposure Model, Version 3
HEPA high efficiency particulate air
HHRAP Human Health Risk Assessment Protocols
HI Hazard Index
HQ Hazard Quotient
ICR information collection request
IRIS Integrated Risk Information System
Km kilometer
LAER lowest achievable emissions rate
lb/yr pounds per year
MACT maximum achievable control technology
MACT Code Code within the NEI used to identify processes included in a source category
MDL method detection level
mg/acm milligrams per actual cubic meter
mg/dscm milligrams per dry standard cubic meter
mg/m^3 milligrams per cubic meter
MIR maximum individual risk
MRL minimum risk level
NAC/AEGL Committee National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances
NAICS North American Industry Classification System
NAS National Academy of Sciences
NATA National Air Toxics Assessment
NEI National Emissions Inventory
NESHAP National Emissions Standards for Hazardous Air Pollutants
NOAEL no observed adverse effects level
NRC National Research Council
NTTAA National Technology Transfer and Advancement Act
O&M operation and maintenance
OAQPS Office of Air Quality Planning and Standards
ODW Office of Drinking Water
OECA Office of Enforcement and Compliance Assurance
OHEA Office of Health and Environmental Assessment
OMB Office of Management and Budget
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
PM particulate matter
POM polycyclic organic matter
ppmv parts per million volume
RACT reasonably available control technology
RBLC RACT/BACT/LAER Clearinghouse
REL reference exposure level
RFA Regulatory Flexibility Act
RfC reference concentration
RfD reference dose
RIA Regulatory Impact Analysis
RTR residual risk and technology review
SAB Science Advisory Board
SBA Small Business Administration
SCC Source Classification Codes
SOP standard operating procedures
SSM startup, shutdown, and malfunction
TEQ toxic equivalency quotient
TOSHI target organ-specific hazard index
TPY tons per year
TRIM Total Risk Integrated Modeling System
TTN Technology Transfer Network
UF uncertainty factor
μg/m^3 microgram per cubic meter
UL upper limit
UMRA Unfunded Mandates Reform Act
UPL upper predictive limit
URE unit risk estimate
WHO World Health Organization
WWW worldwide web

Organization of this Document. The information in this preamble is organized as follows:

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H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, after the EPA has identified categories of sources emitting one or more of the HAP listed in section 112(b) of the CAA, section 112(d) of the CAA calls for us to promulgate national emission standards for hazardous air pollutants (NESHAP) for those sources. ''Major sources'' are those that emit or have the potential to emit (PTE) 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAP. For major sources, these technology-based standards must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements and nonair quality health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

MACT standards are to reflect application of measures, processes, methods, systems or techniques including, but not limited to, measures which (1) reduce the volume of or eliminate emissions of pollutants through process changes, substitution of materials or other modifications, (2) enclose systems or processes to eliminate emissions, (3) capture or treat pollutants when released from a process, stack, storage or fugitive emissions point, (4) are design, equipment, work practice or operational standards (including requirements for operator training or certification) or (5) are a combination of the above. CAA section 112(d)(2)(A)–(E). The MACT standard may take the form of a design, equipment, work practice or operational standard where the EPA first determines that either (1) a pollutant cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant or that any requirement for, or use of, such a conveyance would be inconsistent with law, or (2) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations. CAA sections 112(h)(1)–(2).

The MACT ''floor'' is the minimum control level allowed for MACT standards promulgated under CAA section 112(d)(3) and may not be based on cost considerations. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT floors for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor (''beyond the floor'' standards) based on the consideration of the cost of achieving the emissions reductions and any nonair quality health and environmental impacts and energy requirements. No beyond the floor standards are proposed in this rulemaking action.

The EPA is then required to review these technology-based standards and to revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, under CAA section 112(d)(6). In conducting this review, the EPA is not obliged to completely recalculate the prior MACT determination. *NRDC* v. *EPA,* 529 F.3d 1077, 1084 (D.C. Cir. 2008).

The second stage in standard-setting focuses on reducing any remaining ''residual'' risk according to CAA section 112(f). This provision requires, first, that the EPA prepare a *Report to Congress* discussing (among other things) methods of calculating risk posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks, and the EPA's recommendations as to legislation regarding such remaining risk. The EPA prepared and submitted this report (*Residual Risk Report to Congress,* EPA–453/R–99–001) in March 1999. Congress did not act in response to the report, thereby triggering the EPA's obligation under CAA section 112(f)(2) to analyze and address residual risk.

CAA section 112(f)(2) requires us to determine, for source categories subject to MACT standards, whether the emissions standards provide an ample margin of safety to protect public health. If the MACT standards for HAP ''classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than 1-in-1 million,'' the EPA must promulgate residual risk standards for the source category (or subcategory), as necessary, to provide an ample margin of safety to protect public health. In doing so, the EPA may adopt standards equal to existing MACT standards if the EPA determines that the existing standards are sufficiently protective. *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008). (''If EPA determines that the existing technology-based standards provide an ''ample margin of safety,'' then the agency is free to readopt those standards during the residual risk rulemaking.'') The EPA must also adopt more stringent standards, if necessary, to prevent an adverse environmental effect [1] but must consider cost, energy, safety and other relevant factors in doing so.

Section 112(f)(2) of the CAA expressly preserves our use of a two-step process for developing standards to address any residual risk and our interpretation of ''ample margin of safety'' developed in the *National Emission Standards for Hazardous Air Pollutants: Benzene Emissions From Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants (Benzene NESHAP)* (54 FR 38044, September 14, 1989). The first step in this process is the determination of acceptable risk. The second step provides for an ample margin of safety to protect public health, which is the level at which the standards are set (unless a more

[1] ''Adverse environmental effect'' is defined in CAA section 112(a)(7) as any significant and widespread adverse effect, which may be reasonably anticipated to wildlife, aquatic life or natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental qualities over broad areas.

stringent standard is required to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect).

The terms ''individual most exposed,'' ''acceptable level,'' and ''ample margin of safety'' are not specifically defined in the CAA. However, CAA section 112(f)(2)(B) preserves the interpretation set out in the Benzene NESHAP, and the United States Court of Appeals for the District of Columbia Circuit in *NRDC* v. *EPA,* 529 F.3d 1077, concluded that the EPA's interpretation of subsection 112(f)(2) is a reasonable one. See *NRDC* v. *EPA,* 529 F.3d at 1083 (''[S]ubsection 112(f)(2)(B) expressly incorporates the EPA's interpretation of the Clean Air Act from the Benzene standard, complete with a citation to the **Federal Register**''). (D.C. Cir. 2008). See also, *A Legislative History of the Clean Air Act Amendments of 1990,* volume 1, p. 877 (Senate debate on Conference Report). We notified Congress in the *Residual Risk Report to Congress* that we intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11).

In the Benzene NESHAP, we stated as an overall objective:

* * * in protecting public health with an ample margin of safety, we strive to provide maximum feasible protection against risks to health from hazardous air pollutants by, (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1-in-1 million; and (2) limiting to no higher than approximately 1-in-10 thousand [*i.e.,* 100-in-1 million] the estimated risk that a person living near a facility would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

The agency also stated that, ''The EPA also considers incidence (the number of persons estimated to suffer cancer or other serious health effects as a result of exposure to a pollutant) to be an important measure of the health risk to the exposed population. Incidence measures the extent of health risk to the exposed population as a whole, by providing an estimate of the occurrence of cancer or other serious health effects in the exposed population.'' The agency went on to conclude that ''estimated incidence would be weighed along with other health risk information in judging acceptability.'' As explained more fully in our *Residual Risk Report to Congress,* the EPA does not define ''rigid line[s] of acceptability,'' but considers rather broad objectives to be weighed with a series of other health measures and factors (EPA–453/R–99–001, p. ES–11). The determination of what represents an ''acceptable'' risk is based on a judgment of ''what risks are acceptable in the world in which we live'' (*Residual Risk Report to Congress,* p. 178, quoting the Vinyl Chloride decision at 824 F.2d 1165) recognizing that our world is not risk-free.

In the Benzene NESHAP, we stated that ''EPA will generally presume that if the risk to [the maximum exposed] individual is no higher than approximately 1-in-10 thousand, that risk level is considered acceptable.'' 54 FR 38045. We discussed the maximum individual lifetime cancer risk (or maximum individual risk (MIR)) as being ''the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.'' *Id.* We explained that this measure of risk ''is an estimate of the upper bound of risk based on conservative assumptions, such as continuous exposure for 24 hours per day for 70 years.'' *Id.* We acknowledge that maximum individual lifetime cancer risk ''does not necessarily reflect the true risk, but displays a conservative risk level which is an upper-bound that is unlikely to be exceeded.'' *Id.*

Understanding that there are both benefits and limitations to using maximum individual lifetime cancer risk as a metric for determining acceptability, we acknowledged in the 1989 Benzene NESHAP that ''consideration of maximum individual risk * * * must take into account the strengths and weaknesses of this measure of risk.'' *Id.* Consequently, the presumptive risk level of 100-in-1 million (1-in-10 thousand) provides a benchmark for judging the acceptability of maximum individual lifetime cancer risk, but does not constitute a rigid line for making that determination.

The agency also explained in the 1989 Benzene NESHAP the following: ''In establishing a presumption for MIR, rather than a rigid line for acceptability, the agency intends to weigh it with a series of other health measures and factors. These include the overall incidence of cancer or other serious health effects within the exposed population, the numbers of persons exposed within each individual lifetime risk range and associated incidence within, typically, a 50-kilometer (km) exposure radius around facilities, the science policy assumptions and estimation uncertainties associated with the risk measures, weight of the scientific evidence for human health effects, other quantified or unquantified health effects, effects due to co-location of facilities and co-emission of pollutants.'' *Id.*

In some cases, these health measures and factors taken together may provide a more realistic description of the magnitude of risk in the exposed population than that provided by maximum individual lifetime cancer risk alone. As explained in the Benzene NESHAP, ''[e]ven though the risks judged 'acceptable' by the EPA in the first step of the Vinyl Chloride inquiry are already low, the second step of the inquiry, determining an 'ample margin of safety,' again includes consideration of all of the health factors, and whether to reduce the risks even further.'' In the ample margin of safety decision process, the agency again considers all of the health risks and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties and any other relevant factors. Considering all of these factors, the agency will establish the standard at a level that provides an ample margin of safety to protect the public health, as required by CAA section 112(f). 54 FR 38046.

As discussed in the previous section of this preamble, we apply a two-step process for developing standards to address residual risk. In the first step, the EPA determines whether risks are acceptable. This determination ''considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) [2] of approximately 1-in-10 thousand [*i.e.,* 100-in-1 million].'' 54 FR 38045. In the second step of the process, the EPA sets the standard at a level that provides an ample margin of safety ''in consideration of all health information, including the number of persons at risk levels higher than approximately 1-in-1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.'' *Id.*

In past residual risk determinations, the EPA presented a number of human health risk metrics associated with emissions from the category under review, including: The MIR; the numbers of persons in various risk ranges; cancer incidence; the maximum noncancer hazard index (HI); and the maximum acute noncancer hazard. In estimating risks, the EPA considered

[2] Although defined as ''maximum individual risk,'' MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk were an individual exposed to the maximum level of a pollutant for a lifetime.

source categories under review that are located near each other and that affect the same population. The EPA provided estimates of the expected difference in actual emissions from the source category under review and emissions allowed pursuant to the source category MACT standard. The EPA also discussed and considered risk estimation uncertainties. The EPA is providing this same type of information in support of these actions.

The agency acknowledges that the Benzene NESHAP provides flexibility regarding what factors the EPA might consider in making our determinations and how they might be weighed for each source category. In responding to comment on our policy under the Benzene NESHAP, the EPA explained that: ''The policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of noncancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the Vinyl Chloride mandate that the Administrator ascertain an acceptable level of risk to the public by employing [her] expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and, thereby, implicitly permits consideration of any and all measures of health risk which the Administrator, in [her] judgment, believes are appropriate to determining what will 'protect the public health.' ''

For example, the level of the MIR is only one factor to be weighed in determining acceptability of risks. The Benzene NESHAP explains ''an MIR of approximately 1-in-10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the agency may find, in a particular case, that a risk that includes MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors.'' Similarly, with regard to the ample margin of safety analysis, the Benzene NESHAP states that: ''EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category.''

B. Does this action apply to me?

The regulated industrial source category that is the subject of this proposal is listed in Table 2 of this preamble. Table 2 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding the entities likely to be affected by this proposed action. These standards, once finalized, will be directly applicable to affected sources. Federal, State, local, and Tribal government entities are not affected by this proposed action. As defined in the source category listing report published by the EPA in 1992, the Primary Aluminum Reduction Plant source category is defined as any facility which produced primary aluminum by the electrolytic reduction process.

TABLE 2—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Source category	NESHAP	NAICS code [1]	MACT code [2]
Primary Aluminum Reduction Plants	Primary Aluminum Reduction Plants	331312	0023

[1] North American Industry Classification System.
[2] Maximum Achievable Control Technology.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this proposal will also be available on the World Wide Web (WWW) through the EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* The TTN provides information and technology exchange in various areas of air pollution control.

Additional information is available on the residual risk and technology review (RTR) Web page at: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* This information includes source category descriptions and detailed emissions estimates and other data that were used as inputs to the risk assessments.

D. What should I consider as I prepare my comments for the EPA?

Submitting CBI. Do not submit information containing CBI to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit a CD ROM or disk that does not contain CBI, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID Number EPA–HQ–OAR–2011–0797.

II. Background

A. What is this source category and how did the MACT standard regulate its HAP emissions?

The NESHAP (or MACT rule) for the Primary Aluminum Reduction Plants was promulgated on October 7, 1997 (62 FR 52407) and amended on November 2, 2005 (70 FR 66285). The rule is applicable to facilities with affected sources associated with the production of aluminum by electrolytic reduction. Aluminum is produced from refined

bauxite ore (also known as alumina), using an electrolytic reduction process in a series of cells called a ''potline.'' The raw materials include alumina, coke, pitch and fluoride salts. According to information available on the Web site of The Aluminum Association, Inc. (*http://www.aluminum.org*) approximately 50 percent of the aluminum produced in the U.S. comes from primary aluminum facilities. The two main potline types are prebake (a newer, higher efficiency, lower-emitting technology) and Soderberg (an older, lower efficiency, higher-emitting technology). There are currently 15 facilities located in the United States that are subject to the requirements of this NESHAP: 14 primary aluminum production plants and one carbon-only prebake anode production facility. These 14 primary aluminum production plants have approximately 53 potlines that produce aluminum. Each plant has a paste production operation, and 12 of the 14 plants have anode bake furnaces. Twelve of the 14 facilities utilize prebake potlines; the other 2 utilize Soderberg potlines. According to The Aluminum Association, Inc., due to a decrease in demand for aluminum, four of the 14 facilities are currently idle including 1 Soderberg facility. The major HAPs emitted by these facilities are carbonyl sulfide (COS), hydrogen fluoride (HF), and polycyclic organic matter (POM), specifically polycyclic aromatic hydrocarbons (PAH).

The standards promulgated in 1997 and 2005 apply to emissions of HF, measured using total fluorides (TF) as a surrogate, from all potlines and anode bake furnaces and POM (as measured by methylene chloride extractables) from Soderberg potlines, anode bake furnaces, paste production plants and pitch storage tanks associated with primary aluminum reduction. Affected sources under the rules are each potline, each anode bake furnace (except for one that is located at a facility that only produces anodes for use off-site), each paste production plant, and each new pitch storage tank.

The NESHAP designated seven subcategories of existing potlines based primarily on differences in the process operation and configuration. The control of primary emissions from the reduction process is typically achieved by the installation of a dry alumina scrubber (with a baghouse to collect the alumina and other particulate matter). The MACT control technology typically used for anode bake furnaces is a dry alumina scrubber, and a capture system vented to a dry coke scrubber is used for control of paste production plants. See Table 3 for the emission limits.

TABLE 3—SUMMARY OF CURRENT MACT EMISSION LIMITS FOR EXISTING SOURCES UNDER THE 1997 NESHAP, AND THE 2005 AMENDMENTS

Source	Pollutant	Emission limit
Potlines: [1]		
CWPB1 potlines	TF	0.95 kg/Mg (1.9 lb/ton) of aluminum produced.
CWPB2 potlines	TF	1.5 kg/Mg (3.0 lb/ton) of aluminum produced.
CWPB3 potlines	TF	1.25 kg/Mg (2.5 lb/ton) of aluminum produced.
SWPB potlines	TF	0.8 kg/Mg (1.6 lb/ton) of aluminum produced.
VSS1 potlines	TF	1.1 kg/Mg (2.2 lb/ton) of aluminum produced.
	POM	1.2 kg/Mg (2.4 lb/ton) of aluminum produced.
VSS2 potlines	TF	1.35 kg/Mg (2.7 lb/ton) of aluminum produced.
	POM	2.85 kg/Mg (5.7 lb/ton) of aluminum produced.
HSS potlines	TF	1.35 kg/Mg (2.7 lb/ton) of aluminum produced.
	POM	2.35 kg/Mg (4.7 lb/ton) of aluminum produced.
Paste Production	POM	Install, operate, and maintain equipment for capture of emissions and vent to a dry coke scrubber.
Anode Bake Furnace (collocated with a primary aluminum plant).	TF	0.10 kg/Mg (0.20 lb/ton) of green anode.
	POM	0.09 kg/Mg (0.18 lb/ton) of green anode.

[1] CWPB1 = Center-worked prebake potline with the most modern reduction cells; includes all center-worked prebake potlines not specifically identified as CWPB2 or CWPB3.

CWPB2 = Center-worked prebake potlines located at Alcoa in Rockdale, Texas; Kaiser Aluminum in Mead, Washington; Ormet Corporation in Hannibal, Ohio; Ravenswood Aluminum in Ravenswood, West Virginia; Reynolds Metals in Troutdale, Oregon; and Vanalco Aluminum in Vancouver, Washington.

CWPB3 = Center-worked prebake potline that produces very high purity aluminum, has wet scrubbers as the primary control system, and is located at the primary aluminum plant operated by NSA in Hawesville, Kentucky.

HSS = Horizontal stud Soderberg potline.

SWPB = Side-worked prebake potline.

VSS1 = Vertical stud Soderberg potline at Northwest Aluminum in The Dalles, Oregon, or at Columbia Aluminum in Goldendale, Washington.

VSS2 = Vertical stud Soderberg potlines at Columbia Falls Aluminum in Columbia Falls, Montana.

TABLE 4—SUMMARY OF CURRENT MACT EMISSION LIMITS FOR NEW SOURCES UNDER THE 1997 NESHAP AND 2005 AMENDMENTS

Source	Pollutant	Emission limit
All Potlines	TF	0.6 kg/Mg (1.2 lb/ton) of aluminum produced.
VSS1, VSS2, and HSS potlines	POM	0.32 kg/Mg (0.63 lb/ton) of aluminum produced.
Paste Production	POM	Install, operate, and maintain equipment for capture of emissions and vent to a dry coke scrubber.
Anode Bake Furnace (collocated with a primary aluminum plant).	TF	0.01 kg/Mg (0.020 lb/ton) of green anode
	POM	0.025 kg/Mg (0.05 lb/ton) of green anode.
Pitch storage tanks	POM	Emission control system designed and operated to reduce inlet emissions by 95 percent or greater.

The 1997 NESHAP for primary aluminum reduction plants incorporates new source performance standards for potroom groups; these emission limits are listed in Table 4. The limits for new Soderberg facilities apply to any Soderberg facility that adds a new potroom group to an existing potline or is associated with a potroom group that meets the definition of a modified or reconstructed potroom group. Since these POM limits are very stringent, they effectively preclude the operation of any new Soderberg potlines.

Compliance with the emission limits in the current rule is demonstrated by performance testing which can be addressed individually for each affected source or according to emissions averaging provisions. Monitoring requirements include monthly measurements of TF secondary emissions, quarterly measurement of POM secondary emissions and annual measurement of primary emissions, continuous parameter monitoring for each emission control device, a monitoring device to track daily weight of aluminum produced, daily inspection for visible emissions, and daily inspection of wet roof scrubbers. Recordkeeping for the rule is consistent with the General Provisions requirements with the addition of recordkeeping for daily production of aluminum, records supporting emissions averaging and records documenting the portion of TF measured as particulate matter or gaseous form.

B. What data collection activities were conducted to support this action?

For the Primary Aluminum Reduction Plant source category, we compiled a preliminary dataset using available information, reviewed the data, and made changes where necessary. The preliminary dataset was based on data in the 2002 National Emissions Inventory (NEI) Final Inventory, Version 1 (made publicly available on February 26, 2006), and the 2005 National Emissions Inventory (NEI), version 2.0 (made publicly available in October 2008). The NEI is a database that contains information about sources that emit criteria air pollutants, their precursors, and HAP. The NEI database includes estimates of annual air pollutant emissions from point and volume sources, emission release characteristic data such as height, velocity, temperature and location latitude/longitude coordinates.

We reviewed the NEI datasets, corrected geographic coordinates and stack parameters in consultation with the facilities, and made changes based on available information. We also reviewed the emissions and other data to identify data anomalies that could affect risk estimates. The 2005 NEI was then updated to develop the 2005 National Air Toxics Assessment (NATA) Inventory. Subsequently, in April 2011, we received test data and other information through an Information Collection Request (ICR) from 11 of the 15 facilities in the source category. These ICR data were then used along with the 2005 NATA inventory data to develop the emissions dataset for this source category, which includes our best estimates of actual emissions of HAP for the facilities. This dataset was then used in the risk modeling analyses to estimate the risks due to actual emissions for the source category.

POM emissions were allocated to specific POM compounds on the basis of the fractional contributions of these compounds to the actual POM emissions, as determined (as appropriate) from an average of test data for two prebake potlines and an average of data from two Soderberg facilities. Based on knowledge of the industry and previous testing, we could reasonably expect emissions of approximately 23 POM specific POM compounds from primary aluminum production facilities. The allocation incorporated POM emissions at 50 percent of the detection limit for those compounds ''reported as below detection limit.'' The use of 50 percent of the detection limit is more conservative than assuming that these compounds were not present; an assumption that the compounds were present at the detection limit would be an overestimation. The assumption that these compounds were present at 50 percent of the detection limit represented the midpoint of two extreme options. For Soderberg potline stacks, six out of 38 measurements were below the detection limit. For Soderberg potroom roof vents, 10 out of 38 measurements were below the detection limit. For prebake potline stacks, 21 out of 38 measurements were below the detection limit. For prebake potroom roof vents, 25 out of 38 measurements were below the detection limit.

To estimate allowable emissions, we analyzed the emissions data gathered from the 2002 NEI, the 2005 NEI and responses to the ICR described above. Based on that analysis, we estimated that allowable emissions were generally about 1.5 times higher than actual emissions. Therefore, to calculate allowable emissions we assumed that allowable emissions were 1.5 times greater than actual emissions for all facilities except for one idle Soderberg facility (Columbia Falls). For Columbia Falls, which has the highest potential for emissions of all the facilities, we evaluated site-specific data and estimated that allowable emissions were about 1.9 times higher than actual emissions.

Actual emissions of COS for the industry are estimated to be about 4,400 tons per year (tpy), with an average of about 330 tons per facility. Actual emissions of HF are estimated to be about 1,900 tpy with an average of about 160 tpy per facility. Estimated emissions of speciated compounds of POM were much lower. Estimated actual emissions of identified POM species totaled approximately 180 tpy for the industry. Moreover, POM emissions are much higher from Soderberg facilities compared to prebake facilities. The average POM emissions from prebake facilities are about 4.5 tpy per facility, and the average POM emissions for Soderberg facilities are about 60 tpy per facility. We estimate that approximately one-third of the emissions of POM for both types of potrooms come from the control device stack, and the remainder are secondary emissions emitted from potroom vents. This estimate is based on a summary of emissions derived from reports of emission testing conducted at two prebake facilities and two Soderberg facilities (''Industry Review of Draft POM Speciation and Emissions Data,'' December 19, 2007).

The emissions data, calculations and risk assessment inputs for the Primary Aluminum Reduction Plant source category are described further in *Draft Development of the RTR Emissions Dataset for the Primary Aluminum Production Source Category* which is available in the docket for this proposed rulemaking.

III. Analyses Performed

In this section we describe the analyses performed to support the proposed decisions for the RTR for this source category.

A. How did we address unregulated emissions sources?

In the course of evaluating the Primary Aluminum Reduction Plant source category, we identified certain HAP for which we failed to establish emission standards in the original MACT. See *National Lime* v. *EPA,* 233 F. 3d 625, 634 (DC Cir. 2000) (the EPA has ''clear statutory obligation to set emissions standards for each listed HAP'').

We evaluated establishing emissions limits for COS for the source category and for POM for various emissions points that had not been regulated in the 1997 MACT rule or in the 2005

amendments. Section 112(d)(3)(B) of the CAA requires that the MACT standards for existing sources be at least as stringent as the average emissions limitation achieved by the best performing five sources (for which the Administrator has or could reasonably obtain emissions information) in a category with fewer than 30 sources. The Primary Aluminum source category consists of fewer than 30 sources.

The EPA must exercise its judgment, based on an evaluation of the relevant factors and available data, to determine the level of emissions control that has been achieved by the best performing sources under variable conditions. It is recognized in the case law that the EPA may consider variability in estimating the degree of emissions reduction achieved by best-performing sources and in setting MACT floors. See *Mossville Envt'l Action Now* v. *EPA,* 370 F.3d 1232, 1241–42 (DC Cir 2004) (holding that the EPA may consider emissions variability in estimating performance achieved by best-performing sources and may set the floor at a level that a best-performing source can expect to meet ''every day and under all operating conditions''). More details on how we calculate MACT floors and how we account for variability are described in the *Draft MACT Floor Analysis for the Primary Aluminum Source Category* which is available in the docket for this proposed action.

Carbonyl sulfide (COS) was not regulated in the 1997 NESHAP or in the 2005 amendments for Primary Aluminum Reduction Plants. In this action we analyzed the available data and evaluated options for developing MACT standards for this HAP. Based on all our analyses, which are described in section IV.A of this preamble, we concluded that establishing a standard based on a mass balance equation would be the most appropriate approach. Therefore, we are proposing MACT standards for COS in today's action based on use of a mass balance equation to derive COS emissions based on data on anode coke sulfur content, anode consumption and aluminum production.

Polycyclic organic matter (POM) emissions from prebake potlines were also not regulated in the 1997 NESHAP or in the 2005 amendments. We are proposing MACT limits for new and existing prebake potlines in today's action based on available data. Finally, the 1997 NESHAP included MACT standards for new pitch storage tanks, which required a 95 percent reduction in emissions. However, the rule had no limits for existing storage tanks. We are proposing that existing tanks will be subject to the same standard (*i.e.,* minimum of 95 percent reduction of POM emissions). At least three facilities are currently achieving this level of control on existing tanks.

Further details about the analyses, the results and proposed decisions regarding the proposed MACT limits pursuant to CAA section 112(d)(2) and 112(d)(3) are presented in section IV.A of this preamble.

B. How did we estimate risks posed by the source category?

The EPA conducted risk assessments that provided estimates of the MIR posed by the HAP emissions for each source in the category, the HI for chronic exposures to HAP with the potential to cause noncancer health effects, and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause noncancer health effects. The assessments also provided estimates of the distribution of cancer risks within the exposed populations, cancer incidence and an evaluation of the potential for adverse environmental effects for each source category. The risk assessments consisted of seven primary steps, as discussed below. The docket for this rulemaking contains the following document which provides more information on the risk assessment inputs and models: *Draft Residual Risk Assessment for the Primary Aluminum Reduction Plant Source Category.* The methods used to assess risks (as described in the seven primary steps below) are consistent with those peer-reviewed by a panel of the EPA's Science Advisory Board (SAB) in 2009 and described in their peer review report issued in 2010 [3]; they are also consistent with the key recommendations contained in that report.

1. Establishing the Nature and Magnitude of Actual Emissions and Identifying the Emissions Release Characteristics

As discussed in section II.B of this preamble, we used a dataset consisting of the estimated actual and allowable emissions as the basis for the risk assessment. In addition to the quality assurance (QA) of the emissions and associated parameters contained in the dataset, we also checked the coordinates of every facility in the dataset through visual observations using tools such as Google Earth and ArcView. Where coordinates were found to be incorrect, we identified and corrected them to the extent possible. We also performed QA of the emissions data and release characteristics to ensure there were no outliers.

2. Establishing the Relationship Between Actual Emissions and MACT-Allowable Emissions Levels

The available emissions data in the MACT dataset include estimates of the mass of HAP actually emitted during the specified annual time period. These ''actual'' emission levels are often lower than the emission levels that a facility might be allowed to emit and still comply with the MACT standards. The emissions level allowed to be emitted by the MACT standards is referred to as the ''MACT-allowable'' emissions level. This represents the highest emissions level that could be emitted by the facility without violating the MACT standards.

We discussed the use of both MACT-allowable and actual emissions in the final Coke Oven Batteries residual risk rule (70 FR 19998–19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP residual risk rules (71 FR 34428, June 14, 2006, and 71 FR 76609, December 21, 2006, respectively). In those previous actions, we noted that assessing the risks at the MACT-allowable level is inherently reasonable since these risks reflect the maximum level sources could emit and still comply with national emission standards. But we also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP. (54 FR 38044, September 14, 1989.)

Further explanation is provided in the document *Draft Development of the RTR Emissions Dataset for the Primary Aluminum Production Source Category* which is available in the docket for this proposed rulemaking.

3. Conducting Dispersion Modeling, Determining Inhalation Exposures and Estimating Individual and Population Inhalation Risks

Both long-term and short-term inhalation exposure concentrations and health risks from each facility in the source category addressed in this proposal were estimated using the Human Exposure Model (HEM) (Community and Sector HEM–3 version 1.1.0). The HEM–3 performs three primary risk assessment activities: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term

[3] U.S. EPA SAB. *Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing,* May 2010.

and short-term inhalation exposures to individuals residing within 50 km of the modeled sources and (3) estimating individual and population-level inhalation risks using the exposure estimates and quantitative dose-response information.

The dispersion model used by HEM–3 is AERMOD, which is one of the EPA's preferred models for assessing pollutant concentrations from industrial facilities.[4] To perform the dispersion modeling and to develop the preliminary risk estimates, HEM–3 draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes 1 year (1991) of hourly surface and upper air observations for more than 158 meteorological stations, selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block[5] internal point locations and populations provides the basis of human exposure calculations (Census, 2000). In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant unit risk factors and other health benchmarks is used to estimate health risks. These risk factors and health benchmarks are the latest values recommended by the EPA for HAP and other toxic air pollutants. These values are available at *http://www.epa.gov/ttn/atw/toxsource/summary.html* and are discussed in more detail later in this section.

In developing the risk assessment for chronic exposures, we used the estimated annual average ambient air concentration of each of the HAP emitted by each source for which we have emissions data in the source category. The air concentrations at each nearby census block centroid were used as a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. We calculated the MIR for each facility as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week, and 52 weeks per year for a 70-year period) exposure to the maximum concentration at the centroid of an inhabited census block. Individual cancer risks were calculated by multiplying the estimated lifetime exposure to the ambient concentration of each of the HAP (in micrograms per cubic meter) by its unit risk estimate (URE), which is an upper bound estimate of an individual's probability of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic meter of air. For residual risk assessments, we generally use URE values from the EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without the EPA IRIS values, we look to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) URE values, where available. In cases where new, scientifically credible dose-response values have been developed in a manner consistent with the EPA guidelines and have undergone a peer review process similar to that used by the EPA, we may use such dose-response values in place of, or in addition to, other values, if appropriate.

Polycyclic organic matter (POM), a carcinogenic HAP with a mutagenic mode of action, is emitted by the facilities in this source category.[6] For this compound group,[7] the age-dependent adjustment factors (ADAF) described in the EPA's *Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens*[8] were applied. This adjustment has the effect of increasing the estimated lifetime risks for POM by a factor of 1.6. In addition, although only a small fraction of the total POM emissions were not reported as individual compounds, the EPA expresses carcinogenic potency for compounds in this group in terms of benzo[a]pyrene equivalence, based on evidence that carcinogenic POM has the same mutagenic mechanism of action as benzo[a]pyrene. For this reason, the EPA's Science Policy Council[9] recommends applying the *Supplemental Guidance* to all carcinogenic polycyclic aromatic hydrocarbons for which risk estimates are based on relative potency. Accordingly, we have applied the ADAF to the benzo[a]pyrene equivalent portion of all POM mixtures.

Incremental individual lifetime cancer risks associated with emissions from the source category were estimated as the sum of the risks for each of the carcinogenic HAP (including those classified as carcinogenic to humans, likely to be carcinogenic to humans and suggestive evidence of carcinogenic potential[10]) emitted by the modeled source. Cancer incidence and the distribution of individual cancer risks for the population within 50 km of any source were also estimated for the source category as part of these assessments by summing individual risks. A distance of 50 km is consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044) and the limitations of Gaussian dispersion models, including AERMOD.

To assess risk of noncancer health effects from chronic exposures, we summed the HQ for each of the HAP that affects a common target organ system to obtain the HI for that target organ system (or target organ-specific HI, TOSHI). The HQ for chronic exposures is the estimated chronic exposure divided by the chronic reference level, which is either the EPA reference concentration (RfC), defined as ''an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime,'' or, in cases where an RfC from the EPA's IRIS database is not available, a value from the following prioritized sources: (1) The agency for Toxic Substances and Disease Registry Minimum Risk Level, which is defined as ''an estimate of daily human exposure to a substance that is likely to be without an appreciable risk of adverse effects (other than cancer) over a specified duration of exposure''; (2) the CalEPA Chronic Reference Exposure Level (REL), which is defined as ''the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration;'' or

[4] U.S. EPA. Revision to the *Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions* (70 FR 68218, November 9, 2005).

[5] A census block is generally the smallest geographic area for which census statistics are tabulated.

[6] U.S. EPA. Performing risk assessments that include carcinogens described in the *Supplemental Guidance* as having a mutagenic mode of action. *Science Policy Council Cancer Guidelines Implementation Work Group Communication II:* Memo from W.H. Farland, dated October 4, 2005.

[7] See the *Risk Assessment for Source Categories* document available in the docket for a list of HAP with a mutagenic mode of action.

[8] U.S. EPA. *Supplemental Guidance for Assessing Early-Life Exposure to Carcinogens.* EPA/630/R–03/003F, 2005. *http://www.epa.gov/ttn/atw/childrens_supplement_final.pdf.*

[9] U.S. EPA. *Science Policy Council Cancer Guidelines Implementation Workgroup Communication II:* Memo from W.H. Farland, dated June 14, 2006.

[10] These classifications also coincide with the terms ''known carcinogen, probable carcinogen and possible carcinogen,'' respectively, which are the terms advocated in the EPA's previous *Guidelines for Carcinogen Risk Assessment,* published in 1986 (51 FR 33992, September 24, 1986). Summing the risks of these individual compounds to obtain the cumulative cancer risks is an approach that was recommended by the EPA's SAB in their 2002 peer review of EPA's NATA entitled, *NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data—an SAB Advisory,* available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf.*

(3) as noted above, a scientifically credible dose-response value that has been developed in a manner consistent with the EPA guidelines and has undergone a peer review process similar to that used by the EPA, in place of or in concert with other values.

Screening estimates of acute exposures and risks were also evaluated for each of the HAP at the point of highest off-site exposure for each facility (*i.e.,* not just the census block centroids), assuming that a person is located at this spot at a time when both the peak (hourly) emission rates from each emission point at the facility and worst-case dispersion conditions occur. The acute HQ is the estimated acute exposure divided by the acute dose-response value. In each case, acute HQ values were calculated using best available, short-term dose-response values. These acute dose-response values, which are described below, include the acute REL, acute exposure guideline levels (AEGL) and emergency response planning guidelines (ERPG) for 1-hour exposure durations. As discussed below, we used conservative assumptions for emission rates, meteorology and exposure location for our acute analysis.

As described in the CalEPA's *Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants,* an acute REL value (*http://www.oehha.ca.gov/air/pdf/acuterel.pdf*) is defined as ''the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration.'' Acute REL values are based on the most sensitive, relevant, adverse health effect reported in the medical and toxicological literature. Acute REL values are designed to protect the most sensitive sub-populations (*e.g.,* asthmatics) by the inclusion of margins of safety. Since margins of safety are incorporated to address data gaps and uncertainties, exceeding the acute REL does not automatically indicate an adverse health impact.

AEGL values were derived in response to recommendations from the National Research Council (NRC). As described in *Standing Operating Procedures (SOP) of the National Advisory Committee on Acute Exposure Guideline Levels for Hazardous Substances* (*http://www.epa.gov/opptintr/aegl/pubs/sop.pdf*),[11] ''the NRC's previous name for acute exposure levels—community emergency exposure levels—was replaced by the term AEGL to reflect the broad application of these values to planning, response, and prevention in the community, the workplace, transportation, the military, and the remediation of Superfund sites.'' This document also states that AEGL values ''represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to eight hours.'' The document lays out the purpose and objectives of AEGL by stating (page 21) that ''the primary purpose of the AEGL program and the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances is to develop guideline levels for once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals.'' In detailing the intended application of AEGL values, the document states (page 31) that ''[i]t is anticipated that the AEGL values will be used for regulatory and nonregulatory purposes by U.S. Federal and state agencies and possibly the international community in conjunction with chemical emergency response, planning, and prevention programs. More specifically, the AEGL values will be used for conducting various risk assessments to aid in the development of emergency preparedness and prevention plans, as well as real-time emergency response actions, for accidental chemical releases at fixed facilities and from transport carriers.''

The AEGL–1 value is then specifically defined as ''the airborne concentration of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.'' The document also notes (page 3) that, ''Airborne concentrations below AEGL–1 represent exposure levels that can produce mild and progressively increasing but transient and nondisabling odor, taste, and sensory irritation or certain asymptomatic, nonsensory effects.'' Similarly, the document defines AEGL–2 values as ''the airborne concentration (expressed as ppm or mg/m^3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape.''

ERPG values are derived for use in emergency response, as described in the American Industrial Hygiene Association's document entitled, *Emergency Response Planning Guidelines (ERPG) Procedures and Responsibilities* (*http://www.aiha.org/1documents/committees/ERPSOPs2006.pdf*) which states that, ''Emergency Response Planning Guidelines were developed for emergency planning and are intended as health based guideline concentrations for single exposures to chemicals.'' [12] The ERPG–1 value is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor.'' Similarly, the ERPG–2 value is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action.''

As can be seen from the definitions above, the AEGL and ERPG values include the similarly defined severity levels 1 and 2. For many chemicals, a severity level 1 value AEGL or ERPG has not been developed; in these instances, higher severity level AEGL–2 or ERPG–2 values are compared to our modeled exposure levels to assess potential for acute concerns.

Acute REL values for 1-hour exposure durations are typically lower than their corresponding AEGL–1 and ERPG–1 values. Even though their definitions are slightly different, AEGL–1 values are often similar to the corresponding ERPG–1 values, and AEGL–2 values are often similar to ERPG–2 values. Maximum HQ values from our acute screening risk assessments typically result when basing them on the acute REL value for a particular pollutant. In cases where our maximum acute HQ value exceeds 1, we also report the HQ value based on the next highest acute dose-response value (usually the AEGL–1 and/or the ERPG–1 value).

To develop screening estimates of acute exposures, we developed estimates of maximum hourly emission rates by multiplying the average actual annual hourly emission rates by a factor to cover routinely variable emissions. Acute risk modeling is conducted under the assumption that peak emissions are ten times greater than long term average

[11] NAS, 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals,* page 2.

[12] *ERP Committee Procedures and Responsibilities.* November 1, 2006. American Industrial Hygiene Association.

emissions, in the absence of information regarding the variability of the emissions.

With respect to routine variable emissions, primary aluminum potlines have a more consistent emissions profile than many other sources because these emissions actually reflect the average of the emissions from approximately 100 individual pots which operate in cycles that are not in phase with each other. Thus any variability associated with aluminum levels or electrode replacement for a particular pot may be damped out by the other pots at different stages. Alcoa provided to EPA a series of hourly hydrogen fluoride concentration data for two potlines at their Wenatchee facility. Approximately 2,075 consecutive hourly readings were provided based on Fourier Transform Infrared measurements at the roof vents. Alcoa found that the ratio of the maximum HAP emission rate to the average HAP emission rate for these two potlines were 2.7 and 5.6. Only one value out 2,075 consecutive hour samples (0.05 percent) was more than 5 times the average (*i.e.,* 99.95 percent of values were less than 5 times the average).

This dataset was then combined and subjected to two statistical analysis techniques: The upper prediction limit (UPL) calculated assuming a log-normal distribution after adjusting for temporal correction and extreme value theory. The average of the concentration values is 514 μg/m^3. The 99 percent UPL was calculated at 2,215 μg/m, which corresponds to 4.3 times the mean.

Using the extreme value theory, the 99.9 percentile estimate of the generalized extreme value distribution (corresponding to 1 observation in 1000) was 2,306 μg/m^3, which corresponds to 4.5 times the mean. Based on these data, a source category factor of 5 times the average hourly emissions rate, rather than the default factor of 10, was used in the acute screening assessment.

When worst-case HQ values from the initial acute screen step were less than 1, acute impacts were deemed negligible and no further analysis was performed. In cases where an acute HQ value from the screening step indicated the potential for acute risk, we further analyzed these values by considering additional site-specific data to develop a relatively more refined estimate of the potential for acute impacts of concern. This site-specific data includes the facility layout that was used to distinguish facility property from an area where the public could be exposed. These refinements are discussed in the *Draft Residual Risk Assessment for the Primary Aluminum Production Source Category* document, which is available in the docket for this proposed rulemaking.

Ideally, we would prefer to have continuous measurements over time to see how the emissions vary by each hour over an entire year. Having a frequency distribution of hourly emission rates over a year would allow us to perform a probabilistic analysis to estimate potential threshold exceedances and their frequency of occurrence. Such an evaluation could include a more complete statistical treatment of the key parameters and elements adopted in this screening analysis. However, we recognize that having this level of data is rare, hence our use of the multiplier approach.

To better characterize the potential health risks associated with estimated acute exposures to HAP, and in response to a key recommendation from the SAB's peer review of the EPA's RTR risk assessment methodologies,[13] we generally examine a wider range of available acute health metrics than we do for our chronic risk assessments. This is in response to the SAB's acknowledgement that there are generally more data gaps and inconsistencies in acute reference values than there are in chronic reference values. Comparisons of the estimated maximum off-site 1-hour exposure levels are not typically made to occupational levels for the purpose of characterizing public health risks in RTR assessments. This is because they are developed for working-age adults and are not generally considered protective for the general public. We note that occupational ceiling values are, for most chemicals, set at levels higher than a 1-hour AEGL–1.

4. Conducting Multi-Pathway Exposure and Risk Screening

The potential for significant human health risks due to exposures via routes other than inhalation (*i.e.,* multi-pathway exposures) and the potential for adverse environmental impacts were evaluated in a three-step process. In the first step, we determined whether any facilities emitted any PB–HAP (HAP known to be persistent and bio-accumulative in the environment). There are 14 PB–HAP compounds or compound classes identified for this screening in the EPA's *Air Toxics Risk Assessment Library* (available at *http://www.epa.gov/ttn/fera/risk_atra_vol1.html*). They are cadmium compounds, chlordane, chlorinated dibenzodioxins and furans, dichlorodiphenyldichloroethylene, heptachlor, hexachlorobenzene, hexachlorocyclohexane, lead compounds, mercury compounds, methoxychlor, polychlorinated biphenyls, POM, toxaphene and trifluralin.

Since POM is a PB–HAP and is emitted by all facilities in this source category, we proceeded to the second step of the evaluation to screen for potentially significant multi-pathway risks due to POM emissions. In this step, we determined whether the facility-specific emission rates of POM were large enough to create the potential for significant non-inhalation human or environmental risks under reasonable worst-case conditions. To facilitate this step, we have developed emission rate thresholds for each PB–HAP using a hypothetical worst-case screening exposure scenario developed for use in conjunction with the EPA's TRIM.FaTE model. The hypothetical screening scenario was subjected to a sensitivity analysis to ensure that its key design parameters were established such that environmental media concentrations were not underestimated (*i.e.,* to minimize the occurrence of false negatives or results that suggest that risks might be acceptable when, in fact, actual risks are high) and to also minimize the occurrence of false positives for human health endpoints. We call this application of the TRIM.FaTE model TRIM-Screen. The facility-specific emission rates of POM were compared to the TRIM-Screen emission threshold values for POM to assess the potential for significant human health risks or environmental risks via non-inhalation pathways.

5. Assessing Risks Considering Emissions Control Options

In addition to assessing baseline inhalation risks and screening for potential multi-pathway risks, where appropriate, we also estimated risks considering the potential emission reductions that would be achieved by the particular control options under consideration. In these cases, the expected emissions reductions were applied to the specific HAP and emissions sources in the source category dataset to develop corresponding estimates of risk reductions.

6. Conducting Other Risk-Related Analyses: Facility Wide Assessments

To put the source category risks in context, for our residual risk reviews, we also typically examine the risks from the entire ''facility,'' where the facility

[13] The SAB peer review of RTR Risk Assessment Methodologies is available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf.*

includes all HAP-emitting operations within a contiguous area and under common control. In these facility wide assessments we examine the HAP emissions not only from the source category of interest, but also emissions of HAP from all other emissions sources at the facility. Eleven of the primary aluminum reduction plants are collocated with secondary aluminum production operations. Based on a general knowledge of these facilities, we believe that the Primary Aluminum sources are the largest sources of HAP emissions at each of them. Moreover, we plan to do a facility wide assessment for each of these eleven facilities in an upcoming RTR rulemaking for the Secondary Aluminum source category. Therefore, we did not perform a facility wide risk assessment for these eleven facilities as part of today's action. For the four primary aluminum facilities that are not collocated with secondary aluminum production operations, the risk assessment performed as part of today's action is a facility wide risk assessment.

7. Considering Uncertainties in Risk Assessment

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for the Primary Aluminum source category addressed in this proposal. Although uncertainty exists, we believe that our approach, which used conservative tools and assumptions, ensures that our decisions are health-protective. A brief discussion of the uncertainties in the emissions datasets, dispersion modeling, inhalation exposure estimates and dose-response relationships follows below. A more thorough discussion of these uncertainties is included in the risk assessment documentation (referenced earlier) available in the docket for this action.

a. Uncertainties in the Emissions Datasets

Although the development of the MACT dataset involved QA/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are inaccurate, errors in estimating emissions values and other factors. The emission estimates considered in this analysis generally are annual totals for certain years that do not reflect short-term fluctuations during the course of a year or variations from year to year.

The estimates of peak hourly emission rates for the acute effects screening assessment were based on a multiplication factor of 5 applied to the average annual hourly emission rate, which is intended to account for emission fluctuations due to normal facility operations.

b. Uncertainties in Dispersion Modeling

While the analysis employed the EPA's recommended regulatory dispersion model, AERMOD, we recognize that there is uncertainty in ambient concentration estimates associated with any model, including AERMOD. In circumstances where we had to choose between various model options, where possible, model options (*e.g.,* rural/urban, plume depletion, chemistry) were selected to provide an overestimate of ambient air concentrations of the HAP rather than underestimates. However, because of practicality and data limitation reasons, some factors (*e.g.,* meteorology, building downwash) have the potential in some situations to overestimate or underestimate ambient impacts. For example, meteorological data were taken from a single year (1991), and facility locations can be a significant distance from the sites where these data were taken. Despite these uncertainties, we believe that at off-site locations and census block centroids, the approach considered in the dispersion modeling analysis should generally yield overestimates of ambient HAP concentrations.

c. Uncertainties in Inhalation Exposure

The effects of human mobility on exposures were not included in the assessment. Specifically, short-term mobility and long-term mobility between census blocks in the modeling domain were not considered.[14] The assumption of not considering short or long-term population mobility does not bias the estimate of the theoretical MIR, nor does it affect the estimate of cancer incidence since the total population number remains the same. It does, however, affect the shape of the distribution of individual risks across the affected population, shifting it toward higher estimated individual risks at the upper end and reducing the number of people estimated to be at lower risks, thereby increasing the estimated number of people at specific risk levels.

In addition, the assessment predicted the chronic exposures at the centroid of each populated census block as surrogates for the exposure concentrations for all people living in that block. Using the census block centroid to predict chronic exposures tends to over-predict exposures for people in the census block who live further from the facility, and under-predict exposures for people in the census block who live closer to the facility. Thus, using the census block centroid to predict chronic exposures may lead to a potential understatement or overstatement of the true maximum impact, but it is an unbiased estimate of average risk and incidence.

The assessments evaluate the cancer inhalation risks associated with continuous pollutant exposures over a 70-year period, which is the assumed lifetime of an individual. In reality, both the length of time that modeled emissions sources at facilities actually operate (*i.e.,* more or less than 70 years) and the domestic growth or decline of the modeled industry (*i.e.,* the increase or decrease in the number or size of United States facilities) will influence the risks posed by a given source category. Depending on the characteristics of the industry, these factors will, in most cases, result in an overestimate both in individual risk levels and in the total estimated number of cancer cases. However, in rare cases, where a facility maintains or increases its emission levels beyond 70 years, residents live beyond 70 years at the same location, and the residents spend most of their days at that location, then the risks could potentially be underestimated. Annual cancer incidence estimates from exposures to emissions from these sources would not be affected by uncertainty in the length of time emissions sources operate.

The exposure estimates used in these analyses assume chronic exposures to ambient levels of pollutants. Because most people spend the majority of their time indoors, actual exposures may not be as high, depending on the characteristics of the pollutants modeled. For many of the HAP, indoor levels are roughly equivalent to ambient levels, but for very reactive pollutants or larger particles, these levels are typically lower. This factor has the potential to result in an overstatement of 25 to 30 percent of exposures.[15]

In addition to the uncertainties highlighted above, there are several other factors specific to the acute exposure assessment. The accuracy of an acute inhalation exposure assessment depends on the simultaneous

[14] Short-term mobility is movement from one micro-environment to another over the course of hours or days. Long-term mobility is movement from one residence to another over the course of a lifetime.

[15] U.S. EPA. *National-Scale Air Toxics Assessment for 1996.* (EPA 453/R–01–003; January 2001; page 85.)

occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology, and human activity patterns. In this assessment, we assume that individuals remain for 1 hour at the point of maximum ambient concentration as determined by the co-occurrence of peak emissions and worst-case meteorological conditions. These assumptions would tend to overestimate actual exposures since it is unlikely that a person would be located at the point of maximum exposure during the time of worst-case impact.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in our risk assessments for cancer effects from chronic exposures and noncancer effects from both chronic and acute exposures. Some uncertainties may be considered quantitatively, and others generally are expressed in qualitative terms. We note as a preface to this discussion a point on dose-response uncertainty that is brought out in the *EPA 2005 Cancer Guidelines;* namely, that ''the primary goal of the EPA actions is protection of human health; accordingly, as an agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective.'' (*EPA 2005 Cancer Guidelines,* pages 1–7.) This is the approach followed here as summarized in the next several paragraphs. A complete detailed discussion of uncertainties and variability in dose-response relationships is given in the residual risk documentation, which is available in the docket for this action.

Cancer URE values used in our risk assessments are those that have been developed to generally provide an upper bound estimate of risk. That is, they represent a ''plausible upper limit to the true value of a quantity'' (although this is usually not a true statistical confidence limit).[16] In some circumstances, the true risk could be as low as zero; however, in other circumstances, the risk could also be greater.[17] When developing an upper bound estimate of risk and to provide risk values that do not underestimate risk, health-protective default approaches are generally used. To err on the side of ensuring adequate health-protection, the EPA typically uses the upper bound estimates rather than lower bound or central tendency estimates in our risk assessments, an approach that may have limitations for other uses (*e.g.,* priority-setting or expected benefits analysis).

Chronic noncancer reference (RfC and reference dose (RfD)) values represent chronic exposure levels that are intended to be health-protective levels. Specifically, these values provide an estimate (with uncertainty spanning perhaps an order of magnitude) of daily oral exposure (RfD) or of a continuous inhalation exposure (RfC) to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. To derive values that are intended to be ''without appreciable risk,'' the methodology relies upon an uncertainty factor (UF) approach (U.S. EPA, 1993, 1994) which includes consideration of both uncertainty and variability. When there are gaps in the available information, UF are applied to derive reference values that are intended to protect against appreciable risk of deleterious effects. The UF are commonly default values,[18] *e.g.,* factors of 10 or 3, used in the absence of compound-specific data; where data are available, UF may also be developed using compound-specific information. When data are limited, more assumptions are needed and more UF are used. Thus, there may be a greater tendency to overestimate risk in the sense that further study might support development of reference values that are higher (*i.e.,* less potent) because fewer default assumptions are needed. However, for some pollutants, it is possible that risks may be underestimated. While collectively termed ''uncertainty factor,'' these factors account for a number of different quantitative considerations when using observed animal (usually rodent) or human toxicity data in the development of the RfC. The UF are intended to account for: (1) Variation in susceptibility among the members of the human population (*i.e.,* inter-individual variability); (2) uncertainty in extrapolating from experimental animal data to humans (*i.e.,* interspecies differences); (3) uncertainty in extrapolating from data obtained in a study with less-than-lifetime exposure (*i.e.,* extrapolating from sub-chronic to chronic exposure); (4) uncertainty in extrapolating the observed data to obtain an estimate of the exposure associated with no adverse effects; and (5) uncertainty when the database is incomplete or there are problems with the applicability of available studies. Many of the UF used to account for variability and uncertainty in the development of acute reference values are quite similar to those developed for chronic durations, but they more often use individual UF values that may be less than 10. UF are applied based on chemical-specific or health effect-specific information (*e.g.,* simple irritation effects do not vary appreciably between human individuals, hence a value of 3 is typically used), or based on the purpose for the reference value (see the following paragraph). The UF applied in acute reference value derivation include: (1) Heterogeneity among humans; (2) uncertainty in extrapolating from animals to humans; (3) uncertainty in lowest observed adverse effect (exposure) level to no observed adverse effect (exposure) level adjustments; and (4) uncertainty in accounting for an incomplete database on toxic effects of potential concern. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.,* 4 hours) to derive an acute reference value at another exposure duration (*e.g.,* 1 hour).

Not all acute reference values are developed for the same purpose, and care must be taken when interpreting the results of an acute assessment of human health effects relative to the reference value or values being exceeded. Where relevant to the estimated exposures, the lack of short-term dose-response values at different levels of severity should be factored into the risk characterization as potential uncertainties.

Although every effort is made to identify peer-reviewed reference values for cancer and noncancer effects for all pollutants emitted by the sources included in this assessment, some HAP

[16] IRIS glossary (*http://www.epa.gov/NCEA/iris/help_gloss.htm*).

[17] An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible and which is based on maximum likelihood estimates.

[18] According to the NRC report, *Science and Judgment in Risk Assessment* (NRC, 1994) ''[Default] options are generic approaches, based on general scientific knowledge and policy judgment, that are applied to various elements of the risk assessment process when the correct scientific model is unknown or uncertain.'' The 1983 NRC report, *Risk Assessment in the Federal Government: Managing the Process,* defined default option as ''the option chosen on the basis of risk assessment policy that appears to be the best choice in the absence of data to the contrary'' (NRC, 1983a, p. 63). Therefore, default options are not rules that bind the Agency; rather, the Agency may depart from them in evaluating the risks posed by a specific substance when it believes this to be appropriate. In keeping with EPA's goal of protecting public health and the environment, default assumptions are used to ensure that risk to chemicals is not underestimated (although defaults are not intended to overtly overestimate risk). See EPA, 2004, *An Examination of EPA Risk Assessment Principles and Practices,* EPA/100/B–04/001 available at: *http://www.epa.gov/osa/pdfs/ratf-final.pdf.*

continue to have no reference values for cancer or chronic noncancer or acute effects. Since exposures to these pollutants cannot be included in a quantitative risk estimate, an understatement of risk for these pollutants at environmental exposure levels is possible. For a group of compounds that are either unspeciated or do not have reference values for every individual compound (*e.g.,* glycol ethers), we conservatively use the most protective reference value to estimate risk from individual compounds in the group of compounds.

Additionally, chronic reference values for several of the compounds included in this assessment are currently under the EPA IRIS review, and revised assessments may determine that these pollutants are more or less potent than the current value. We may re-evaluate residual risks for the final rulemaking if these reviews are completed prior to our taking final action for this source category and a dose-response metric changes enough to indicate that the risk assessment supporting this notice may significantly understate human health risk.

e. Uncertainties in the Multi-Pathway and Environmental Effects Screening Assessment

We generally assume that when exposure levels are not anticipated to adversely affect human health, they also are not anticipated to adversely affect the environment. For each source category, we generally rely on the site-specific levels of PB–HAP emissions to determine whether a full assessment of the multi-pathway and environmental effects is necessary. For this source category, we only performed a multi-pathway screening assessment for PB–HAP. Thus, it is important to note that potential PB–HAP multi-pathway risks are biased high.

C. How did we consider the risk results in making decisions for this proposal?

In evaluating and developing standards under section 112(f)(2), as discussed in section I.A of this preamble, we apply a two-step process to address residual risk. In the first step, the EPA determines whether risks are acceptable. This determination ''considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) [19] of approximately 1-in-10 thousand [*i.e.,* 100-in-1 million]'' (54 FR 38045). In the second step of the process, the EPA sets the standard at a level that provides an ample margin of safety ''in consideration of all health information, including the number of persons at risk levels higher than approximately 1-in-1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision'' (*Id.)*

In past residual risk actions, the EPA has presented and considered a number of human health risk metrics associated with emissions from the category under review, including: The MIR; the numbers of persons in various risk ranges; cancer incidence; the maximum non-cancer hazard index (HI); and the maximum acute non-cancer hazard (72 FR 25138, May 3, 2007; 71 FR 42724, July 27, 2006). In more recent proposals (75 FR 65068, October 21, 2010, and 75 FR 80220, December 21, 2010), the EPA also presented and considered additional measures of health information, such as estimates of the risks associated with the maximum level of emissions which might be allowed by the current MACT standards (see, *e.g.,* 75 FR 65068, October 21, 2010, and 75 FR 80220, December 21, 2010). The EPA also discussed and considered risk estimation uncertainties. The EPA is providing this same type of information in support of the proposed actions described in this **Federal Register** notice.

The agency is considering all available health information to inform our determinations of risk acceptability and ample margin of safety under CAA section 112(f). Specifically, as explained in the Benzene NESHAP, ''the first step judgment on acceptability cannot be reduced to any single factor'' and thus ''[t]he Administrator believes that the acceptability of risk under [previous] section 112 is best judged on the basis of a broad set of health risk measures and information'' (54 FR 38046). Similarly, with regard to making the ample margin of safety determination, as stated in the Benzene NESHAP ''[in the ample margin decision, the agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.'' *Id.*

The agency acknowledges that the Benzene NESHAP provides flexibility regarding what factors the EPA might consider in making determinations and how these factors might be weighed for each source category. In responding to comment on our policy under the Benzene NESHAP, the EPA explained that: ''The policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of non-cancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the Vinyl Chloride mandate that the Administrator ascertain an acceptable level of risk to the public by employing [her] expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and, thereby, implicitly permits consideration of any and all measures of health risk which the Administrator, in [her] judgment, believes are appropriate to determining what will 'protect the public health''' (54 FR 38057).

Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risks. The Benzene NESHAP explained that ''an MIR of approximately 1-in-10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the agency may find, in a particular case, that a risk that includes MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors'' (*Id.* at 38045). Similarly, with regard to the ample margin of safety analysis, the EPA stated in the Benzene NESHAP that: ''* * * the EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category'' (*Id.* at 38061).

D. How did we perform the technology review?

Our technology review focused on the identification and evaluation of developments in practices, processes, and control technologies that have

[19] Although defined as ''maximum individual risk,'' MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk were an individual exposed to the maximum level of a pollutant for a lifetime.

occurred since the Primary Aluminum Reduction Plant NESHAP was promulgated.

Based on our analyses of the data and information collected from industry and the trade organization representing all facilities subject to the NESHAP, our general understanding of the industry, and other available information in the literature on potential controls for this industry, we identified no new developments in practices, processes, and control technologies. For the purpose of this exercise, we considered any of the following to be a ''development'':

- Any add-on control technology or other equipment that was not identified and considered during development of the 1997 Primary Aluminum Reduction Plant NESHAP.
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the 1997 Primary Aluminum Reduction Plant NESHAP) that could result in significant additional emissions reduction.
- Any work practice or operational procedure that was not identified or considered during development of the 1997 Primary Aluminum Reduction Plant NESHAP.
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the 1997 Primary Aluminum Reduction Plant NESHAP.

We also consulted the EPA's RACT/BACT/LAER Clearinghouse (RBLC) to identify potential technology advances. Control technologies classified as RACT (Reasonably Available Control Technology), BACT (Best Available Control Technology), or LAER (Lowest Achievable Emissions Rate) apply to stationary sources depending on whether the sources exist or new and on the size, age, and location of the facility. BACT and LAER (and sometimes RACT) are determined on a case-by-case basis, usually by State or local permitting agencies. The EPA established the RBLC to provide a central database of air pollution technology information (including technologies required in source-specific permits) to promote the sharing of information among permitting agencies and to aid in identifying future possible control technology options that might apply broadly to numerous sources within a category or apply only on a source-by-source basis. The RBLC contains over 5,000 air pollution control permit determinations that can help identify appropriate technologies to mitigate many air pollutant emissions streams. We searched this database to determine whether it contained any practices, processes, or control technologies for the types of processes covered by the Primary Aluminum Reduction Plant NESHAP. No such practices, processes, or control technologies were identified in this database.

E. What other issues are we addressing in this proposal?

In addition to the analyses described above, we also reviewed other aspects of the MACT standards for possible revision as appropriate and necessary. Based on this review we have identified aspects of the MACT standards that we believe need revision.

This includes proposing revisions to the startup, shutdown and malfunction (SSM) provisions of the MACT rule in order to ensure that they are consistent with a recent court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (DC Cir. 2008). In addition, we are proposing other changes to the rule which are not based on residual risk. These include establishing MACT floor-based standards for POM emissions from prebake potlines, COS emissions from all potlines, and design standards for control of POM emissions from existing pitch storage tanks. We are also proposing changes to the rule related to affirmative defense for exceedance of an emission limit during a malfunction. The analyses and proposed decisions for these actions are presented in section IV of this preamble.

IV. Analytical Results and Proposed Decisions

This section of the preamble provides the results of our RTR for the Primary Aluminum Reduction Plant source category and our proposed decisions concerning changes to the Primary Aluminum Reduction Plant NESHAP.

A. What are the results of our analyses and proposed decisions regarding unregulated emissions sources?

The current MACT rule has no standards for POM from prebake potlines. Prebake facilities have significantly lower POM emissions compared to Soderberg facilities. Nevertheless, these emissions are not negligible. We are proposing to establish MACT emission limits for POM from prebake potlines in this action. The typical controls used on these prebake potlines to limit the primary (*i.e.,* stack) emissions, and which reflect the MACT floor level of control, are dry alumina scrubbers (with a baghouse). We calculated MACT floor limits for these potlines based on the limited available data. We also considered possible controls beyond the MACT floor, such as wet roof scrubbers, but we estimated that these beyond-the-floor controls would only achieve approximately an additional 30 percent reduction in secondary (*i.e.,* roof vent) emissions and that the costs of these additional controls would be quite high (*e.g.,* well over $100 million in capital costs for the industry). We estimate that the cost of controlling POM from prebake potroom secondary emissions would be approximately $800,000 per ton. Therefore, we are proposing emission limits for POM from prebake potlines, after considering variability in emissions using a 99% upper prediction level approach, based on the MACT floor. We are proposing a POM emission limit for new prebake potlines equal to the lowest limit for existing prebake potlines (developed from data obtained from the best performing sources (center-worked prebake one) facilities). More details about the data and analyses used to derive the MACT limits, and explanation of the beyond-the-floor analyses, are provided in the technical document *Draft MACT Floor Analysis for the Primary Aluminum Production Source Category* which is available in the docket for this proposed action. The proposed limits for prebake potlines are shown in Table 5.

TABLE 5—PROPOSED EMISSION LIMITS FOR NEW AND EXISTING PREBAKE POTLINES

Source	Pollutant	Emission limit
Existing Prebake:		
CWPB1 potlines	POM	0.31 kg/Mg (0.62 lb/ton) of aluminum produced.
CWPB2 potlines	POM	0.65 kg/Mg (1.3 lb/ton) of aluminum produced.
CWPB3 potlines	POM	0.63 kg/Mg (1.26 lb/ton) of aluminum produced.
SWPB potlines:	POM	0.33 kg/Mg (0.65 lb/ton) of aluminum produced.
New Prebake:		

TABLE 5—PROPOSED EMISSION LIMITS FOR NEW AND EXISTING PREBAKE POTLINES—Continued

Source	Pollutant	Emission limit
All prebake potline types	POM	0.31 kg/Mg (0.62 lb/ton) of aluminum produced.

As mentioned above, the current MACT rule has no standards for COS. It is very difficult and quite expensive to measure total COS emissions because the concentrations of secondary emissions are below the detection limit of the EPA reference method. However, stack tests are feasible and have been completed. Moreover, emissions studies have been completed using an experimental test method to estimate COS emissions from these secondary emissions sources (Determination of COS to SO_2 Ratio in Smelting Process Emissions at the Alcoa Warrick Operations, 4 August 1995). We have been able to use the experimental test results along with stack test data and data on sulfur content of input materials to estimate total COS emissions. We have determined that there is a direct relationship between the COS emissions and the sulfur content of raw materials. The results of these studies indicate that an estimated 8 percent of the sulfur present in the coke (used to make anodes) is converted to COS emissions.

Given the technical difficulties of measuring secondary COS emissions directly, and given that there is a direct relationship between sulfur content of input materials and COS emissions, we developed a mass balance equation for calculating COS emissions. Using this approach, we developed a proposed MACT standard for COS using the mass balance equation. The equation derives monthly COS emission rates based on anode coke sulfur content, anode consumption and aluminum production, as follows:

$$E_{COS} = [K] \times \left[\frac{Y}{Z}\right] \times [\%S]$$

Where:

E_{COS} = the facility wide emission rate of COS during the calendar month in pounds per ton of aluminum produced;

K = factor accounting for molecular weights and conversion of sulfur to carbonyl sulfide = 234;

Y = the tons of anode used at the facility during the calendar month;

Z = the tons of aluminum produced at the facility during the calendar month; and

%S = the weighted average sulfur content of the anode coke utilized in the production of aluminum during the calendar month (*e.g.,* if the weighted average sulfur content of the anode coke utilized during the calendar month was 2.5%, then %S = 0.025).

Using this method, we are proposing a MACT floor limit for COS for existing facilities at 3.9 pounds of COS per ton of aluminum produced (lb/ton Al), based on data obtained from the five facilities with the lowest calculated COS emissions and adjustment to account for variability using a 99% upper prediction limit approach. With regard to costs for this standard, we estimate that all facilities will be able to meet this limit with minimal additional costs (*e.g.,* calculating COS emissions and the associated monitoring, recordkeeping and reporting). With regard to new sources, the MACT floor limit for COS for new facilities is proposed at 3.1 lb COS/ton Al, based on data obtained from the facility with the lowest calculated COS emissions and adjustment to account for variability.

We also considered beyond-the-floor options for COS. For example, we assessed the feasibility and costs of proposing that all existing facilities meet a limit of 3.1 lb COS/ton Al. We estimate that a limit at this level would impact 5 facilities, result in 220 tpy reductions of COS emissions, at a total cost of $13,000,000 (or $2.6 million per facility) per year. However, there are significant uncertainties regarding the future availability and costs of the associated lower-sulfur anode coke. The Primary Aluminum industry obtains most of their coke as a by-product from the gas and oil refinery industry. It is our understanding that currently available coke with low sulfur contents could be very hard to obtain in the future and will likely be much more expensive. This situation is expected due to the following: (1) The type of crude oil input at refineries in the future is generally expected to be heavier and, therefore, less likely to result in ''anode grade coke'' that has the structure necessary for use in anode production; (2) the type of crude oil input at refineries in the future is generally expected to have higher sulfur content because the per barrel cost of heavy sour (*i.e.,* high-sulfur) crude oil is so much lower than light sweet (*i.e.,* low-sulfur) crude oil; (3) refineries initially designed to process light sweet crude oil are being converted to process heavy sour crude oil at a rapid pace worldwide due to refinery economics; (4) refineries are designed to desulfurize the product streams (gasoline, diesel, *etc.*), not the crude oil input, and the sulfur in the crude oil tends to concentrate in the petroleum coke (*i.e.,* the ''bottoms''); (5) unwillingness of refineries to preferentially process light sweet crude oil in place of heavy sour crude oil due to unfavorable economics (*i.e.,* refineries will not modify their operations to change the quality of a by-product such as petroleum coke); and (6) the lack of leverage that primary aluminum companies have over the quality of this by-product, as coke is a very low profit item for refineries and anode grade coke represents less than 20% of all the petroleum coke produced worldwide. Thus, based on future availability of low-sulfur coke, the true long term costs could exceed the present estimated cost of $13,000,000 per year.

We also evaluated the feasibility and costs of another beyond-the-floor option of requiring that all existing facilities meet a limit of 3.5 lb COS/ton Al. We estimate that a limit at this level would impact 2 facilities, result in 52 tpy reductions of COS emissions, at a total cost of $2,000,000 (or $1 million per facility) per year. Once again, these estimated costs could be significant underestimates of the true long-term costs. The uncertainties and concerns about the future availability and costs of the required low-sulfur content coke that are described above for the 3.1 lb COS/ton Al option are also a concern for this 3.5 lb COS/ton Al option.

We also considered control options including incineration and scrubbing of COS. The cost of incineration would be quite high due to the volume (typically millions of cubic feet per minute) and the relatively low temperature of the exhaust stream (typically less than 200 °F). Incineration also involves the disadvantage of the generation of sulfur dioxide and other pollutants. Similarly, the cost of scrubbers would be quite high and involve the disadvantage of generating a waste sludge stream.

Given the analyses and conclusions described above, we are proposing a MACT standard for COS for existing facilities based on the MACT floor analysis, which is a limit of 3.9 lb COS/ton Al. With regard to new sources, we are proposing a MACT standard for COS based on the MACT floor analysis, which is a limit of 3.1 lb COS/ton Al.

With regard to POM emissions from pitch storage tanks, the 1997 NESHAP included MACT standards for new pitch

storage tanks, which required a 95 percent reduction in POM emissions. However, the 1997 NESHAP had no limits for existing storage tanks. We are proposing in today's action that existing tanks will be subject to the same standard (*i.e.,* minimum of 95 percent reduction of POM emissions). At least three facilities are currently achieving this level of control. We estimate that eight facilities would be affected by this standard and would need to add controls, at a total annualized cost of about $21,000 per facility. We also estimate that this would achieve 1.6 tons reductions in POM emissions per year.

A non-contact single stage, refrigerated, water cooled condenser system was considered as a beyond the floor option for POM from pitch storage tanks. However, we believe the associated cost (estimated at $184,000 per year, per facility) is not justified by the incremental control of HAP (estimated at 0.081 tons per year for the industry).

B. What are the results of the risk assessments?

For the Primary Aluminum source category, we conducted an inhalation risk assessment for all HAP emitted. We also conducted multi-pathway screening analyses for PB–HAP emitted (*i.e.,* POM). Results of the risk assessment are presented briefly below and in more detail in the residual risk documentation referenced in section III of this preamble, which is available in the docket for this action.

Table 6 of this preamble provides an overall summary of the results of the inhalation risk assessment.

TABLE 6—PRIMARY ALUMINUM REDUCTION PLANT INHALATION RISK ASSESSMENT RESULTS

Maximum individual cancer risk (in 1 million) [1]		Estimated population at increased risk of cancer ≥1-in-1 million	Estimated annual cancer incidence (cases per year)	Maximum chronic non-cancer TOSHI [2]		Worst-case maximum refined screening acute non-cancer HQ [3]
Based on actual emissions level	Based on allowable emissions level [4 5]			Based on actual emissions level	Based on allowable emissions level	
30	100	41,000	0.005	0.4	0.6	HQ_{REL} 10 (HF) HQ_{AEGL-1} 4 (HF)

[1] Estimated maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[2] Maximum TOSHI. The target organ with the highest TOSHI for the primary aluminum source category is the skeletal system.
[3] See section III.B of this preamble for explanations of acute dose-response values.
[4] The facility with the highest MIR based on allowable emissions is the Columbia Falls facility. Notably, this facility has not operated in approximately 2 years and therefore, the EPA did not generate risk estimates (*i.e.,* MIR, TOSHI, and acute screening values) based on *actual* emissions for this facility.
[5] The highest MIR based on allowable emissions from an operating facility is estimated to be up to 50 in one million, for the operating Soderberg facility.

The results of the chronic inhalation cancer risk assessment indicate that, based on estimates of current actual emissions, the maximum individual lifetime cancer risk (MIR) could be up to 30 in one million, with emissions of POM [20] primarily from potline roof vents (secondary emissions) and anode bake furnaces driving these risks. The highest MIR of up to 30 in one million based on actual emissions is due to POM emissions from the one currently operating Soderberg facility. The highest MIR due to actual emissions from prebake facilities was estimated to be up to 20 in one million; the next highest MIR for an operating prebake facility is estimated to be up to 6 in one million. The total estimated cancer incidence from this source category based on actual emission levels is 0.005 excess cancer cases per year or one case in every 200 years, with emissions of POM contributing approximately 99 percent to this cancer incidence. In addition, we note that approximately 41,000 people are estimated to have cancer risks greater than 1 in one million, and approximately 900 people are estimated to have risks greater than 10 in one million. When considering the risks associated with MACT-allowable emissions, the MIR could be up to 100 in one million if the Columbia Falls facility (a Soderberg type facility) were to resume its primary aluminum operations (see note 4 on Table 6). The MIR based on allowable emissions from the one currently operating Soderberg facility (Massena East facility) was up to 50 in one million. The highest MIR based on allowable emissions from any of the prebake facilities was up to 30 in one million.

The maximum modeled chronic non-cancer TOSHI value is 0.4 based on actual emissions, driven primarily by HF emissions. When considering MACT allowable emissions, the maximum chronic non-cancer TOSHI value could be up to 0.6. For this source category, there were two HAP that had relevant acute health effect screening values: Carbonyl sulfide (COS) and hydrofluoric acid (HF). Acute health effect screening is performed using actual emissions data. The Columbia Falls facility has not operated in about 2 years and has not operated at capacity since about 1999. Therefore, suitable actual emission data was not available for this facility and its acute health effects are not included in this discussion. Further, the carbon-only prebake anode production facility does not emit COS or HF. Therefore, this discussion addresses the acute health effects of only the 13 remaining facilities subject to this NESHAP. With respect to COS, we did not find any potential for acute health concerns for the 13 facilities based on their actual emissions. However, HF emissions did not screen out with respect to potential acute health effects. The highest refined worst-case HQ for HF based on a REL is 10, based on an AEGL-1 is 4, and based on an ERPG-1 is 2. Moreover, 8 of the 13 facilities show the potential for worst-case acute HQ values greater than 1 based on the REL, 4 of the 13 facilities show the potential for worst-case acute HQ values greater than 1 based on the AEGL-1 and 4 of the 13 facilities show the potential for worst-case acute HQ values greater than or equal to 1 based on the ERPG-1.[21] Nevertheless, it is

[20] Most all POM emitted by this source category are PAHs.

[21] Individual facility acute HQ values for all facilities can be found in Appendix 5, Table 4, of the risk assessment document that is included in the docket for this proposed rulemaking. Acute HQ

important to note that all the worst-case acute HQs are based on conservative assumptions (*e.g.,* worst-case meteorology coinciding with peak short-term one-hour emissions from each emission point, with a person located at the point of maximum concentration during that hour).

In addition to the analyses presented above, to screen for potential multi-pathway effects from emissions of POM, we compared the estimated actual PAH emission rates from 14 facilities in this source category to the multi-pathway screening rate for PAHs described in section III.B. Results of this worst-case screen estimate that actual PAH emissions from all 14 facilities exceed the PAH multi-pathway screening rate. With respect to these exceedances of the worst-case multi-pathway screening rate for PAHs, we note that this only indicates the potential for multi-pathway-related cancer risks of concern from PAHs. Moreover, due to data limitations, we were not able to refine our multi-pathway analysis beyond the screening assessment. Thus, we note that these results are biased high for purposes of screening and are subject to significant uncertainties. As such, they do not necessarily indicate that multi-pathway risks from POM are significant, only that we cannot rule out the possibility that they might be significant.

C. What are our proposed decisions regarding risk acceptability and ample margin of safety?

1. Risk Acceptability

As noted in section III.C of this preamble, we weigh all health risk factors in our risk acceptability determination, including the MIR, the numbers of persons in various risk ranges, cancer incidence, the maximum noncancer HI, the maximum acute noncancer hazard, the extent of noncancer risks, the potential for adverse environmental effects, distribution of risks in the exposed population, and risk estimation uncertainties (54 FR 38044, September 14, 1989).

For the Primary Aluminum Reduction source category, the risk analysis we performed indicates that the cancer risk to the individual most exposed due to actual emissions is well below 100 in one million, and the cancer incidence is low (1 case in every 200 years). The potential risks due to allowable emissions are higher with an estimated MIR of up to 100 in one million which is the presumptive upper limit of acceptable risk.

With regard to noncancer risks, the analysis indicates that chronic noncancer health risks are negligible due to both actual and allowable emissions. The assessment of potential acute noncancer effects (described in the previous section) suggests that there may be potential for some acute risks due to HF emissions with worst-case HQs up to 10 (based on the REL). In characterizing the potential for acute noncancer impacts of concern, it is important to remember the upward bias of these worst-case exposure estimates and to consider the results along with the rather large uncertainties related to the emissions estimates and screening methodology.

With regard to multi-pathway exposures and risks, results of the screening analysis indicate that actual PAH emissions from all the facilities exceed the worst-case multi-pathway screening rate for PAHs, indicating the potential for possible multi-pathway-related cancer risks of concern from PAHs. We note that these screening results do not necessarily indicate that significant multi-pathway risks actually exist at primary aluminum facilities, only that we cannot rule them out as a possibility.

Overall, in determining whether risk is acceptable, we considered all the available health risk information, as described above. In this case, because the MIRs due to actual emissions are well below 100-in-1 million risk, and since the one facility that could pose possible risks due to allowable emissions of up to 100 in one million is not operating, and because a number of other factors indicate relatively low risk concern (*e.g.,* low cancer incidence and low potential for chronic noncancer risks), and given the conservative, worst-case screening level characteristics of the acute and multi-pathway assessments, and various uncertainties, we are proposing to determine that the risks due to HAP emissions from this source category are acceptable.

2. Ample Margin of Safety Analysis

We next considered whether the existing MACT standard provides an ample margin of safety (AMOS). Under the ample margin of safety analysis, we evaluate the cost and feasibility of available control technologies and other measures (including the controls, measures and costs reviewed under the technology review) that could be applied in this source category to further reduce the risks (or potential risks) due to emissions of HAP identified in our risk assessment, along with all of the health risks and other health information considered in the risk acceptability determination described above.

First, we evaluated the feasibility to reduce the potential risks due to allowable POM emissions from Soderberg facilities. As described above, the potential cancer MIR from Soderberg facilities is estimated to be up to 100 in one million due to allowable emissions. These risks are driven by POM emissions from a Soderberg facility within the vertical stud Soderberg (VSS2) subcategory. The current emissions limit (from the 2005 NESHAP amendments) for POM from potlines in this VSS2 subcategory is 2.85 kg of POM per Mg of Aluminum produced (2.85 kg/Mg, or 5.7 lbs/ton). Based on site-specific emissions data submitted by the company in early 2008 for this facility, the estimated actual emissions from this facility were about 2 lbs/ton during the most recent years of operation (see Document EPA–HQ–OAR–2002–0031–0029, which is available in the docket for this rulemaking).

After considering variability in emissions, which is appropriate for establishing MACT limits (as described in section III.A above), we calculated, using a 99% upper prediction level approach, that an emissions limit of 3.8 lbs/ton could be achieved by this facility without any additional controls and therefore no additional costs. This would result in a reduction of approximately 33 percent for the allowable emissions from VSS2 potlines, and would reduce the potential cancer MIR due to allowable emissions to about 70 in one million. We also evaluated potential controls to reduce these risks further (such as requiring wet roof scrubbers). We determined that these controls would be quite costly (approximately $4 million per ton of organic HAP), with estimated capital costs of about $40 million for this facility, and would only achieve about an additional 9.6 tons of HAP per year (30 percent) reduction in POM emissions. These controls and costs are described in more detail below.

We also evaluated the POM emissions from the one operating Soderberg facility (which is in the HSS subcategory) as part of our AMOS analyses. Based on the risk assessment, we estimated that this facility posed a cancer MIR of up to 30 in one million based on actual emissions and an MIR of up to 50 in one million based on allowable emissions. The current

values exceeding a value of 1 based on the REL were as follows: 10, 10, 9, 9, 5, 3, 2 and 2. Acute HQ values greater than a value of 1 based on the AEGL-1 were as follows: 4, 4, 3 and 3. Acute HQ values greater than or equal to a value of 1 based on the ERPG-1 were as follows: 2, 2, 1 and 1.

emissions limit for POM from potlines for this HSS subcategory is 2.35 kg/Mg (or 4.7 lbs/ton). Based on site specific emissions data for this facility, the actual emissions from this facility are estimated to be about 1.5 lbs/ton. After considering variability in emissions, we determined that an emissions limit of 3.0 lbs/ton could be achieved by this facility with no additional controls and, therefore, no additional costs. This would result in a reduction of approximately 36 percent for the allowable emissions from these HSS potlines, and would reduce the potential cancer MIR due to allowable emissions from this facility to about 30 in one million.

We identified wet roof scrubbers as one possible control technology that could be applied to further reduce allowable and actual emissions of POM from potlines, to reduce the cancer risks due to actual and allowable POM emissions, and to reduce the potential risks due to multi-pathway exposures to POM. One facility in the source category currently has this type of scrubber. These controls can also be used to reduce HF emissions and, thus, would reduce the potential for acute noncancer risks. However, the costs for these controls are high. For example, we estimate that the capital costs for the typical facility would be more than $40 million, with annualized costs of $13 million. Industry wide this would result in total capital costs of over $400 million, with estimated annualized costs of over $150 million. These controls would achieve reductions of secondary emissions of about 30 to 50 percent. Given the high costs (estimated at approximately $140,000 per ton of HAP) and relatively low emissions and risk reductions, we propose that it is not appropriate or necessary to establish these additional controls under 112(f)(2). Therefore, based our AMOS analysis, we are proposing under section 112(f)(2) of the CAA to lower the POM emissions limit for VSS2 potlines from 5.7 to 3.8 lbs/ton and to lower the POM limit for HSS potlines from 4.7 to 3.0 lbs/ton. Pursuant to CAA section 112(f)(4), we are proposing that these changes apply 90 days after the effective date of this rulemaking. We did not identify any other cost-effective controls to further reduce HAP emissions for this source category under the AMOS analyses.

In accordance with the approach established in the Benzene NESHAP, the EPA weighed all health risk measures and information considered in the risk acceptability determination, along with the costs and economic impacts of emissions controls, technological feasibility, uncertainties and other relevant factors in proposing our ample margin of safety determination. Considering the health risk information and the costs of the options identified, we propose that the existing MACT standards, along with the proposed lower POM limits for potlines at Soderberg facilities (VSS2 and HSS subcategories) described above, will provide an ample margin of safety to protect public health.

Pursuant to CAA section 112(f)(4), we are proposing that these changes (*i.e.,* lower emission limits for potlines at Soderberg facilities) apply 90 days after the effective date of this rulemaking. See CAA section 112(f)(4)(A).

Nevertheless, we solicit comment and information on the feasibility, costs and appropriateness of any additional controls or options to further reduce the potential risks due to emissions of HAP, especially POM and HF.

D. What are the results and proposed decisions based on our technology review?

As described above, dry alumina scrubbers (with baghouses) are the typical controls used to minimize primary emissions of HF and POM from the potlines. However, some facilities use wet scrubbers and ESPs to control these emissions. The MACT control technology typically used for anode bake furnaces is also a dry alumina scrubber, and a capture system vented to a dry coke scrubber is used for control of paste production plants. These facilities further reduce HAP emissions from anode bake furnaces by implementation of certain practices during periods of startup (*e.g.,* development of an anode bake furnace startup schedule, operation of the associated control system(s) within normal parametric limits prior to the startup of the anode bake furnace). To further control potline secondary emissions, one facility has wet roof scrubbers to get additional control of HF and POM. As described in the AMOS section above, it would be quite costly to require wet roof scrubbers on other facilities.

Overall, based on our technology review, we determined that there have been no developments in practices, processes, and control technologies that would be considered feasible and cost-effective to apply to this source category since promulgation of the Primary Aluminum Reduction Plant NESHAP, other than the anode bake furnace startup practices mentioned above. We propose to modify the MACT requirements for anode bake furnaces to include implementation of the startup practices mentioned above. Further, based on an analysis of recent emissions data, we believe that the practices, processes and control technologies currently in use by this source category allow for a reduction in the POM emission limits for Soderberg potlines (please refer to the ample margin of safety analysis in section IV.C.2 of this preamble).

Additional details regarding these analyses can be found in the following technical document for this action which is available in the docket: *Draft Technology Review for the Primary Aluminum Reduction Plant Source Category.*

E. What other actions are we proposing?

1. Startup, Shutdown and Malfunctions

The United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of startup, shutdown and malfunction (SSM). *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), *cert. denied,* 130 S. Ct. 1735 (U.S. 2010). Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), that are part of a regulation, commonly referred to as the ''General Provisions Rule,'' that the EPA promulgated under CAA section 112. When incorporated into CAA section 112(d) regulations for specific source categories, these two provisions exempt sources from the requirement to comply with the otherwise applicable CAA section 112(d) emissions standard during periods of SSM.

We are proposing the elimination of the SSM exemption in this rule. Consistent with *Sierra Club* v. *EPA,* the EPA is proposing standards in this rule that apply at all times. We are also proposing several revisions to Appendix A to subpart LL of part 63 (the General Provisions Applicability table). For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. We also are proposing to eliminate or revise certain recordkeeping and reporting requirements related to the SSM exemption. The EPA has attempted to ensure that we have not included in the proposed regulatory language any provisions that are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether there are any such provisions that we have inadvertently incorporated or overlooked.

In proposing the standards in this rule, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, the EPA is proposing in some cases different standards for startup periods.

The 1997 MACT rule allowed for periods of up to six months for startup of existing potlines that had been previously shutdown. These long startup periods for potlines are recognized as part of the normal operations during which emissions testing is not feasible. The current MACT emission limits are not applicable during these startup periods. Thus, we are proposing MACT standards for these periods in today's action. Given that it is economically and technically infeasible to measure emissions during these startup periods, we are proposing detailed work practice standards that will minimize HAP emissions and ensure proper operation of the processes and control equipment during startup periods. The proposed work practices include bringing the potline scrubbers and exhaust fans on line prior to energizing the first cell being restarted, ensuring that the primary capture and control system is operating at all times during startup, and keeping pots covered during startup as much as practicable to include, but not limited to, minimizing the removal of covers or panels of the pots on which work is being performed. Moreover, facilities must inspect potlines daily during startup and perform additional work practices, including resealing pot crust as often and as soon as practicable, reducing cell temperatures to as low as practicable, and adjusting pot parameters to their optimum levels to include, but not limited to, the following parameters: Alumina addition rate, exhaust air flow, cell voltage, feeding level, anode current, and liquid and solid bath levels.

The 1997 MACT rule allowed for startup periods for new or reconstructed anode bake furnaces and pitch storage tanks and for anode bake furnaces that had been previously shutdown. Based on information received from industry, we believe that these sources can comply with their MACT standards during startup periods. Therefore, we are removing the provisions for startup of anode bake furnaces and pitch storage tanks. However, we have added startup practices for anode bake furnace startup periods to help ensure that the standards will be met. These startup practices will minimize HAP emissions and ensure proper operation of the processes and control equipment during startup periods (please refer to the discussion of the technology review in section IV.D of this preamble).

Shutdown emissions are not expected to be different from those during normal operation; therefore, no separate standard or work practice is warranted. We propose that the numerical MACT limits described in previous sections of this preamble (established for normal operations) will apply during shutdown periods. We also propose that the MACT limits for all other affected units besides potlines (bake furnaces, pitch tanks, and paste production plants) apply at all times, including during startups and shutdowns.

Information on periods of startup and shutdown received from the industry indicate that emissions during startup (except for potlines) and shutdown periods are no greater than emissions during normal operations. Therefore, the continued operation of the existing control devices and emission capture systems will, in conjunction with the detailed proposed startup practices and work practices described above, be consistent with maximum achievable control technology and will be adequate, along with all the other standards described above, to ensure that risks will be acceptable and the rule will provide an ample margin of safety.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. However, by contrast, malfunction is defined as a ''sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner * * *'' (40 CFR 63.2). The EPA has determined that CAA section 112 does not require that emissions that occur during periods of malfunction be factored into development of CAA section 112 standards. Under CAA section 112, emissions standards for new sources must be no less stringent than the level ''achieved'' by the best controlled similar source and for existing sources generally must be no less stringent than the average emissions limitation ''achieved'' by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the agency to consider malfunctions in determining the level ''achieved'' by the best performing or best controlled sources when setting emissions standards. Moreover, while the EPA accounts for variability in setting emissions standards consistent with the CAA section 112 case law, nothing in that case law requires the agency to consider malfunctions as part of that analysis. Section 112 of the CAA uses the concept of ''best controlled'' and ''best performing'' unit in defining the level of stringency that CAA section 112 performance standards must meet. Applying the concept of ''best controlled'' or ''best performing'' to a unit that is malfunctioning presents significant difficulties, as malfunctions are sudden and unexpected events.

Further, accounting for malfunctions would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. See, *e.g., Sierra Club* v. *EPA,* 167 F.3d 658, 662 (DC Cir. 1999) (EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to ''invest the resources to conduct the perfect study.''). *See* also, *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (DC Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation''). In addition, the goal of a best controlled or best performing source is to operate in such a way as to avoid malfunctions of the source, and accounting for malfunctions could lead to standards that are significantly less stringent than levels that are achieved by a well-performing non-malfunctioning source. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112(d)

standard was, in fact, ''sudden, infrequent, not reasonably preventable'' and was not instead ''caused in part by poor maintenance or careless operation'' 40 CFR 63.2 (definition of malfunction).

Finally, the EPA recognizes that even equipment that is properly designed and maintained can sometimes fail and that such failure can sometimes cause an exceedance of the relevant emissions standard. (See, *e.g.,* State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown (Sept. 20, 1999); Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions (Feb. 15, 1983).). The EPA is therefore proposing to add to the final rule an affirmative defense to civil penalties for exceedances of emissions limits that are caused by malfunctions. See 40 CFR 63.842 (defining ''affirmative defense'' to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding). We also are proposing other regulatory provisions to specify the elements that are necessary to establish this affirmative defense; the source must prove by a preponderance of the evidence that it has met all of the elements set forth in 40 CFR 63.855 (see also 40 CFR 22.24). The criteria ensure that the affirmative defense is available only where the event that causes an exceedance of the emissions limit meets the narrow definition of malfunction in 40 CFR 63.2 (sudden, infrequent, not reasonably preventable and not caused by poor maintenance and or careless operation). For example, to successfully assert the affirmative defense, the source must prove by a preponderance of the evidence that excess emissions ''[w]ere caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner * * *.'' The criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions in accordance with 40 CFR sections 63.843(f) and 63.844(f) to prevent future malfunctions. For example, the source must prove by a preponderance of the evidence that ''[r]epairs were made as expeditiously as possible when the applicable emissions limitations were being exceeded * * *'' and that ''[a]ll possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health * * *.'' In any judicial or administrative proceeding, the Administrator may challenge the assertion of the affirmative defense and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties may be assessed in accordance with CAA section 113 (see also 40 CFR 22.27).

The EPA included an affirmative defense in the proposed rule in an attempt to balance a tension, inherent in many types of air regulation, to ensure adequate compliance while simultaneously recognizing that despite the most diligent of efforts, emission limits may be exceeded under circumstances beyond the control of the source. The EPA must establish emission standards that ''limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.'' 42 U.S.C. 7602(k) (defining ''emission limitation and emission standard''). *See generally Sierra Club* v. *EPA,* 551 F.3d 1019, 1021 (DC Cir. 2008). Thus, the EPA is required to ensure that section 112 emissions limitations are continuous. The affirmative defense for malfunction events meets this requirement by ensuring that even where there is a malfunction, the emission limitation is still enforceable through injunctive relief. While ''continuous'' limitations, on the one hand, are required, there is also case law indicating that in many situations it is appropriate for EPA to account for the practical realities of technology. For example, in *Essex Chemical* v. *Ruckelshaus,* 486 F.2d 427, 433 (DC Cir. 1973), the DC Circuit acknowledged that in setting standards under CAA section 111 ''variant provisions'' such as provisions allowing for upsets during startup, shutdown and equipment malfunction ''appear necessary to preserve the reasonableness of the standards as a whole and that the record does not support the 'never to be exceeded' standard currently in force.'' See also, *Portland Cement Association* v. *Ruckelshaus,* 486 F.2d 375 (DC Cir. 1973). Though intervening case law such as *Sierra Club* v. *EPA* and the CAA 1977 amendments undermine the relevance of these cases today, they support the EPA's view that a system that incorporates some level of flexibility is reasonable. The affirmative defense simply provides for a defense to civil penalties for excess emissions that are proven to be beyond the control of the source. By incorporating an affirmative defense, the EPA has formalized its approach to upset events. In a Clean Water Act setting, the Ninth Circuit required this type of formalized approach when regulating ''upsets beyond the control of the permit holder.'' *Marathon Oil Co.* v. *EPA,* 564 F.2d 1253, 1272–73 (9th Cir. 1977). *But see, Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1057–58 (DC Cir. 1978) (holding that an informal approach is adequate). The affirmative defense provisions give the EPA the flexibility to both ensure that its emission limitations are ''continuous'' as required by 42 U.S.C. 7602(k), and account for unplanned upsets and thus support the reasonableness of the standard as a whole.

Specifically, we are proposing the following rule changes:

- Add general duty requirements in 40 CFR sections 63.843 and 63.844 to replace General Provision requirements that reference vacated SSM provisions.
- Add replacement language that eliminates the reference to SSM exemptions applicable to performance tests in 40 CFR section 63.847(d).
- Add paragraphs in 40 CFR section 63.850(d) requiring the reporting of malfunctions as part of the affirmative defense provisions.
- Add paragraphs in 40 CFR section 63.850(e) requiring the keeping of certain records during malfunctions as part of the affirmative defense provisions.
- Revise Appendix A to subpart LL of part 63 to reflect changes in the applicability of the General Provisions to this subpart resulting from a court vacatur of certain SSM requirements in the General Provisions.

2. Electronic Reporting

The EPA must have performance test data to conduct effective reviews of CAA sections 112 and 129 standards, as well as for many other purposes including compliance determinations, emissions factor development, and annual emissions rate determinations. In conducting these required reviews, the EPA has found it ineffective and time consuming, not only for us, but also for regulatory agencies and source owners and operators, to locate, collect, and submit performance test data because of varied locations for data storage and varied data storage methods. In recent years, though, stack testing firms have typically collected performance test data in electronic format, making it possible to move to an electronic data submittal system that would increase the ease and efficiency of data submittal and improve data accessibility.

Through this proposal the EPA is presenting a step to increase the ease and efficiency of data submittal and

improve data accessibility. Specifically, the EPA is proposing that owners and operators of Primary Aluminum Reduction Plant facilities submit electronic copies of required performance test reports to the EPA's WebFIRE database. The WebFIRE database was constructed to store performance test data for use in developing emissions factors. A description of the WebFIRE database is available at *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main.*

As proposed above, data entry would be through an electronic emissions test report structure called the Electronic Reporting Tool. The ERT would be able to transmit the electronic report through the EPA's Central Data Exchange network for storage in the WebFIRE database making submittal of data very straightforward and easy. A description of the ERT can be found at *http://www.epa.gov/ttn/chief/ert/ert_tool.html.*

The proposal to submit performance test data electronically to the EPA would apply only to those performance tests conducted using test methods that will be supported by the ERT. The ERT contains a specific electronic data entry form for most of the commonly used EPA reference methods. A listing of the pollutants and test methods supported by the ERT is available at *http://www.epa.gov/ttn/chief/ert/ert_tool.html.* We believe that industry would benefit from this proposed approach to electronic data submittal. Having these data, the EPA would be able to develop improved emissions factors, make fewer information requests, and promulgate better informed regulations.

One major advantage of the proposed submittal of performance test data through the ERT is a standardized method to compile and store much of the documentation required to be reported by this rule. Another advantage is that the ERT clearly states what testing information would be required. Another important proposed benefit of submitting these data to the EPA at the time the source test is conducted is that it should substantially reduce the effort involved in data collection activities in the future. When the EPA has performance test data in hand, there will likely be fewer or less substantial data collection requests in conjunction with prospective required residual risk assessments or technology reviews. This would result in a reduced burden on both affected facilities (in terms of reduced manpower to respond to data collection requests) and the EPA (in terms of preparing and distributing data collection requests and assessing the results).

State, local, and Tribal agencies could also benefit from more streamlined and accurate review of electronic data submitted to them. The ERT would allow for an electronic review process rather than a manual data assessment making review and evaluation of the source provided data and calculations easier and more efficient. Finally, another benefit of the proposed data submittal to WebFIRE electronically is that these data would greatly improve the overall quality of existing and new emissions factors by supplementing the pool of emissions test data for establishing emissions factors and by ensuring that the factors are more representative of current industry operational procedures. A common complaint heard from industry and regulators is that emissions factors are outdated or not representative of a particular source category. With timely receipt and incorporation of data from most performance tests, the EPA would be able to ensure that emissions factors, when updated, represent the most current range of operational practices. In summary, in addition to supporting regulation development, control strategy development, and other air pollution control activities, having an electronic database populated with performance test data would save industry, state, local, Tribal agencies, and the EPA significant time, money, and effort while also improving the quality of emissions inventories and, as a result, air quality regulations.

Records must be maintained in a form suitable and readily available for expeditious review, according to 63.10(b)(1). Electronic recordkeeping and reporting is available for many records, and is the form considered most suitable for expeditious review if available. Electronic recordkeeping and reporting is encouraged in this proposal and some records and reports are required to be kept in electronic format.

F. Compliance Dates

We are proposing that existing facilities must comply with the proposed revised emissions limits for Soderberg potlines (which are being proposed under CAA sections 112(f)(2) for all affected sources), no later than 90 days after the date of publication of the final rule. We are proposing that existing facilities must comply with all other changes proposed in this action (other than affirmative defense provisions and electronic reporting which are effective upon promulgation of the final rule) no later than 3 years after the date of publication of the final rule. All new or reconstructed facilities must comply with all requirements in this rule upon startup.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

The affected sources are new and existing potlines, new and existing pitch storage tanks, new and existing anode bake furnaces (except for one that is located at a facility that only produces anodes for use off-site), and new and existing paste production plants.

B. What are the air quality impacts?

The proposed rule will require the POM emissions from existing uncontrolled pitch storage tanks to be reduced by a minimum of 95 percent. This is estimated to result in a reduction of 1.6 tons per year (tpy) of POM. In addition, the proposed lower Soderberg potline POM limits would reduce POM emissions from the two Soderberg facilities, assuming production at plant capacity, by approximately 300 tpy, combined.

C. What are the cost impacts?

Under the proposed amendments, 8 facilities would be required to install or upgrade, and operate emissions control systems (such as activated carbon adsorbers or condensers) to control emissions of HAP from pitch storage tanks at total estimated cost of $167,832 per year, or $20,979 per facility. In addition, 12 facilities will have to conduct periodic performance tests for POM emissions from 45 prebake potlines at an estimated total cost of $90,000 per year for the source category, or $7,500 per year per facility. The total estimated cost of the rule is $258,000 per year.

D. What are the economic impacts?

We performed an economic impact analysis for the proposed modifications in this rulemaking. That analysis estimates total annualized costs of approximately $257,832 at 13 facilities and cost to revenue of less than 0.02% for the Primary Aluminum Production source category. For more information, please refer to the *Draft Economic Impact Analysis* for this proposed rulemaking that is available in the public docket for this proposed rulemaking.

E. What are the benefits?

This proposed rule will achieve about 1.6 tons per year reductions in POM emissions, which may result in a slight health benefit. The proposed limits of 3.9 pounds of COS per ton of aluminum produced (lb COS/ton Al) for existing facilities and 3.1 lb COS/ton Al for new

facilities will prevent increases in COS emissions and prevent increases in SO_2 emissions as a co-benefit. The proposed COS standard will likely result in the use of lower sulfur content coke in the anode production processes. This reduction in anode coke sulfur content would result in decreases in emissions of both COS and sulfur dioxide (SO_2). We estimate that SO_2 emissions will decrease by 12 tons for each ton of COS reduction.

VI. Request for Comments

We are soliciting comments on all aspects of this proposed action. In addition to general comments on this proposed action, we are also interested in any additional data that may help to reduce the uncertainties inherent in the risk assessments and other analyses. We are specifically interested in receiving corrections to the site-specific emissions profiles used for risk modeling. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Section VII of this preamble provides more information on submitting data.

VII. Submitting Data Corrections

The site-specific emissions profiles used in the source category risk and demographic analyses are available for download on the RTR Web page at: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html*. The data files include detailed information for each HAP emissions release point for the facility included in the source category.

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any ''improved'' data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes. To submit comments on the data downloaded from the RTR Web page, complete the following steps:

1. Within this downloaded file, enter suggested revisions to the data fields appropriate for that information. The data fields that may be revised include the following:

Data element	Definition
Control Measure	Are control measures in place? (yes or no)
Control Measure Comment	Select control measure from list provided, and briefly describe the control measure.
Delete	Indicate here if the facility or record should be deleted.
Delete Comment	Describes the reason for deletion.
Emissions Calculation Method Code for Revised Emissions.	Code description of the method used to derive emissions. For example, CEM, material balance, stack test, *etc.*
Emissions Process Group	Enter the general type of emissions process associated with the specified emissions point.
Fugitive Angle	Enter release angle (clockwise from true North); orientation of the y-dimension relative to true North, measured positive for clockwise starting at 0 degrees (maximum 89 degrees).
Fugitive Length	Enter dimension of the source in the east-west (x-) direction, commonly referred to as length (ft).
Fugitive Width	Enter dimension of the source in the north-south (y-) direction, commonly referred to as width (ft).
Malfunction Emissions	Enter total annual emissions due to malfunctions (tpy).
Malfunction Emissions Max Hourly	Enter maximum hourly malfunction emissions here (lb/hr).
North American Datum	Enter datum for latitude/longitude coordinates (NAD27 or NAD83); if left blank, NAD83 is assumed.
Process Comment	Enter general comments about process sources of emissions.
REVISED Address	Enter revised physical street address for MACT facility here.
REVISED City	Enter revised city name here.
REVISED County Name	Enter revised county name here.
REVISED Emissions Release Point Type	Enter revised Emissions Release Point Type here.
REVISED End Date	Enter revised End Date here.
REVISED Exit Gas Flow Rate	Enter revised Exit Gas Flowrate here (ft^3/sec).
REVISED Exit Gas Temperature	Enter revised Exit Gas Temperature here (F).
REVISED Exit Gas Velocity	Enter revised Exit Gas Velocity here (ft/sec).
REVISED Facility Category Code	Enter revised Facility Category Code here, which indicates whether facility is a major or area source.
REVISED Facility Name	Enter revised Facility Name here.
REVISED Facility Registry Identifier	Enter revised Facility Registry Identifier here, which is an ID assigned by the EPA Facility Registry System.
REVISED HAP Emissions Performance Level Code	Enter revised HAP Emissions Performance Level here.
REVISED Latitude	Enter revised Latitude here (decimal degrees).
REVISED Longitude	Enter revised Longitude here (decimal degrees).
REVISED MACT Code	Enter revised MACT Code here.
REVISED Pollutant Code	Enter revised Pollutant Code here.
REVISED Routine Emissions	Enter revised routine emissions value here (tpy).
REVISED SCC Code	Enter revised SCC Code here.
REVISED Stack Diameter	Enter revised Stack Diameter here (ft).
REVISED Stack Height	Enter revised Stack Height here (ft).
REVISED Start Date	Enter revised Start Date here.
REVISED State	Enter revised State here.
REVISED Tribal Code	Enter revised Tribal Code here.
REVISED Zip Code	Enter revised Zip Code here.
Shutdown Emissions	Enter total annual emissions due to shutdown events (tpy).
Shutdown Emissions Max Hourly	Enter maximum hourly shutdown emissions here (lb/hr).
Stack Comment	Enter general comments about emissions release points.
Startup Emissions	Enter total annual emissions due to startup events (tpy).
Startup Emissions Max Hourly	Enter maximum hourly startup emissions here (lb/hr).

Data element	Definition
Year Closed	Enter date facility stopped operations.

2. Fill in the commenter information fields for each suggested revision (*i.e.,* commenter name, commenter organization, commenter email address, commenter phone number, and revision comments).

3. Gather documentation for any suggested emissions revisions (*e.g.,* performance test reports, material balance calculations).

4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Docket ID Number EPA–HQ–OAR–2011–0797 (through one of the methods described in the **ADDRESSES** section of this preamble). To expedite review of the revisions, it would also be helpful if you submitted a copy of your revisions to the EPA directly at *RTR@epa.gov* in addition to submitting them to the docket.

5. If you are providing comments on a facility, you need only submit one file for that facility, which should contain all suggested changes for all sources at that facility. We request that all data revision comments be submitted in the form of updated Microsoft® Access files, which are provided on the RTR Web Page at: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.*

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a significant regulatory action because it raises novel legal and policy issues. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by the EPA has been assigned the EPA ICR number 2447.01. The information collection requirements are not enforceable until OMB approves them. The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emissions standards. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to agency policies set forth in 40 CFR part 2, subpart B.

We are proposing new paperwork requirements for the Primary Aluminum Reduction Plant source category in the form of a one-time requirement to prepare design specifications for existing pitch storage tank controls, and submissions of test reports and calculations for demonstration of compliance with prebake potline POM limits.

For this proposed rule, the EPA is adding affirmative defense to the estimate of burden in the ICR. To provide the public with an estimate of the relative magnitude of the burden associated with an assertion of the affirmative defense position adopted by a source, the EPA has provided administrative adjustments to this ICR to show what the notification, recordkeeping and reporting requirements associated with the assertion of the affirmative defense might entail. The EPA's estimate for the required notification, reports and records for any individual incident, including the root cause analysis, totals $3,141 and is based on the time and effort required of a source to review relevant data, interview plant employees, and document the events surrounding a malfunction that has caused an exceedance of an emissions limit. The estimate also includes time to produce and retain the record and reports for submission to the EPA. The EPA provides this illustrative estimate of this burden because these costs are only incurred if there has been a violation and a source chooses to take advantage of the affirmative defense.

Given the variety of circumstances under which malfunctions could occur, as well as differences among sources' operation and maintenance practices, we cannot reliably predict the severity and frequency of malfunction-related excess emissions events for a particular source. It is important to note that the EPA has no basis currently for estimating the number of malfunctions that would qualify for an affirmative defense. Current historical records would be an inappropriate basis, as source owners or operators previously operated their facilities in recognition that they were exempt from the requirement to comply with emissions standards during malfunctions. Of the number of excess emissions events reported by source operators, only a small number would be expected to result from a malfunction (based on the definition above), and only a subset of excess emissions caused by malfunctions would result in the source choosing to assert the affirmative defense. Thus we believe the number of instances in which source operators might be expected to avail themselves of the affirmative defense will be extremely small.

With respect to the Primary Aluminum Production source category, the emissions controls are operational before the associated emission source(s) commence operation and remain operational until after the associated emission source(s) cease operation. Also, production operations would not proceed or continue if there is a malfunction of a control device and the time required to shut down production operations (*i.e.,* on the order of a day) is small compared to the averaging time of the emission standards (*i.e.,* monthly, quarterly and annual averages). Thus, we believe it is unlikely that a control device malfunction would cause an exceedance of any emission limit. Therefore, sources within this source category are not expected to have any need or use for the affirmative defense and we believe that there is no burden to the industry for the affirmative defense provisions in the proposed rule.

We expect to gather information on such events in the future and will revise this estimate as better information becomes available. We estimate 15 regulated entities are currently subject to subpart LL and will be subject to all proposed standards. The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the standards) for these amendments to subpart LL is estimated

to be $148,000 per year. This includes 1,558 labor hours per year at a total labor cost of $148,000 per year, and total non-labor capital and operation and maintenance (O&M) costs of $500 per year. This estimate includes performance tests, notifications, reporting, and recordkeeping associated with the new requirements for existing pitch storage tanks and new and existing potlines. The total burden for the Federal government (averaged over the first 3 years after the effective date of the standard) is estimated to be 120 hours per year at a total labor cost of $11,400 per year. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When these ICRs are approved by OMB, the agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control numbers for the approved information collection requirements contained in the final rules.

To comment on the agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, the EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2011–0797. Submit any comments related to the ICR to the EPA and OMB. See the **ADDRESSES** section at the beginning of this notice for where to submit comments to the EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 6, 2011, a comment to OMB is best assured of having its full effect if OMB receives it by January 5, 2012. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. For this source category, which has the NAICS code 331312, the SBA small business size standard is 1,000 employees according to the SBA small business standards definitions. There are no small entities subject to subpart LL.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comment on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed rule does not contain a Federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. The proposed rule would not result in expenditures of $100 million or more for State, local, and Tribal governments, in aggregate, or the private sector in any 1 year. The proposed rule imposes no enforceable duties on any State, local or Tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 or 205 of the UMRA.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments nor does it impose obligations upon them.

E. Executive Order 13132: Federalism

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the facilities subject to this action are owned or operated by State governments, and, because no new requirements are being promulgated, nothing in this proposed rule will supersede State regulations. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and State and local governments, the EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). None of the provisions of this proposed rule will result in increased emissions of any hazardous air pollutant from any facility. The more stringent limitations of POM emissions from horizontal stud Soderberg potlines may result in decreased risk to Indian Tribal populations. Thus, Executive Order 13175 does not apply to this action.

The EPA specifically solicits additional comment on this proposed action from Tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This proposed rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866. Moreover, the agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. Nevertheless, the public is invited to submit comments or identify studies and data that assess effects of early life exposure to HAP from Primary Aluminum sources. The EPA will typically accord greater weight to studies and data that have been peer reviewed.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined under Executive Order 13211, ''Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not likely to have significant adverse effect on the supply, distribution, or use of energy. This action will not create any new requirements and therefore no additional costs for sources in the energy supply, distribution, or use sectors.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113 (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable VCS.

This proposed rulemaking involves technical standards. The EPA proposes to use ASTM D3177–02 (2007) Standard Test Methods for Total Sulfur in the Analysis Sample of Coal and Coke. This is a voluntary consensus method. This method can be obtained from the American Society for Testing and Materials, 100 Bar Harbor Drive, West Conshohocken, Pennsylvania 19428 (telephone number (610) 832–9500). This method was proposed because it is commonly used by primary aluminum reduction facilities to demonstrate compliance with sulfur dioxide emission limitations imposed in their current Title V permits. The EPA welcomes comments on this aspect of this proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

For the primary aluminum source category, EPA has determined that the current health risks posed to anyone by actual emissions from this source category are within the acceptable range, and that the proposed rulemaking will not appreciably reduce these risks further. As a result, this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations.

To examine the potential for any environmental justice issues that might be associated with each source category, we evaluated the distributions of HAP-related cancer and non-cancer risks across different social, demographic, and economic groups within the populations living near the facilities where this source category is located. The methods used to conduct demographic analyses for this rule are described in the document *Draft Residual Risk Assessment for the Primary Aluminum Reduction Plant Source Category* which may be found in the docket for this rulemaking. The development of demographic analyses to inform the consideration of environmental justice issues in the EPA rulemakings is an evolving science. The EPA offers the demographic analyses in today's proposed rulemaking as examples of how such analyses might be developed to inform such consideration, and invites public comment on the approaches used and the interpretations made from the results, with the hope that this will support the refinement and improve utility of such analyses.

In the demographics analysis, we focused on populations within 50 km of the facilities in this source category with emissions sources subject to the MACT standard. More specifically, for these populations we evaluated exposures to HAP that could result in cancer risks of 1 in one million or greater. We compared the percentages of particular demographic groups within the focused populations to the total percentages of those demographic groups nationwide. The results of this analysis are documented in the document *Draft Residual Risk Assessment for the Primary Aluminum Reduction Plant Source Category* in the docket for this proposed rulemaking.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: November 4, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart LL—[AMENDED]

2. Section 63.840 is amended by revising paragraph (a) to read as follows:

§ 63.840 Applicability.

(a) Except as provided in paragraph (b) of this section, the requirements of this subpart apply to the owner or operator of each new or existing pitch storage tank, potline, paste production plant and anode bake furnace associated with primary aluminum production and located at a major source as defined in § 63.2.

* * * * *

3. Section 63.841 is amended by adding paragraph (a)(3) to read as follows:

§ 63.841 Incorporation by reference.

(a) * * *

(3) ASTM D3177–02 (2007) Standard Test Methods for Total Sulfur in the Analysis Sample of Coal and Coke.

* * * * *

4. Section 63.842 is amended to read as follows:

a. Removing the definition for ''Vertical stud Soderberg one (VSS1)'' and

b. Adding, in alphabetical order, definitions for ''Affirmative defense'' and ''Startup of an anode bake furnace''

§ 63.842 Definitions.

* * * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

Startup of an anode bake furnace means the process of initiating heating to the anode baking furnace where all sections of the furnace have previously been at ambient temperature. The startup or re-start of the furnace begins when the heating begins. The startup or

re-start concludes at the start of the second anode bake cycle.

* * * * *

5. Section 63.843 is amended to read as follows:

a. Revising paragraph (a)(1)introductory text;

b. Removing and reserving paragraph (a)(1)(v);

c. Revising paragraph (a)(2)introductory text, and (a)(2)(i);

d. Removing and reserving paragraph (a)(2)(ii);

e. Revising paragraph (a)(2)(iii); and

f. Adding paragraphs (a)(2)(iv) through (a)(2)(vii), (d), (e), and (f)

§ 63.843 Emission limits for existing sources.

(a) * * *

(1) Emissions of TF must not exceed:

* * * * *

(v) [Reserved]

* * * * *

(2) Emissions of POM must not exceed:

(i) 1.5 kg/Mg (3.0 lb/ton) of aluminum produced for each HSS potline;

(ii) [Reserved;]

(iii) 1.9 kg/Mg (3.8 lb/ton) of aluminum produced for each VSS2 potline;

(iv) 0.31 kg/Mg (0.62 lb/ton) of aluminum produced for each existing CWPB1 prebake potline;

(v) 0.65 kg/Mg (1.3 lb/ton) of aluminum produced for each existing CWPB2 prebake potline;

(vi) 0.63 kg/Mg (1.26 lb/ton) of aluminum produced for each existing CWPB3 prebake potline;

(vii) 0.33 kg/Mg (0.65 lb/ton) of aluminum produced for each existing SWPB prebake potline;

* * * * *

(d) *Pitch storage tanks.* Each pitch storage tank shall be equipped with an emission control system designed and operated to reduce inlet emissions of POM by 95 percent or greater.

(e) *COS limit.* Emissions of COS must not exceed 3.9 lb/ton of aluminum produced.

(f) At all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

6. Section 63.844 is amended to read as follows:

a. Adding paragraph (a)(3);

b. Adding paragraph (e); and

c. Adding paragraph (f)

§ 63.844 Emission limits for new or reconstructed sources.

(a) * * *

(3) *POM limit.* Emissions of POM from prebake potlines must not exceed 0.31 kg/Mg (0.62 lb/ton) of aluminum produced.

* * * * *

(e) *COS limit.* Emissions of COS must not exceed 3.1 lb/ton of aluminum produced.

(f) At all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

7. Section 63.846 is amended to read as follows:

a. Revising paragraph (b);

b. Revising paragraph (d)(2)(iv);

c. Revising paragraphs (d)(4)(ii) and (iii);

d. Removing and reserving paragraph (d)(4)(iv); and

e. Adding paragraphs (e) and (f)

§ 63.846 Emission averaging.

* * * * *

(b) Soderberg Potlines. The owner or operator may average TF emissions from potlines and demonstrate compliance with the limits in Table 1 of this subpart using the procedures in paragraphs (b)(1) and (b)(2) of this section. The owner or operator also may average POM emissions from potlines and demonstrate compliance with the limits in Table 2 of this subpart using the procedures in paragraphs (b)(1) and (b)(3) of this section.

* * * * *

(d) * * *

(2) * * *

(iv) The test plan for the measurement of TF or POM emissions in accordance with the requirements in §§ 63.847(b) and (k);

* * * * *

(4) * * *

(ii) The inclusion of any emission source other than an existing potline or existing anode bake furnace subject to the same operating permit; or

(iii) The inclusion of any potline or anode bake furnace while it is shut down, in the emission calculations.

(iv) [Reserved]

* * * * *

(e) *TF emissions from Prebake Potlines.* The owner or operator may average TF emissions from potlines and demonstrate compliance with the limits in Table 1 of this subpart using the procedures in paragraphs (e)(1) and (e)(2) of this section.

(1) Monthly average emissions of TF must not exceed the applicable emission limit in Table 1 of this subpart. The emission rate must be calculated based on the total emissions from all potlines over the period divided by the quantity of aluminum produced during the period, from all potlines comprising the averaging group.

(2) To determine compliance with the applicable emission limit in Table 1 of this subpart for TF emissions, the owner or operator must determine the monthly average emissions (in lb/ton) from each potline from at least three runs per potline each month for TF secondary emissions using the procedures and methods in §§ 63.847 and 63.849. The owner or operator must combine the results of secondary TF monthly average emissions with the TF results for the primary control system and divide total emissions by total aluminum production.

(f) *POM Emissions from Prebake Potlines.* The owner or operator also may average POM emissions from potlines and demonstrate compliance with the limits in Table 2 of this subpart using the procedures in paragraphs (f)(1) and (f)(2) of this section.

(1) Average emissions of POM for each compliance demonstration period, must not exceed the applicable emission limit in Table 2 of this subpart. The emission rate must be calculated based on the total emissions from all potlines divided by the quantity of aluminum produced during the period, from all potlines comprising the averaging group.

(2) To determine compliance with the applicable emission limit in Table 2 of this subpart for POM emissions, the owner or operator must determine the emissions (in lb/ton) from each potline using the procedures and methods in §§ 63.847 and 63.849. The owner or operator must combine the results of measured or calculated secondary POM emissions with the POM emissions from the primary control system and divide

total emissions by total aluminum production.

8. Section 63.847 is amended to read as follows:

a. Revising paragraph (a)

b. Removing and reserving paragraph (a)(3);

c. Revising paragraph (b) introductory text;

d. Removing and reserving paragraph (b)(6);

e. Revising paragraphs (c)(1); (c)(2); and (c)(3);

f. Removing paragraphs (c)(2)(i) through (iii);

g. Revising paragraph (c)(3);

h. Revising paragraphs (d) introductory text and (d)(2);

i. Adding paragraph (d)(5);

j. Revising paragraph (e)(2);

k. Adding paragraph (e)(8);

l. Revising paragraph (g) introductory text;

m. Adding and reserving paragraph (i); and

n. Adding paragraphs (j), (k), (l), and (m).

The revisions and additions read as follows:

§ 63.847 Compliance Provisions.

(a) *Compliance dates.* The owner operator of a primary aluminum reduction plant must comply with the requirements of this subpart by the applicable compliance date in paragraph (a)(1), (a)(2) or (a)(3) of this section:

(1) Except as noted in paragraph (a)(2) of this section, the compliance date for an owner or operator of an existing plant or source subject to the provisions of this subpart is October 7, 1999.

(2) The compliance dates for existing plants and sources are:

(i) [Date 90 days after date of publication of final rule] for Soderberg potlines subject to emission limits in §§ 63.843(a)(2)(i) and (iii) which became effective [Date of publication of final rule].

(ii) [Date 3 years after date of publication of final rule] for prebake potlines subject to emission limits in §§ 63.843(a)(2)(iv) through (vii) and § 63.848(n) which became effective [Date of publication of final rule].

(iii) [Date 3 years after date of publication of final rule] for potlines subject to the work practice standards in § 63.854 which became effective [insert date of publication of final rule].

(iv) [Date 3 years after date of publication of final rule] for anode bake furnaces subject to the startup practices in § 63.847(m) which became effective [insert date of publication of final rule].

(v) [Date 3 years after date of publication of final rule] for compliance with the pitch storage tank POM limit provisions of § 63.843(d) and the COS emission limit provisions of §§ 63.843(e) and 63.844(e).

(vi) [Date of publication of final rule] for the malfunction provisions of §§ 63.850(d)(2) and (e)(4)(xvi) and (xvii), the affirmative defense provisions of § 63.855, and the electronic reporting provisions of §§ 63.850(c) and (f).

(3) [Reserved]

* * * * *

(b) *Test plan for TF from all anode bake furnaces and potlines and POM from Soderberg potlines.* The owner or operator shall prepare a site-specific test plan prior to the initial performance test according to the requirements of § 63.7(c) of this part. The test plan must include procedures for conducting the initial performance test and for subsequent performance tests required in § 63.848 for emission monitoring. In addition to the information required by § 63.7, the test plan shall include:

* * * * *

(6) [Reserved]

* * * * *

(c) * * *

(1) During the first month following the compliance date for an existing potline (or potroom group), anode bake furnace or pitch storage tank;

(2) By the 180th day following startup for a potline or potroom group for which the owner or operator elects to conduct an initial performance test. The 180-day period starts when the first pot in a potline or potroom group is energized.

(3) By the 180th day following startup for a potline or potroom group that was shut down at the time compliance would have otherwise been required and is subsequently restarted. The 180-day period starts when the first pot in a potline or potroom group is energized.

(d) *Performance test requirements.* The initial performance test and all subsequent performance tests must be conducted in accordance with the requirements of the general provisions in subpart A of this part, the approved test plan, and the procedures in this section. Performance tests must be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Upon request, the owner or operator must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

(2) *POM emissions from Soderberg potlines.* For each Soderberg (HSS and VSS2) potline, the owner or operator must measure and record the emission rate of POM exiting the primary emission control system and the rate of secondary emissions exiting through each roof monitor, or for a plant with roof scrubbers, exiting through the scrubbers. Using the equation in paragraph (e)(2) of this section, the owner or operator must compute and record the average of at least three runs each quarter (one run per month) for secondary emissions and at least three runs each year for the primary control system to determine compliance with the applicable emission limit. Compliance is demonstrated when the emission rate of POM is equal to or less than the applicable emission limit in §§ 63.843, 63.844 or 63.846.

* * * * *

(5) *POM emissions from prebake potlines.* For each prebake potline, the owner or operator shall measure and record the emission rate of POM exiting the primary emission control system. The owner or operator shall compute and record the average of at least three runs every five years. For each prebake potline for which the owner or operator chooses to demonstrate compliance using the provisions of § 63.847(e)(2), the owner or operator shall measure and record the emission rate of secondary emissions exiting through each roof monitor, or for a plant with roof scrubbers, exiting through the scrubbers. The owner or operator shall compute and record the average of at least three runs every five years for secondary emissions. The owner or operator shall calculate POM emissions in accordance with §§ 63.847(e)(2) or (8). Compliance is demonstrated when the emission rate of POM is equal to or less than the applicable emission limit in §§ 63.843, 63.844 or 63.846.

(e) * * *

(2) Compute the emission rate of POM from each Soderberg potline, and from those prebake potlines for which the owner or operator chooses to measure secondary emissions, using Equation 1,

Where:

E_p = emission rate of POM from the potline, kg/mg (lb/ton); and

C_s = concentration of POM, mg/dscm (mg/dscf). POM emission data collected during the installation and startup of a cathode must not be included in C_s.

* * * * *

(8) Compute the rate of POM from each prebake potline for which the owner or operator does not choose to determine the measure the secondary emissions using Equation 3:

$$E_{pp} = \frac{(C_{pp1} \times Q_1) + (C_{pF2} \times \frac{C_{pF1}}{C_{pF2}} \times Q_2)}{(P \times K)} \qquad \text{(Equation 3)}$$

Where:

E_{pp} = emission rate of POM from a potline, kg/Mg (lb/ton);

C_{pp1} = concentration of POM from the primary control system, mg/dscm (mg/dscf);

Q_1 = volumetric flow rate of effluent gas from the primary control system dscm/hr (dscf/hr);

C_{pF2} = concentration of TF from the secondary control system or roof monitor, mg/dscm (mg/dscf);

C_{pF1} = concentration of TF from the primary control system, mg/dscm (mg/dscf); and

Q_2 = volumetric flow rate of effluent gas from the secondary control system or roof monitor, dscm/hr (dscf/hr).

* * * * *

(g) *Pitch storage tanks.* The owner or operator must demonstrate initial compliance with the standard for pitch storage tanks in §§ 63.843(d) and 63.844(d) by preparing a design evaluation or by conducting a performance test. The owner or operator shall submit for approval by the regulatory authority the information specified in paragraph (g)(1) of this section, along with the information specified in paragraph (g)(2) of this section where a design evaluation is performed or the information specified in paragraph (g)(3) of this section where a performance test is conducted.

* * * * *

(i) [Reserved]

(j) *COS Emissions.* The owner operator of each plant must calculate the facility wide emission rate of COS for each calendar month of operation using the following equation:

$$E_{COS} = [K] \times \left[\frac{Y}{Z}\right] \times [\%S]$$

Where:

E_{COS} = the facility wide emission rate of COS during the calendar month in pounds per ton of aluminum produced;

K = factor accounting for molecular weights and conversion of sulfur to carbonyl sulfide = 234;

Y = the tons of anode used at the facility during the calendar month;

Z = the tons of aluminum produced at the facility during the calendar month; and

%S = the weighted average sulfur content of the anode coke utilized in the production of aluminum during the calendar month (*e.g.,* if the weighted average sulfur content of the anode coke utilized during the calendar month was 2.5%, then %S = 0.025).

Compliance is demonstrated if the calculated value of E_{COS} is less than the applicable standard for COS emissions in §§ 63.843(e) and 63.844(e).

(k) *Test plan POM from prebake potlines.* The owner or operator must prepare a site-specific test plan prior to the initial performance test according to the requirements of § 63.7(c) of this part. The test plan must include procedures for conducting the initial performance test and for subsequent performance tests required in § 63.848 for emission monitoring. In addition to the information required by § 63.7 the test plan shall include:

(1) Procedures to ensure a minimum of three runs are performed for the primary control system for each source;

(2) For a source with a single control device exhausted through multiple stacks, procedures to ensure that at least three runs are performed by a representative sample of the stacks satisfactory to the applicable regulatory authority;

(3) For multiple control devices on a single source, procedures to ensure that at least one run is performed for each control device by a representative sample of the stacks satisfactory to the applicable regulatory authority;

(4) For plants with roof scrubbers, procedures for rotating sampling among the scrubbers or other procedures to obtain representative samples as approved by the applicable regulatory authority.

(l) *Potlines.* The owner or operator shall develop a written startup plan as described in § 63.854 that contains specific procedures to be followed during startup periods of potline(s). Compliance with the applicable standards in § 63.854 will be demonstrated through site inspection(s) and review of site records by the applicable regulatory authority.

(m) *Anode bake furnaces.* If you own or operate a new or existing primary aluminum reduction affected source, you must develop a written startup plan as described in paragraphs (m)(1) through (4) of this section. Compliance with the startup plan will be demonstrated through site inspection(s) and review of site records by the applicable regulatory authority. The written startup plan must contain specific procedures to be followed during startup periods of anode bake furnaces, including the following:

(1) A requirement to develop an anode bake furnace startup schedule prior to startup of the first anode bake furnace.

(2) Records of time, date, duration and any nonroutine actions taken during startup of the furnaces.

(3) A requirement that the associated emission control system should be operating within normal parametric limits prior to startup of the first anode bake furnace.

(4) A requirement to shut down the anode bake furnaces immediately if the associated emission control system is off line at any time during startup.

9. Section 63.848 is amended by revising paragraph (b) and adding paragraph (n) to read as follows:

§ 63.848 Emission monitoring requirements.

* * * * *

(b) *POM emissions from Soderberg potlines.* Using the procedures in § 63.847 and in the approved test plan, the owner or operator shall monitor emissions of POM from each Soderberg (HSS and VSS2) potline every three months. The owner or operator shall compute and record the quarterly (3-month) average from at least one run per month for secondary emissions and the previous 12-month average of all runs for the primary control systems to determine compliance with the applicable emission limit. The owner or operator must include all valid runs in the quarterly (3-month) average. The duration of each run for secondary emissions must represent a complete operating cycle. The primary control system must be sampled over an 8-hour period, unless site-specific factors dictate an alternative sampling time subject to the approval of the regulatory authority.

* * * * *

(n) *POM emissions from prebake potlines.* Using the procedures in § 63.847 and in the approved test plan, the owner or operator must monitor emissions of POM from each prebake potline every five years. The owner or operator must compute and record the sum of the average primary and secondary emissions using the procedures of §§ 63.847(e)(2) or (e)(8).

10. Section 63.849 is amended by adding paragraph (f) to read as follows:

§ 63.849 Test methods and procedures.

* * * * *

(f) The owner or operator must use ASTM Method D3177—02 (2007) for determination of the sulfur content in anode coke shipments to determine

compliance with the applicable facility wide emission limit for COS emissions.

11. Section 63.850 is amended to read as follows:

a. Revising paragraphs (c) and (d);

b. Removing and reserving paragraph (e)(4)(iii); and

c. Adding paragraphs (e)(4)(xvi), (e)(4)(xvii) and (f).

The revisions and additions read as follows:

§ 63.850 Notification, reporting and recordkeeping requirements.

* * * * *

(c) As of January 1, 2012, and within 60 days after the date of completing each performance test, as defined in § 63.2, and as required in this subpart, the owner or operator must submit performance test data, except opacity data, electronically to the EPA's Central Data Exchange by using the ERT (see *http://www.epa.gov/ttn/chief/ert/erttool.html/*) or other compatible electronic spreadsheet. Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically into the EPA's WebFIRE database.

(d) *Reporting.* In addition to the information required under § 63.10 of the General Provisions, the owner or operator must provide semi-annual reports containing the information specified in paragraphs (d)(1) through (d)(2) of this section to the Administrator or designated authority.

(1) *Excess emissions report.* As required by § 63.10(e)(3), the owner or operator must submit a report (or a summary report) if measured emissions are in excess of the applicable standard. The report must contain the information specified in § 63.10(e)(3)(v) and be submitted semiannually unless quarterly reports are required as a result of excess emissions.

(2) If there was a malfunction during the reporting period, the owner or operator must submit a report that includes the number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with §§ 63.843(f) and 63.844(f), including actions taken to correct a malfunction.

(e) * * *

(4) * * *

(iii) [Reserved]

* * * * *

(xvi) Records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control equipment and monitoring equipment.

(xvii) Records of actions taken during periods of malfunction to minimize emissions in accordance with §§ 63.843 and 63.844, including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

(f) All reports required by this subpart not subject to the requirements in paragraph (b) of this section must be sent to the Administrator at the appropriate address listed in § 63.13. If acceptable to both the Administrator and the owner or operator of a source, these reports may be submitted on electronic media. The Administrator retains the right to require submittal of reports subject to paragraph (b) of this section in paper format.

12. Section 63.854 is added to read as follows:

§ 63.854 Work Practice Standards for Periods of Startup.

(a) *Startup of potlines.* If you own or operate a new or existing primary aluminum reduction affected source, you must comply with the requirements of paragraphs (a)(1) through (7) of this section during startup for each affected potline.

(1) Develop a potline startup schedule before starting up the potline.

(2) Keep records of number of pots started per day.

(3) Bring the potline scrubbers and exhaust fans on line prior to energizing the first cell being restarted.

(4) Ensure that the primary capture and control system is operating at all times during startup.

(5) Keep pots covered during startup as much as practicable to include but not limited to minimizing the removal of covers or panels of the pots on which work is being performed.

(6) Inspect potlines daily during startup and perform the following work practices as specified in paragraphs (a)(6)(i) through (iv) of this section.

(i) Identify unstable pots as soon as practicable but in no case more than 12 hours from the time the pot became unstable;

(ii) Reduce cell temperatures to as low as practicable, but no higher than the maximum temperature specified in the operating plan described in paragraph (a)(7) of this section;

(iii) Reseal pot crusts that have been broken as often and as soon as practicable but in no case more than 24 hours from the time the crust was broken; and

(iv) Adjust pot parameters to their optimum levels, as specified in the operating plan described in paragraph (a)(7) of this section, including, but not limited to, the following parameters: Alumina addition rate, exhaust air flow, cell voltage, feeding level, anode current and liquid and solid bath levels.

(7) Prepare a written operating plan to minimize emissions during startup to include, but not limited to, the requirements in (a)(1) through (6) of this section.

13. Section 63.855 is added to read as follows:

§ 63.855 Affirmative defense for exceedance of emission limit during malfunction.

In response to an action to enforce the standards set forth in this subpart, you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined at § 63.2. Appropriate penalties may be assessed, however, if you fail to meet your burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) To establish the affirmative defense in any action to enforce such a limit, you must timely meet the notification requirements in § 63.850, and must prove by a preponderance of evidence that:

(1) The excess emissions:

(i) Were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner; and

(ii) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(iii) Did not stem from any activity or event that could have been foreseen and avoided, or planned for.

(iv) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(2) Repairs were made as expeditiously as possible when the applicable emissions limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(3) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(4) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life,

personal injury, or severe property damage; and

(5) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health; and

(6) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(7) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(8) At all times, the affected source was operated in a manner consistent with good practices for minimizing emissions; and

(9) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(b) *Notification.* The owner or operator of the affected source experiencing an exceedance of its emissions limit(s) during a malfunction, shall notify the Administrator by telephone or facsimile transmission as soon as possible, but no later than two business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense, shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standards in this subpart to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (e) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45 day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

14. Table 1 to Subpart LL of Part 63 is revised to read as follows:

TABLE 1 TO SUBPART LL OF PART 63—POTLINE TF LIMITS FOR EMISSION AVERAGING

Type	Monthly TF limit (1b/ton) (for given number of potlines)						
	2 lines	3 lines	4 lines	5 lines	6 lines	7 lines	8 lines
CWPB1	1.7	1.6	1.5	1.5	1.4	1.4	1.4
CWPB2	2.9	2.8	2.7	2.7	2.6	2.6	2.6
CWPB3	2.3	2.2	2.2	2.1	2.1	2.1	2.1
VSS2	2.6	2.5	2.5	2.4	2.4	2.4	2.4
HSS	2.5	2.4	2.4	2.3	2.3	2.3	2.3
SWPB	1.4	1.3	1.3	1.2	1.2	1.2	1.2

15. Table 2 to Subpart LL of Part 63 is revised to read as follows:

TABLE 2 TO SUBPART LL OF PART 63—POTLINE POM LIMITS FOR EMISSION AVERAGING

Type	POM limit (lb/ton) (for given number of potlines)						
	2 lines	3 lines	4 lines	5 lines	6 lines	7 lines	8 lines
HSS	3.5	3.2	3.1	3.0	3.0	2.9	2.8
VSS2	3.5	3.3	3.2	3.1	3.0	2.9	2.9
CWPB1	0.63	0.56	0.52	0.52	0.48	0.48	0.48
CWBP2	1.4	1.35	1.31	1.31	1.26	1.26	1.26
CWBP3	1.33	1.28	1.28	1.26	1.26	1.26	1.26
SWPB	0.63	0.56	0.52	0.52	0.48	0.48	0.48

16. Appendix A to Subpart LL of Part 63 is revised to read as follows:

Appendix A to Subpart LL of Part 63—Applicability of General Provisions (40 CFR Part 63, Subpart A)

Reference Section(s) * * *	Applies to subpart LL	Comment
63.1	Yes.	
63.2	Yes.	
63.3	Yes.	
63.4	Yes.	
63.5	Yes.	
63.6(a), (b), (c)	Yes.	
63.6(d)	No	Section reserved.
63.6(e)(1)(i)	No	See §§ 63.843(f) and 63.844(f) for general duty requirement.
63.6(e)(1)(ii)	No.	
63.6(e)(1)(iii)	Yes.	

Reference Section(s) * * *	Applies to subpart LL	Comment
63.6(e)(2)	No	Section reserved.
63.6(e)(3)	No.	
63.6(f)(1)	No.	
63.6(g)	Yes.	
63.6(h)	No	No opacity limits in rule.
63.6(i)	Yes.	
63.6(j)	Yes.	
63.7(a) through (d)	Yes.	
63.7(e)(1)	No	See § 63.847(d).
63.7(e)(2) through (e)(4)	Yes.	
63.7(f), (g), (h)	Yes.	
63.8(a) and (b)	Yes.	
63.8(c)(1)(i)	No	See §§ 63.843(f) and 63.844(f) for general duty requirement.
63.8(c)(1)(ii)	Yes.	
63.8(c)(1)(iii)	No.	
63.8(c)(2) through (d)(2)	Yes.	
63.8(d)(3)	Yes, except for last sentence.	
63.8(e) through (g)	Yes.	
63.9(a), (b), (c), (e), (g), (h)(1) through (3), (h)(5) and (6), (i) and (j).	Yes.	
63.9(f)	No.	
63.9(h)(4)	No	Section reserved.
63.10(a)	Yes.	
63.10(b)(1)	Yes.	
63.10(b)(2)(i)	No.	
63.10(b)(2)(ii)	No	See §§ 63.850(e)(4)(xvi) and (xvii) for recordkeeping of occurrence and duration of malfunctions and recordkeeping of actions taken during malfunction.
63.10(b)(2)(iii)	Yes.	
63.10(b)(2)(iv) and (b)(2)(v)	No.	
63.10(b)(2)(vi) through (b)(2)(xiv)	Yes.	
63.(10)(b)(3)	Yes.	
63.10(c)(1) through (9)	Yes.	
63.10(c)(10) and (11)	No	See §§ 63.850(e)(4)(xvi) and (xvii) for recordkeeping of malfunctions.
63.10(c)(12) through (c)(14)	Yes.	
63.10(c)(15)	No.	
63.10(d)(1) through (4)	Yes.	
63.10(d)(5)	No	See § 63.850(d)(2) for reporting of malfunctions.
63.10(e) and (f)	Yes.	
63.11	No	Flares will not be used to comply with the emission limits.
63.12 through 63.15	Yes.	

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