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FEDERAL REGISTER

Vol. 76 Monday,

No. 238 December 12, 2011

Pages 77107–77362

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0731; Directorate Identifier 2010–NE–39–AD; Amendment 39–16886; AD 2011–25–10]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Corp. (PW) JT9D–7R4H1 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all PW JT9D–7R4H1 turbofan engines. This AD was prompted by reports of cracks in five high-pressure compressor (HPC) shafts. This AD requires removing certain HPC shafts before their certified life limits and establishes a new, lower life-limit for these parts. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective January 17, 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: Stephen K. Sheely, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; *phone:* (781) 238–7750; fax: (781) 238–7199; *email: stephen.k.sheely@faa.gov.*

SUPPLEMENTARY INFORMATION:

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 13, 2011 (76 FR 41144). That NPRM proposed to require:

- For HPC shafts that have more than 4,500 cycles-since-new (CSN) on the effective date of this AD, removing the HPC shaft from service within 500 cycles-in-service (CIS) after the effective date of this AD or at the next shop visit after the effective date of this AD, whichever occurs first.
- For HPC shafts that have 4,500 or fewer CSN on the effective date of this AD, removing the HPC shaft from service before exceeding 5,000 CSN.

Comments

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

Request To Clarify Exemption for JT9D–7R4E1 and JT9D–7R4E1H Engine Models

One commenter, FedEx Express, requested that the FAA clearly state the exemption of JT9D–7R4E1 and –7R4E1H engine models from this requirement.

We partially agree. We do not agree that it is necessary to specifically exempt the JT9D–7R4E1 and –7R4E1H engine models because the Applicability paragraph clearly states that this AD applies only to the PW JT9D–7R4H1 turbofan engine model. All other models (including the JT9D–7R4E1 and –7R4E1H models) are automatically excluded from the compliance requirements. However, we do agree that the installation prohibition statement could be misinterpreted to go beyond the scope of the AD applicability. Therefore, we revised this AD by adding ''JT9D–7R4H1'' to paragraph (i)(2).

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (76 FR 41144, July 13, 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 41144, July 13, 2011).

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

Costs of Compliance

We estimate that this AD does not affect any engines installed on airplanes of U.S. registry.

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):

2011–25–10 Pratt & Whitney Corp: Amendment 39–16886; Docket No. FAA–2011–0731; Directorate Identifier 2010–NE–39–AD.

(a) Effective Date

This AD is effective January 17, 2012.

(b) Affected ADs

None.

(c) Applicability

Pratt & Whitney Corp (PW) JT9D–7R4H1 turbofan engines with a high-pressure compressor (HPC) shaft, part number (P/N) 808070 or 808071, installed.

(d) Unsafe Condition

This AD was prompted by reports of cracks in five HPC shafts. We are issuing this AD to correct the unsafe condition on these products.

(e) Compliance

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

(f) Engines With an HPC Shaft, P/N 808071, That Has More Than 4,500 Cycles-Since-New (CSN)

For engines with an HPC shaft, P/N 808071, that has more than 4,500 CSN on the effective date of this AD, remove the HPC shaft from service within 500 cycles-in-service (CIS) after the effective date of the AD or at piece-part exposure, whichever occurs first.

(g) Engines With an HPC Shaft, P/N 808071, That Has 4,500 or Fewer CSN

For engines with an HPC shaft, P/N 808071, that has 4,500 or fewer CSN on the effective date of this AD, remove the HPC shaft from service before exceeding 5,000 CSN.

(h) Engines With an HPC Shaft, P/N 808070, Removal From Service

For engines with an HPC shaft, P/N 808070, remove the HPC shaft, P/N 808070, from service before exceeding 1,200 CSN.

(i) Installation Prohibition

(1) After the effective date of this AD, do not install or reinstall into any engine any HPC shaft removed in accordance with paragraphs (f), (g), or (h) of this AD.

(2) After the effective date of this AD, do not install or reinstall into any JT9D–7R4H1 engine:

(i) Any HPC shaft, P/N 808071, that is at piece-part exposure and exceeds the new lower life limit of 5,000 CSN, or

(ii) Any HPC shaft, P/N 808070, that is at piece-part exposure and exceeds the new lower life limit of 1,200 CSN.

(j) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(k) Related Information

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

(l) Material Incorporated by Reference

None.

Issued in Burlington, MA, on November 29, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–31342 Filed 12–9–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0494; Directorate Identifier 2010–NE–20–AD; Amendment 39–16884; AD 2011–25–08]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for International Aero Engines (IAE) V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 turbofan engines. This AD was prompted by three reports of high-pressure turbine (HPT) case burn-through events, numerous reports of loss of stage 1 blade outer air seal segments, and HPT case bulging. This AD requires initial and repetitive 360 degree borescope inspections of HPT stage 1 blade outer air seal segments for evidence of certain distress conditions. This AD also requires incorporation of improved durability stage 1 blade outer air seal segments at the next exposure to the HPT module subassembly as terminating action to the repetitive inspections. We are issuing this AD to prevent HPT case burn-through, uncontrolled under-cowl engine fire, and damage to the airplane.

DATES: This AD is effective January 17, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 17, 2012.

ADDRESSES: For service information identified in this AD, contact International Aero Engines AG, 628 Hebron Avenue, Suite 400, Glastonbury, CT 06033; *phone:* (860) 368–3700; *fax:* (860) 368–4600; *email: iaeinfo@iaev2500.com;* Web site: *https://www.iaeworld.com.* 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: Carlos Fernandes, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *phone:* (781) 238–7189; *fax:* (781) 238–7199, *email: carlos.fernandes@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 November 23, 2010 (75 FR 71373). That NPRM proposed to require initial and repetitive 360 degree borescope inspections of HPT stage 1 blade outer air seal segments for evidence of distress. That NPRM also proposed to require incorporation of improved design stage 1 blade outer air seal segments at the next exposure to the HPT module subassembly.

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 Increase Repetitive Inspection Interval

A commenter, JetBlue Airways (JetBlue), requested that the repetitive borescope inspection interval be increased from 1,200 hours to either 1,500 or 2,000 hours. JetBlue requested the change to coincide with the recent extension of its JetBlue maintenance check to 1,500 hours or its existing borescope inspection interval of 2,000 hours per its maintenance planning document.

We disagree. We based the 1,200 hour interval on risk analysis and it demonstrates a minimum level of safety. JetBlue did not offer data to support an increase in the repetitive inspection interval. We did not change the AD in response to this comment.

Request To Use Modified Parts That Have Been Reworked

Three commenters, Lufthansa Technik AG, United Airlines, and TAM Airlines, requested that the FAA allow use of modified parts that have been reworked as a terminating action.

We disagree. The commenters did not provide data to suggest that the modified parts would correct the unsafe condition. Applicants are allowed to propose alternative methods of compliance per paragraph (h) of this AD. We did not change the AD in response to this comment.

Request To Make Compliance Not Based on Exhaust Gas Temperature (EGT) Margin

One commenter, Japan Airlines, asked that compliance be changed so it does not depend on EGT margin or so that a longer period of time is allowed to check EGT margin.

We disagree. The unsafe condition identified in this AD develops due to blade outer air seal degradation which is related to reduced EGT margin. The EGT margin criteria in Table 1 of the compliance section of this AD were developed based on field data. Operators who lack EGT margin capture systems may develop an acceptable method to evaluate EGT margin or assume the EGT margin criteria in Table 1 have been met. We did not change the AD in response to this comment.

Request To Clarify EGT Margin

Three commenters, United Airlines, Japan Airlines, and Delta Airlines, requested that EGT margin be clarified.

We agree. We revised paragraph (f) of this AD by providing additional guidance on EGT margin.

Request To Establish Corrective Action for Each Operator's Environment

One commenter, Japan Airlines, asked that corrective action be established for each operator's operational environment. The commenter believes this change is justified because its blade outer air seals (BOASs) are in good condition.

We disagree. The EGT margin requirement in this AD accounts for the operating environment. The calculation of operating hours to inspect begins when all three criteria in Table 1 exceed requirements. We did not change the AD in response to this comment.

Request To Vary EGT Margin

Two commenters, Japan Airlines and TAM Airlines, requested to vary EGT margin based on EGT redline/thrust level. The commenters believe EGT trigger margin is too high and should be reduced.

We disagree. EGT margin will vary based on thrust level so there is no need to reduce or vary it. We have also seen reports that lower redline/thrust engines with 45 degree Celsius margins have also experienced BOAS damage. We did not change the AD in response to this comment.

Request To Address Intersecting Axial and Circumferential Cracks

One commenter, Delta Airlines, asked that we address intersecting axial and circumferential cracks.

We agree. We revised the AD by updating the SB V2500–ENG–72–0580 from revision 2 to revision 3 in paragraph (f), ''Borescope Inspections.'' Revision 3 of this SB provides revised criteria for intersecting axial and circumferential cracks.

Request To Clarify Terminating Action Requirement

One commenter, Delta Airlines, asked that we clarify the terminating action requirement. Delta Airlines indicated that it is unclear if the terminating action for this AD is required or is optional and requested further definition of the HPT module exposure. Delta Airlines also asked that the paragraph in the terminating action requirement that refers to concurrent requirements be modified to identify the piece part stage 1 support assembly.

We agree. Terminating action is mandatory. To eliminate any uncertainty, we revised the heading of the ''Terminating Action'' paragraph to ''Mandatory Terminating Action'' to clarify that this action is required. We also added a definition of HPT module exposure to the Mandatory Terminating Action paragraph to improve clarity. We further modified this paragraph by changing the concurrent requirement paragraph references to identify the piece part stage 1 support assembly.

Request To Change Engine Inspection Criteria

One commenter, TAM Airlines, requested that the criteria for engine inspection be determined by EGT margin deterioration rate instead of a fixed EGT margin value. TAM Airlines asked that the current engine inspection criteria be merged with high EGT margin deterioration rate (°C/1000FH) and or EGT margin abrupt trend shifts.

We disagree. EGT margin allows the operator to use more of the available stage 1 blade outer air seal segments life and correlates with the air seal degradation. We did not change the AD in response to this comment.

Request To Provide Guidance on Engine Position Changes

One commenter, TAM Airlines, asked for guidance on how to manage engine position changes after going back above the EGT margin threshold.

We agree. We revised the Borescope Inspections paragraph to provide additional clarification on engine position changes.

Additional Information on Unsafe Condition

One commenter, Airbus, supported the FAA's position on repetitive inspections and noted that the potential pylon lower spar damage caused by HPT case burn-through would not prevent continued safe flight and landing of the aircraft.

We disagree. The description used in the AD adequately describes the unsafe condition. We did not change the AD in response to 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 with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (75 FR 71373, November 23, 2010) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (75 FR 71373, November 23, 2010).

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

Costs of Compliance

We estimate that this AD affects 34 V2500 A1 series and 510 V2500 A5/D5 series engines installed on airplanes of U.S. registry. We also estimate that it will take about 3 work-hours per engine to perform one inspection, about 3 work-hours per engine to install the improved durability stage 1 blade outer air seal segments, and that the average labor rate is $85 per work-hour. Required parts cost about $150,882 (V2500 A1 series) and $155,195 (V2500 A5/D5 series) per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $84,556,878.

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):

2011–25–08 International Aero Engines: Amendment 39–16884; Docket No. FAA–2010–0494; Directorate Identifier 2010–NE–20–AD.

(a) Effective Date

This AD is effective January 17, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to International Aero Engines (IAE) V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 turbofan engines.

(d) Unsafe Condition

This AD results from three reports received of high-pressure turbine (HPT) case burn-through events. There have also been numerous shop reports of loss of stage 1 blade outer air seal segments, and HPT case bulging. We are issuing this AD to prevent HPT case burn-through, uncontrolled under-cowl engine fire, and damage to the airplane.

(e) Compliance

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

(2) For engines that have incorporated IAE Service Bulletin (SB) No. V2500–ENG–72–0483, Revision 3 or earlier, or IAE SB No. V2500–ENG–72–0542, Revision 1 or earlier, no further action is required.

(f) Borescope Inspections

(1) Perform 360 degree borescope inspections of the HPT stage 1 blade outer air seal segments for evidence of the distress conditions listed in Appendix D of IAE SB No. V2500–ENG–72–0580, Revision 3, dated August 23, 2011.

(2) For V2525–D5 and V2528–D5 turbofan engines:

(i) Inspect within 1,000 operating hours after the engine meets all criteria as defined in Table 1 of this AD, or within 600 operating hours after the effective date of this AD, whichever is greater.

(ii) Thereafter, re-inspect within every 1,000 operating hours or as defined in Appendix D of IAE SB No. V2500–ENG–72–0580, Revision 3, dated August 23, 2011, whichever is less.

(iii) Use Accomplishment Instructions paragraphs 3.B.(1) through 3.B.(3), and Appendices A through D of IAE SB No. V2500–ENG–72–0580, Revision 3, dated August 23, 2011, to do these inspections.

(3) For V2500–A1, V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 turbofan engines:

(i) Inspect within 1,200 operating hours after the engine meets all criteria as defined in Table 1 of this AD, or within 600 operating hours after the effective date of this AD, whichever is greater.

(ii) Thereafter, re-inspect within every 1,200 operating hours or as defined in Appendix D of IAE SB No. V2500–ENG–72–0580, Revision 3, dated August 23, 2011, whichever is less.

(iii) Use Accomplishment Instructions paragraphs 3.A.(1) through 3.A.(3), and Appendices A through D of IAE SB No.

V2500–ENG–72–0580, Revision 3, dated August 23, 2011, to do these inspections.

TABLE 1—STAGE 1 BLADE OUTER AIR SEAL SEGMENT INSPECTION COMPLIANCE CRITERIA

Engine model	Stage 1 blade outer air seal segments hours-since-new or since-last-repair (greater than)	Stage 1 blade outer air seal segments cycles-since-new or since-last-repair (greater than)	Exhaust gas temperature margin degrees Celsius (less than)
A1	6,000	3,800	45
A5	6,000	3,500	45
D5	5,000	3,500	45

(4) Exhaust Gas Temperature Margin is defined as the expected margin during a sea-level takeoff on a 30-degree Celsius Outside Air Temperature Day. Guidance on how to calculate EGT margin can be found in IAE SIL 057. EGT margin smoothed data (data averaged over 6 consecutive flights) is to be compared with the criteria in Table 1. If a gap in EGT data exists due to temporary loss of data, you may use linear interpolation. Calculate operating hours from the point when all criteria exceed the requirements in Table 1.

(5) Except as provided below, the inspection of paragraphs (f)(2)(i) through (f)(2)(iii) and (f)(3)(i) through (f)(3)(iii) must be performed after all the criteria in Table 1 are satisfied; regardless of subsequent EGT margin calculations or engine rating changes. Temporary EGT margin excursions below the criteria in Table 1 that are corrected with simple troubleshooting methods (*e.g.,* LRU (line replaceable unit) replacement or correction of a measurement error) do not constitute satisfying the criteria in Table 1.

(g) Mandatory Terminating Action

(1) As terminating action to the repetitive 360 degree borescope inspections required in paragraphs (f)(2)(ii) and (f)(3)(ii) above, install improved durability stage 1 blade outer air seal segments at the next HPT module subassembly exposure, which is defined as separation of the HPT module mating flanges.

(i) For V2500–A1 turbofan engines, use paragraphs 1.B., Concurrent Requirements, and paragraphs 3.(1)(a), 3.(1)(b)(iii), and 3.(2)(a) of the Accomplishment Instructions of IAE SB No. V2500–ENG–72–0542, Revision 1, dated January 7, 2009, to do the installation.

(ii) For V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 turbofan engines, use paragraphs 1.B., Concurrent Requirements, and paragraphs 3.(1)(a), 3.(1)(b), 3.(1)(c)(ii), and 3.(2)(a) of the Accomplishment Instructions of IAE SB No. V2500–ENG–72–0483, Revision 3, dated January 7, 2009, to do the installation.

(iii) Both IAE SBs No. V2500–ENG–72–0542, Revision 1, and SB No. V2500–ENG–72–0483, Revision 3, require modification of the stage 1 HPT support assembly before installing the new blade outer air seal segments. You must complete the modification using those SBs, as applicable to the appropriate engine model, to properly perform the mandatory terminating action of this AD.

(h) Alternative Methods of Compliance

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

(i) Related Information

(1) For more information about this AD, contact Carlos Fernandes, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *phone:* (781) 238–7189; *fax:* (781) 238–7199; *email: carlos.fernandes@faa.gov.*

(2) Contact International Aero Engines AG, 628 Hebron Avenue Suite 400, Glastonbury, CT 06033; *phone:* (860) 368–3700; *fax:* (860) 368–4600; *email: iaeinfo@iaev2500.com;* Web site: *https://www.iaeworld.com;* for a copy of the service information referenced in this AD.

(j) Material Incorporated by Reference

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

(i) International Aero Engines (IAE) SB No. V2500–ENG–72–0580, Revision 3, dated August 23, 2011, approved for IBR January 17, 2012.

(ii) IAE SB No. V2500–ENG–72–0542, Revision 1, dated January 7, 2009, approved for IBR January 17, 2012.

(iii) IAE SB No. V2500–ENG–72–0483, Revision 3, dated January 7, 2009, approved for IBR January 17, 2012.

(2) For service information identified in this AD, contact International Aero Engines AG, 628 Hebron Avenue, Suite 400, Glastonbury, CT 06033; *phone:* (860) 368–3700; *fax:* (860) 368–4600; *email: iaeinfo@iaev2500.com;* Web site: *https://www.iaeworld.com.*

(3) You may review copies of the 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.

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

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

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–31663 Filed 12–9–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30815; Amdt. No. 3454]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective December 12, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the Federal Register as of December 12, 2011.

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

For Examination—

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

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

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

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

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

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

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

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

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

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

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on November 25, 2011.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 15 DEC 2011

Rota Island-North Mariana Island, CQ, Rota Intl, GPS RWY 9, Orig-C, CANCELLED
Rota Island-North Mariana Island, CQ, Rota Intl, GPS RWY 27, Orig-C, CANCELLED
Rota Island-North Mariana Island, CQ, Rota Intl, RNAV (GPS) RWY 9, Orig
Rota Island-North Mariana Island, CQ, Rota Intl, RNAV (GPS) RWY 27, Orig

Effective 12 JAN 2012

Hampton, IA, Hampton Muni, NDB RWY 17, Amdt 4B, CANCELLED
Mount Vernon, IL, Mount Vernon, ILS OR LOC RWY 23, Amdt 11A
Ashland, OH, Ashland County, NDB RWY 19, Amdt 11B
Ashland, OH, Ashland County, RNAV (GPS) RWY 19, Orig-B
Ashland, OH, Ashland County, VOR–A, Amdt 9B
Celina, OH, Lakefield, NDB RWY 8, Amdt 5, CANCELLED

Wapakoneta, OH, Neil Armstrong, LOC RWY 26, Amdt 3D, CANCELLED
Fort Hood/Killeen, TX, Robert Gray AAF, RADAR–1, Orig
New Market, VA, New Market, RNAV (GPS) RWY 6, Orig
New Market, VA, New Market, RNAV (GPS) RWY 24, Orig
Roanoke, VA, Roanoke Rgnl/Woodrum Field, LDA RWY 6, Amdt 11

Effective 9 FEB 2012

Huntsville, AL, Huntsville Intl—Carl T Jones field, Takeoff Minimums and Obstacle DP, Amdt 2
Chico, CA, Chico Muni, Takeoff Minimums and Obstacle DP, Amdt 6
Concord, CA, Buchannan Field, RNAV (GPS) Y RWY 19R, Amdt 1
Concord, CA, Buchannan Field, RNAV (GPS) Z RWY 19R, Orig
Torrance, CA, Zamperini Field, VOR RWY 11L, Amdt 15
Eaton Rapids, MI, Skyways Estates, Takeoff Minimums and Obstacle DP, Orig, CANCELLED
Eaton Rapids, MI, Skyways Estates, VOR OR GPS–A, Amdt 1A, CANCELLED
Gaylord, MI, Gaylord Rgnl, ILS OR LOC RWY 9, Amdt 1
Harbor Springs, MI, Harbor Springs, VOR–A, Amdt 2
Charlotte, NC, Charlotte/Douglas Intl, ILS OR LOC RWY 18C, Amdt 10A
Charlotte, NC, Charlotte/Douglas Intl, ILS OR LOC RWY 36C, ILS RWY 36C (CAT II), ILS RWY 36C (CAT III), Amdt 16A
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) Y RWY 18C, Amdt 3A
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) Y RWY 36C, Amdt 3A
Charlotte, NC, Charlotte/Douglas Intl, RNAV (RNP) Z RWY 18C, Orig-B
Charlotte, NC, Charlotte/Douglas Intl, RNAV (RNP) Z RWY 36C, Orig-C
New York, NY, John F Kennedy Intl, RNAV (GPS) Y RWY 4R, Amdt 1C
Kent, OH, Kent State Univ, NDB RWY 1, Amdt 13
Kent, OH, Kent State Univ, VOR–A, Amdt 14
Youngstown, OH, Lansdowne, NDB OR GPS–B, Amdt 8, CANCELLED
Youngstown, OH, Lansdowne, Takeoff Minimums and Obstacle DP, Amdt 2, CANCELLED
Seymour, TX, Seymour Muni, Takeoff Minimums and Obstacle DP, Orig

[FR Doc. 2011–31215 Filed 12–9–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30816; Amdt. No. 3455]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective December 12, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 12, 2011.

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

For Examination—

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

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

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

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

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

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

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

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

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

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on November 25, 2011.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

** * * Effective Upon Publication*

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
12–Jan–12	NC	Greenville	Pitt-Greenville	1/2074	11/9/11	ILS OR LOC RWY 20, Amdt 4A.
12–Jan–12	DC	Washington	Washington Dulles Intl	1/2075	11/9/11	RNAV (RNP) Z RWY 1R, Orig-B.
12–Jan–12	TN	Tullahoma	Tullahoma Rgnl Arpt/Wm Northern Field.	1/2163	11/9/11	SDF RWY 18, Amdt 5.
12–Jan–12	KY	Greenville	Muhlenberg County	1/2171	11/9/11	VOR/DME A, Amdt 5.
12–Jan–12	CQ	Rota Island	Rota Intl	1/2192	11/9/11	NDB RWY 9, Amdt 3B.
12–Jan–12	CQ	Rota Island	Rota Intl	1/2193	11/9/11	NDB RWY 27, Amdt 3C.
12–Jan–12	CQ	Rota Island	Rota Intl	1/2194	11/9/11	Takeoff Minimums and Obstacle DP, Amdt 1A.
12–Jan–12	FL	Tampa	Tampa Intl	1/2597	11/9/11	ILS OR LOC RWY 1L, ILS RWY 1L (SA CAT I), ILS RWY 1L (CAT II), ILS RWY 1L (CAT III), Amdt 16.
12–Jan–12	FL	Brooksville	Hernando County	1/2598	11/9/11	ILS OR LOC RWY 9, Amdt 2B.
12–Jan–12	GA	Atlanta	Dekalb-Peachtree	1/2606	11/9/11	VOR/DME RWY 27, Amdt 1E.
12–Jan–12	GA	Atlanta	Dekalb-Peachtree	1/2609	11/9/11	RNAV (GPS) Y RWY 20L, Orig-B.
12–Jan–12	GA	Atlanta	Dekalb-Peachtree	1/2612	11/9/11	RNAV (RNP) Z RWY 20L, Orig-A.
12–Jan–12	GA	Atlanta	Dekalb-Peachtree	1/2613	11/9/11	VOR/DME RWY 20L, Amdt 1F.
12–Jan–12	GA	Atlanta	Dekalb-Peachtree	1/2614	11/9/11	RNAV (GPS) RWY 27, Orig.
12–Jan–12	NJ	Berlin	Camden County	1/2617	11/9/11	VOR B, Amdt 2.
12–Jan–12	MS	Pascagoula	Trent Lott Intl	1/2618	11/9/11	VOR A, Amdt 1.
12–Jan–12	TN	Gallatin	Sumner County Rgnl	1/2627	11/9/11	VOR/DME A, Amdt 2.
12–Jan–12	FL	Jacksonville	Cecil	1/2636	11/9/11	VOR RWY 9R, Orig.
12–Jan–12	AL	Foley	Foley Muni	1/2934	11/9/11	NDB RWY 18, Amdt 1.
12–Jan–12	MS	Meridian	Key Field	1/3205	11/9/11	ILS OR LOC RWY 1, Amdt 25.
12–Jan–12	MS	Meridian	Key Field	1/3206	11/9/11	RNAV (GPS) RWY 19, Orig-A.
12–Jan–12	MS	Meridian	Key Field	1/3207	11/9/11	RNAV (GPS) RWY 1, Amdt 2.
12–Jan–12	MS	Meridian	Key Field	1/3208	11/9/11	ILS OR LOC RWY 19, Orig-A.
12–Jan–12	MS	Meridian	Key Field	1/3209	11/9/11	VOR A, Amdt 16.
12–Jan–12	MS	Meridian	Key Field	1/3210	11/9/11	RNAV (GPS) RWY 4, Orig.
12–Jan–12	MS	Meridian	Key Field	1/3211	11/9/11	RNAV (GPS) RWY 22, Orig.
12–Jan–12	MS	Natchez	Hardy-Anders Field Natchez-Adams County.	1/3224	11/9/11	VOR RWY 18, Amdt 10B.

[FR Doc. 2011–31217 Filed 12–9–11; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 736, 738, 740, 742, 746, and 774

[Docket No. 110627356–1475–01]

RIN 0694–AF29

Amendments to the Export Administration Regulations: Facilitating Enhanced Public Understanding of the Provisions That Implement the Comprehensive U.S. Sanctions on Syria

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by moving the substantive provisions of the comprehensive sanctions on Syria from General Order No. 2 in Supplement No. 1 to part 736 to a revised § 746.9. This rule also includes conforming changes to the EAR. This rule will facilitate compliance with the comprehensive sanctions on Syria.

DATES: This rule is effective December 12, 2011.

FOR FURTHER INFORMATION CONTACT: Director, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, (202) 482–4252.

SUPPLEMENTARY INFORMATION:

Background

Amendments to Parts 736 and 746 of the Export Administration Regulations

In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by moving the substantive provisions of the comprehensive sanctions on Syria from General Order No. 2 in Supplement No. 1 to part 736 to a revised Section 746.9. In General Order No. 2 of May 14, 2004, BIS implemented the U.S. sanctions on Syria pursuant to the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (SAA) and the International Emergency Economic Powers Act (IEEPA). Part 746 of the EAR addresses embargoes and other special controls and is therefore the most appropriate place for the comprehensive sanctions against Syria. For this reason, part 746 previously contained a cross reference to the Syria provisions in General Order No. 2 at section 746.9. BIS is removing the cross reference and replacing it with the substantive provisions previously set forth in the General Order. As a result, the Syria controls will be included in part 746 along with the controls applicable to other embargoed and sanctioned countries. As noted below, certain Syria controls continue to be set forth in section 742.9 of the EAR, and section 746.9 supersedes the substantive provisions of section 742.9. These changes will facilitate compliance with the comprehensive U.S. sanctions on Syria.

Although all the substantive provisions from General Order No. 2 are being included in part 746, BIS is maintaining certain provisions relating to the sanctions against Syria in the General Order at this time because of wording in Executive Order 13338. That Executive Order invokes the waiver authority granted to the President in the SAA by waiving application of certain prohibitions of the SAA ''so as to permit the exportation or reexportation of certain items as specified in the Department of Commerce's General Order No. 2 to Supplement No. 1 * * *.'' Because of this cross reference to General Order No. 2 in the Executive Order, BIS is maintaining in the General Order the waiver provisions referenced in the Executive Order.

This rule also makes conforming changes to the EAR for the amendments to Supplement No. 1 to part 736, General Order No. 2, and Section 746.9.

Conforming Changes: Parts 732, 736, 738, 740, 742, and 774

This rule amends sections 732.1 (Steps overview), 740.2 (Restrictions on all License Exceptions), and 740.9 (Temporary imports, exports, and reexports) of the EAR. Specifically, Syria is now listed in paragraphs 732.1(d)(2), 732.1(d)(3), 732.3(d)(4), 732.3(i), 740.2(a)(6), and 740.9(a)(2).

This rule also amends Section 742.9 (Anti-terrorism: Syria) and Supplement No. 1 to part 738—Commerce Country Chart. Paragraph (e) of Section 742.9 and the sentence that appears in the entry for Syria in the Commerce Country Chart now direct the public to revised Section 746.9, which provides export and reexport license requirements, licensing policy and license exceptions as applied to Syria.

Finally, this rule amends the entries on the Commerce Control List in Supplement No. 1 to part 774 of the EAR for items controlled by Export Control Classification Numbers 1C350, 1C355 and 1C395. The rule removes a statement in the License Requirements section of those entries that directed exporters to Supplement No. 1 to part 736 of the EAR for controls on Syria.

Since August 21, 2001, the Export Administration Act (the Act) has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2011 (76 FR 50,661 (Aug. 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.* (2000)). 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

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, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This 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.

2. Notwithstanding any other provisions of law, no person is required to respond to nor be 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 Office of Management and Budget (OMB) Control Number. This rule does not involve a collection of information and, therefore, does not implicate requirements of the PRA.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The Department finds that the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring prior notice, the opportunity for public participation, and a delay in effective date are inapplicable because the Department for good cause finds that prior notice and opportunity for public

comment are unnecessary (5 U.S.C. 553(b)(B)). It is unnecessary to provide prior notice and an opportunity for public comment in issuing this notice because the notice does not make any substantive changes to the Regulations. This rule simply reorganizes certain Syria-related provisions of the EAR. The provisions are currently in a General Order and the public is directed to them through a cross-reference in the EAR section addressing embargoes and special controls. This rule places the Syria provisions into the EAR section addressing embargoes and special controls, replacing the existing cross-reference. All controls in place pertaining to Syria remain in place and no new controls have been added. Therefore, this regulation is issued in final form. In addition, the Department finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness. The controls at issue have been in effect since 2004 and the public has been expected to be in compliance with the provisions since that time. Thus, because the controls on Syria are not changed by this rule, there is no need to delay the effectiveness of the rule to allow the regulated public time to come into compliance. Accordingly, this regulation is made effective immediately upon publication.

No other law requires that a notice of proposed rulemaking and an opportunity for public comments be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Parts 732 and 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Parts 736 and 738

Exports.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 746 and 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 732, 736, 738, 740, 742, 746 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 732—[AMENDED]

■ 1. The authority citation for 15 CFR part 732 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *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 (Aug. 16, 2011)).

§ 732.1 [Amended]

■ 2. Section 732.1 is amended by:

■ a. Removing the phrase ‘‘, and Three (Foreign-Produced Direct Product Reexports) for all countries except: Cuba, Iran, and North Korea.’’ in the next to last sentence of paragraph (d)(2) and adding in its place ‘‘, and Three (Foreign-Produced Direct Product Reexports) for all countries except: Cuba, Iran, North Korea, and Syria.’’; and

■ b. Removing the parenthetical phrase ‘‘(*e.g.,* Cuba, Iran, and North Korea)’’ in paragraph (d)(3) and adding in its place ‘‘(*e.g.,* Cuba, Iran, North Korea and Syria)’’.

■ 3. Section 732.3 is amended by revising paragraphs (d)(4) and (i) to read as follows:

§ 732.3 Steps regarding the ten general prohibitions.

* * * * *

(d) * * *

(4) *Destinations subject to embargo and other special controls provisions.* The Country Chart does not apply to Cuba, Iran, North Korea, and Syria. For those countries you should review the provisions at part 746 of the EAR and may skip this step concerning the Country Chart. For Iraq and Rwanda, the Country Chart provides for certain license requirements, and part 746 of the EAR provides additional requirements.

* * * * *

(i) Step 14: Embargoed countries and special destinations. If your destination for any item is Cuba, Iran, Iraq, North Korea, Rwanda, or Syria you must consider the requirements of parts 742 and 746 of the EAR. Unless otherwise indicated, General Prohibition Six (Embargo) applies to all items subject to the EAR, *i.e.* both items on the CCL and within EAR99. You may not make an export or reexport contrary to the provisions of part 746 of the EAR without a license unless:

* * * * *

PART 736—[AMENDED]

■ 4. The authority citation for 15 CFR part 736 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. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of August 12, 2011 (76 FR 50661 (Aug. 16, 2011)); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010).

■ 5. Supplement No. 1 to part 736—General Order No. 2—is revised to read as follows:

Supplement No. 1 to Part 736—General Orders

* * * * *

General Order No. 2; Section 5(b) of the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (SAA) gives the President authority to waive the application of certain prohibitions set forth in the SAA if the President determines that it is in the national security interest of the United States to do so. The President made such a determination in Executive Order 13338, finding that it was ‘‘in the national security interest of the United States to waive application of subsection 5(a)(1) and 5(a)(2)(A) of the SAA so as to permit the exportation or reexportation of certain items as specified in the Department of Commerce’s General Order No. 2.’’ The President’s reference to General Order No. 2 addresses applications to export and reexport the following items, which are considered on a case-by-case basis as opposed to the general policy of denial set forth in section 746.9 of the Regulations: items in support of activities, diplomatic or otherwise, of the United States Government (to the extent that regulation of such exportation or reexportation would not fall within the President’s constitutional authority to conduct the nation’s foreign affairs); medicine (on the CCL) and medical devices (both as defined in part 772 of the EAR); parts and components intended to ensure the safety of civil aviation and the safe operation of commercial passenger aircraft; aircraft chartered by the Syrian Government for the transport of Syrian Government officials on official Syrian Government business; telecommunications equipment and associated computers, software and technology; and items in support of United Nations operations in Syria. The total dollar value of each approved license for aircraft parts for flight safety normally will be limited to no more than $2 million over the 24-month standard license term, except in the case of complete overhauls.

Note to General Order No. 2: The controls for exports and reexports to Syria are set forth in § 746.9 of the EAR.

* * * * *

PART 738—[AMENDED]

■ 6. The authority citation for 15 CFR part 738 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 (Aug. 16, 2011)).

■ 7. Supplement No. 1 to part 738—Commerce Country Chart—is amended by revising the sentence that appears in the entry for ''Syria'' to read ''See § 746.9 of the EAR to determine whether a license is required in order to export or reexport to this destination.''

PART 740—[AMENDED]

■ 8. 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 (Aug. 16, 2011)).

■ 9. Section 740.2 is amended by revising paragraph (a)(6) to read as follows:

§ 740.2 Restriction on all License Exceptions.

(a) * * *

(6) The export or reexport is to a sanctioned destination (Cuba, Iran, North Korea, and Syria), unless a license exception or portion thereof is specifically listed in the license exceptions paragraph pertaining to a particular sanctioned country in part 746 of the EAR.

* * * * *

■ 10. Section 740.9 is amended by:

■ (a) Revising the heading and first sentence of paragraph (a)(2)(i)(A) to read as set forth below.

■ (b) Removing the clause in paragraph (a)(2)(viii)(A), ''to Country Groups D:1 or E:2, or Sudan (see supplement No. 1 to part 740) if the commodities:'', and adding in its place ''to Country Groups D:1 or E:2, Sudan, or Syria (see Supplement No. 1 to part 740) if the commodities:''

§ 740.9 Temporary imports, exports, and reexports (TMP).

(a) * * *

(2) * * *

(i) * * *

(A) *Destinations other than Country Group E:2, Sudan or Syria.* Exports and reexports of tools of trade for use by the exporter or employees of the exporter may be made only to destinations other than Country Group E:2, Sudan, or Syria. * * *

* * * * *

PART 742—[AMENDED]

■ 11. The authority citation for 15 CFR part 742 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. 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 (Aug. 16, 2011)); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010).

■ 12. Section 742.1 is amended by revising the last sentence of paragraph (d) to read as follows:

§ 742.1 Introduction.

* * * * *

(d) * * * If you are exporting or reexporting to Cuba, Iran, North Korea, or Syria, you should review part 746 of the EAR, Embargoes and Other Special Controls.

* * * * *

■ 13. Section 742.9 is amended by revising paragraph (e) to read as follows:

§ 742.9 Anti-terrorism: Syria.

* * * * *

(e) Section 746.9 (Syria) of the EAR sets forth the export and reexport controls for Syria. Section 746.9 supersedes the provisions of paragraphs (a) through (d) of this section.

PART 746—[AMENDED]

■ 14. The authority citation for 15 CFR part 746 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. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007–7 of December 7, 2006, 72 FR 1899 (January 16, 2007); August 12, 2011 (76 FR 50661 (Aug. 16, 2011)).

■ 15. Section 746.1 is amended by revising paragraph (a) introductory text and adding paragraph (a)(3) to read as follows:

§ 746.1 Introduction.

* * * * *

(a) *Comprehensive controls.* This part contains or refers to all the BIS licensing requirements, licensing policies, and License Exceptions for countries subject to general embargoes or comprehensive sanctions, currently Cuba, Iran, and Syria. This part is the focal point for all the EAR requirements for transactions involving these countries.

* * * * *

(3) *Syria.* Pursuant to Sections 5(a)(1) and 5(a)(2)(A) of the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (Pub. L. 108–175, codified as a note to 22 U.S.C. 2151) (the SAA), since May 14, 2004 BIS has maintained a prohibition on the export to Syria of all items on the Commerce Control List (in 15 CFR part 774) (CCL) and a prohibition on the export to Syria of products of the United States, other than food and medicine. The President also exercised national security waiver authority pursuant to Section 5(b) of the SAA for certain transactions. Section 746.9 of this part sets forth the specific license requirements, licensing policy and license exceptions applicable to Syria as a sanctioned country under the EAR. These provisions were issued consistent with Executive Order 13338 of May 11, 2004 which implemented the SAA.

* * * * *

■ 16. Section 746.9 is revised to read as follows:

§ 746.9 Syria.

Sections 5(a)(1) and 5(a)(2)(A) of the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (Pub. L. 108–175, codified as a note to 22 U.S.C. 2151) (the SAA) require a prohibition on the export to Syria of all items on the Commerce Control List (in 15 CFR part 774) (CCL) and a prohibition on the export to Syria of products of the United States, other than food and medicine. The President also exercised national security waiver authority pursuant to Section 5(b) of the SAA for certain transactions. The provisions in this section were issued consistent with Executive Order 13338 of May 11, 2004 which implemented the SAA.

(a) *License requirements.* A license is required for the export or reexport to Syria of all items subject to the EAR, except food and medicine classified as EAR99 (food and medicine are defined in part 772 of the EAR). A license is required for the ''deemed export'' and ''deemed reexport,'' as described in § 734.2(b) of the EAR, of any technology or source code on the Commerce Control List (CCL) to a Syrian foreign

national. ''Deemed exports'' and ''deemed reexports'' to Syrian foreign nationals involving technology or source code subject to the EAR but not listed on the CCL do not require a license.

(b) *License Exceptions.* No License Exceptions to the license requirements set forth in paragraph (a) of this section are available for exports or reexports to Syria, except the following:

(1) TMP for items for use by the news media as set forth in § 740.9(a)(2)(viii) of the EAR,

(2) GOV for items for personal or official use by personnel and agencies of the U.S. Government as set forth in § 740.11(b)(2)(i) and (ii) of the EAR,

(3) TSU for operation technology and software, sales technology, and software updates pursuant to the terms of § 740.13(a), (b), or (c) of the EAR,

(4) BAG for exports of personally-owned items by individuals leaving the United States as personal baggage pursuant to the terms of § 740.14(a) through (d), only, of the EAR, and

(5) AVS for the temporary sojourn of civil aircraft reexported to Syria pursuant to the terms of § 740.15(a)(4) of the EAR.

(c) *Licensing policy.* (1) Except as described in this paragraph (c), all license applications for export or reexport to Syria are subject to a general policy of denial. License applications for ''deemed exports'' and ''deemed reexports'' of technology and source code will be reviewed on a case-by-case basis. BIS may consider, on a case-by-case basis, license applications for exports and reexports of items necessary to carry out the President's constitutional authority to conduct U.S. foreign affairs and as Commander-in-Chief, including exports and reexports of items necessary for the performance of official functions by the United States Government personnel abroad.

(2) BIS may also consider the following license applications on a case-by-case basis: items in support of activities, diplomatic or otherwise, of the United States Government (to the extent that regulation of such exportation or reexportation would not fall within the President's constitutional authority to conduct the nation's foreign affairs); medicine (on the CCL) and medical devices (both as defined in part 772 of the EAR); parts and components intended to ensure the safety of civil aviation and the safe operation of commercial passenger aircraft; aircraft chartered by the Syrian Government for the transport of Syrian Government officials on official Syrian Government business; telecommunications equipment and associated computers, software and technology; and items in support of United Nations operations in Syria. The total dollar value of each approved license for aircraft parts for flight safety normally will be limited to no more than $2 million over the 24-month standard license term, except in the case of complete overhauls.

(3) In addition, consistent with part 734 of the EAR, the following are not subject to the EAR and therefore not subject to this General Order: informational materials in the form of books and other media; publicly available software and technology; and technology exported in the form of a patent application or an amendment, modification, or supplement thereto or a division thereof (see 15 CFR 734.3(b)(1)(v), (b)(2) and (b)(3)).

Note to § 746.9: For administrative reasons, BIS continues to maintain provisions in General Order No. 2, Supplement No. 1 to part 736 of the EAR relating to the President's waiver of certain prohibitions. This section contains all of the substantive controls against Syria, including the waiver-related provisions maintained in General Order No. 2.

PART 774—[AMENDED]

■ 17. 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 (Aug. 16, 2011)).

■ 18. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Micro Organisms,'' and ''Toxins''—Export Control Classification Number (ECCN) 1C350 is amended by revising the AT paragraph in the License Requirements section to read as follows:

Supplement No. 1 to Part 774—Commerce Control List

* * * * *

1C350 Chemicals that may be used as precursors for toxic chemical agents.

License Requirements

* * * * *

AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C350. A license is required, for AT reasons, to export or reexport items controlled by 1C350 to a country in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. (See part 742 of the EAR for additional information on the AT controls that apply to Iran, North Korea, Sudan, and Syria. See part 746 of the EAR for additional information on sanctions that apply to Cuba, Iran, North Korea, and Syria.)

* * * * *

■ 19. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Micro Organisms,'' and ''Toxins''—Export Control Classification Number (ECCN) 1C355 is amended by revising the Control(s) paragraphs in the License Requirements section to read as follows:

1C355 Chemical Weapons Convention (CWC) Schedule 2 and 3 chemicals and families of chemicals not controlled by ECCN 1C350 or by the Department of State under the ITAR.

License Requirements

* * * * *

Control(s): CW applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons. A license is required to export or reexport CWC Schedule 2 chemicals and mixtures identified in 1C355.a to States not Party to the CWC (destinations not listed in Supplement No. 2 to part 745 of the EAR). A license is required to export CWC Schedule 3 chemicals and mixtures identified in 1C355.b to States not Party to the CWC, unless an End-Use Certificate issued by the government of the importing country is obtained by the exporter, prior to export. A license is required to reexport CWC Schedule 3 chemicals and mixtures identified in 1C355.b from a State not Party to the CWC to any other State not Party to the CWC. (See § 742.18 of the EAR for license requirements and policies for toxic and precursor chemicals controlled for CW reasons.)

AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C355. A license is required, for AT reasons, to export or reexport items controlled by 1C355 to a country in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. (See part 742 of the EAR for additional information on the AT controls that apply to Iran, North Korea, Sudan, and Syria. See part 746 of the EAR for additional information on sanctions that apply to Cuba, Iran, North Korea, and Syria.)

* * * * *

■ 20. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Micro Organisms,'' and ''Toxins''—Export Control Classification Number (ECCN) 1C395 is amended by revising the AT paragraph in the License Requirements section to read as follows:

1C395 Mixtures and Medical, Analytical, Diagnostic, and Food Testing Kits Not Controlled by ECCN 1C350, as Follows (See List of Items Controlled).

License Requirements

* * * * *

AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C395. A license is required, for AT reasons, to export or reexport items controlled by 1C395 to a country in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. (See part 742 of the EAR for additional information on the AT controls that apply to Iran, North Korea, Sudan, and Syria. See part 746 of the EAR for additional information on sanctions that apply to Cuba, Iran, North Korea, and Syria.)

* * * * *

Dated: December 5, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2011–31682 Filed 12–9–11; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–1083]

RIN 1625–AA08

Special Local Regulations; Pompano Beach Holiday Boat Parade, Intracoastal Waterway, Pompano Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations on the waters of the Intracoastal Waterway in Pompano Beach, Florida during the Pompano Beach Holiday Boat Parade on Sunday, December 11, 2011. The marine parade will consist of approximately 50 vessels. The marine parade will begin at Lake Santa Barbara, transit north on the Intracoastal Waterway, and end at the Hillsborough Bridge. These special local regulations are necessary to provide for the safety of life on navigable waters of the United States during the marine parade. The special local regulations consist of a series of moving buffer zones around participant vessels as they transit from Lake Santa Barbara to the Hillsborough Bridge. Persons and vessels that are not participating in the marine parade are prohibited from entering, transiting through, anchoring in, or remaining within any of the buffer zones unless authorized by the Captain of the Port Miami or a designated representative.

DATES: This rule is effective from 5 p.m. until 10 p.m. on December 11, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–1083 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1083 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Lieutenant Jennifer S. Makowski, Sector Miami Prevention Department, Coast Guard; telephone (305) 535–8724, email *Jennifer.S.Makowski@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 the Coast Guard did not receive necessary information about this year's Pompano Beach Holiday Boat Parade with sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to marine parade participants, participant vessels, spectators, and the general public.

For the same reason discussed above, 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**.

Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233.

The purpose of the rule is to insure safety of life on navigable waters of the United States during the Pompano Beach Holiday Boat Parade.

Discussion of Rule

On December 11, 2011, Greater Pompano Beach Chamber of Commerce is hosting the Pompano Beach Holiday Boat Parade on the Intracoastal Waterway in Pompano Beach, Florida. The marine parade will consist of approximately 50 vessels. The marine parade will begin at Lake Santa Barbara, transit north on the Intracoastal Waterway, and end at the Hillsborough Bridge. Although this event occurs annually, and special local regulations have been promulgated in the Code of Federal Regulations at 33 CFR 100.701, the date of the marine parade does not correspond with the date published in the Code of Federal Regulations, and the special local regulations have been modified. Therefore, the special local regulations set forth in 33 CFR 100.701 are inapplicable for this year's Pompano Beach Holiday Boat Parade.

The special local regulations consist of a series of buffer zones around vessels participating in the Pompano Beach Holiday Boat Parade. These buffer zones are as follows: (1) All waters within 75 yards of the lead marine parade vessel; (2) all waters within 75 yards of the last marine parade vessel; and (3) all waters within 50 yards of all other marine parade vessels. Notice of the special local regulations, including the identities of the lead marine parade vessel and the last marine parade vessel, will be provided prior to the marine parade by Local Notice to Mariners and Broadcast Notice to Mariners. These special local regulations will be enforced from 5 p.m. until 10 p.m. on December 11, 2011. Persons and vessels are prohibited from entering, transiting

through, anchoring, or remaining within the buffer zones unless authorized by the Captain of the Port Miami or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the buffer zones may contact the Captain of the Port Miami by telephone at (305) 535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within any of the buffer zones is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

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

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation under Executive Order 12866.

The economic impact of this rule is not significant for the following reasons: (1) The special local regulations will be enforced for only five hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the buffer zones without authorization from the Captain of the Port Miami or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the buffer zones if authorized by the Captain of the Port Miami or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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 may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Intracoastal Waterway encompassed within the special local regulations from 5 p.m. until 10 p.m. on December 11, 2011. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves special local regulations issued in conjunction with a marine parade. Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add temporary § 100.35T07–1083 to read as follows:

§ 100.35T07–1083 Special Local Regulations; Pompano Beach Holiday Boat Parade, Intracoastal Waterway, Pompano Beach, FL.

(a) *Regulated Areas.* The following buffer zones are regulated areas during the Pompano Beach Holiday Boat Parade: All waters within 75 yards of the lead marine parade vessel; all waters within 75 yards of the last marine parade vessel; and all waters within 50 yards of all other marine parade vessels. The identities of the lead marine parade vessel and the last marine parade vessel will be provided prior to the marine parade by Local Notice to Mariners and Broadcast Notice to Mariners. The marine parade will begin at Lake Santa Barbara, transit north on the Intracoastal Waterway, and end at the Hillsborough Bridge.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated areas.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless authorized by the Captain of the Port Miami or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Miami by telephone at (305) 535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Date.* This rule will be enforced from 5 p.m. until 10 p.m. on December 11, 2011.

Dated: November 22, 2011.

C.P. Scraba,

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

[FR Doc. 2011–31593 Filed 12–9–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1108]

RIN 1625–AA11, 1624–AA00

Safety Zone and Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing both a safety zone and a Regulated Navigation Area on the Chicago Sanitary and Ship Canal near Romeoville, IL. This final rule places navigational, environmental, and operational restrictions on all vessels transiting the navigable waters located adjacent to and over the U.S. Army Corps of Engineers' electrical dispersal fish barrier system.

DATES: This rule is effective in the CFR on December 12, 2011. This rule is effective with actual notice for purposes of enforcement at 5:30 p.m. on December 1, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–1108 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1108 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call

CDR Scott Anderson, U.S. Coast Guard, Ninth District Prevention Department, Cleveland, OH, at (216) 902–6049 or email him at *scott.e.anderson@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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**. A 30 day effective period is unnecessary in this case because the safety zone and regulated navigation area (RNA) established by this rule have been in effect and enforced on a temporary basis for the last twelve months. Also, a 30 day effective period would be against the public interest. Delaying the effective date of this final rule would delay its protective effects on the public against the dangers presented by the electrical dispersal barrier. Additionally, postponing the effective date of this final rule would delay its protective effects against the potential transport north of the barrier of carp eggs, gametes, or juvenile fish and thus, would be against the public's environmental interests.

Basis and Purpose

In response to the threat of Asian carp reaching the Great Lakes and devastating the Great Lakes commercial and sport fishing industries, the U.S. Army Corps of Engineers (USACE) began in 2002 the operation of a series of electrical barriers in the Chicago Sanitary and Ship Canal (CSSC). These barriers are located approximately 30 miles from Lake Michigan and create an electric field in the water by pulsing low voltage DC current through steel cables secured to the bottom of the canal. Currently, three electrical barriers are in operation. These barriers are meant to prevent and reduce the dispersal of Asian carp in the CSSC.

The Coast Guard's Ninth District Commander has determined that the electric current radiated from the electric barriers poses certain safety risks to commercial vessels, recreational boaters, and people on or in portions of the CSSC in the vicinity of the barriers. Consequently, the Coast Guard's Ninth District Commander has concluded that an RNA is necessary to mitigate such risks.

In addition to safety concerns about electric current in the water, concerns have also been raised about the potential transport of carp eggs, gametes, and juvenile fish in bilge, ballast, or other non-potable water from south of the barriers to waters north of the barriers. To address these concerns, the Coast Guard's Ninth District Commander has determined that a safety zone is necessary to mitigate the threat of such transportation.

For a fuller discussion on the history of the electrical dispersal barriers and the potential transportation of eggs, gametes, and juvenile fish across the barriers see 70 FR 76694, 75 FR 754, and 75 FR 75145, which were published on December 28, 2005, January 6, 2010, and December 2, 2010 respectively.

Background

To address the aforesaid safety risks, the Coast Guard's Ninth District Commander first established a permanent RNA on December 28, 2005 (70 FR 76694). That RNA is located at 33 CFR 165.923. Because the safety risks associated with the electrified water evolved as additional barriers came online and because awareness increased about the potential transportation of carp eggs, gametes, and juvenile fish, the Coast Guard's Ninth District Commander twice elected to temporarily put in place a new RNA and a new safety zone. The first temporary RNA and safety zone were established on January 6, 2010 (75 FR 754). The second temporary RNA and safety zone were established on December 2, 2010 (75 FR 75145). In each instance, the Coast Guard's Ninth District Commander suspended the permanent RNA created on December 28, 2005.

The electric barriers are still in operation, and there are no indications of that their use will be terminated in the foreseeable future. Also, the potential transportation of carp eggs, gametes, and juvenile fish via bilge, ballast, or other non-potable water has not been disproved. For these reasons, the Coast Guard's Ninth District Commander has decided to revise 33 CFR 165.923 and thus, make effective and enforceable at 5:30 p.m. on December 1, 2011 the requirements that have been in place since December 2, 2010 via the aforesaid temporary interim rule (75 FR 75145).

Discussion of Rule

As stated above, the Coast Guard's Ninth District Commander has decided to revise 33 CFR 165.923 via this final rule, permanently putting in place an RNA on all waters located adjacent to, and over, the electrical dispersal barriers on the CSSC between mile marker 295.5 and mile marker 297.2. An RNA of this size is necessary to account for situations where a vessel inside the barrier could come into contact with a vessel outside the barrier possibly causing sparking greater than 1,200 feet beyond the Romeo Road Bridge or the aerial pipeline arch.

The RNA establishes vessel size, type, and operating requirements to include: (1) Vessels must be greater than twenty feet in length; (2) vessel must not be a personal watercraft of any kind (*i.e.* jet skis, wave runners, kayak, *etc.*); (3) all up-bound and downbound commercial tows that consist of barges carrying flammable liquid cargos (grade A through C, flashpoint below 140 degrees Fahrenheit, or heated to within 15 degrees Fahrenheit of flash point) must engage the services of a bow boat at all times until the entire tow is clear of the RNA; (4) vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), may not pass (meet or overtake) in the RNA and must make a SECURITE call when approaching the RNA to announce intentions and work out passing arrangements on either side; (5) commercial tows transiting the RNA must only be made up with wire rope to ensure electrical connectivity between all segments of the tow; (6) all vessels are prohibited from loitering in the RNA; (7) vessels may enter the RNA for the sole purpose of transiting to the other side and must maintain headway throughout the transit; (8) all vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the RNA; (9) all personnel on vessels transiting the RNA should remain inside the cabin, or as inboard as practicable. If personnel must be on open decks, they must wear a Coast Guard approved personal flotation device; (10) vessels may not moor or lay up on the right or left descending banks of the RNA; and, (11) towboats may not make or break tows if any portion of the towboat or tow is located in the RNA.

The rule also places a safety zone over a smaller portion of the same waterway. The safety zone will consist of all waters of the CSSC between mile marker 296.1 and mile marker 296.7. Vessels are prohibited from transiting the safety zone with non-potable water on board in any space except for water on board that will not be discharged on the other side of the safety zone. Vessels must notify and obtain permission from the Captain of the Port Sector Lake Michigan prior to transiting the safety zone if they intend to discharge any non-potable water attained on one-side of the safety zone on the other side of the zone. This includes water in void spaces being unintentionally introduced through cracks or other damage to the

hull. The Captain of the Port Sector Lake Michigan maintains a telephone line that is manned 24 hours a day, seven days a week at 414–747–7182.

The requirements established in this rule are necessary for safe navigation of the RNA and to ensure the safety of vessels and their personnel as well as the public in general. The requirements are also necessary to protect against the harms presented by a potential invasion of Asian carp in Lake Michigan. Deviation from this final rule is prohibited unless specifically authorized by the Coast Guard's Ninth District Commander or his or her designated representatives. For the life of this RNA, the Coast Guard's Ninth District Commander designates as his or her representatives the Captain of the Port, Sector Lake Michigan, and the Commanding Officer, Marine Safety Unit Chicago.

The safety zone and RNA will be enforced at all times. If, however, enforcement of the safety zone or RNA is at any time suspended, the Coast Guard's Ninth District Commander or his or her designated representatives will cause notice of the suspension to be made by all appropriate means to effect the widest publicity among the affected segments of the public.

Regulatory Analyses

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

Regulatory Planning and Review

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

This rule will affect commercial traffic transiting the electrical dispersal fish barrier system and surrounding waters. The USACE maintains data about the commercial vessels using the Lockport Lock and Dam, which provides access to the proposed RNA. According to USACE data, the commercial traffic through the Lockport Lock consisted of 147 towing vessels and 13,411 barges during 2007. Of those, 96 towing vessels and 2,246 barges were handling red flag cargo (*i.e.,* those carrying hazardous, flammable, or combustible material in bulk).

Recreational vessels will also be affected under this rule. According to USACE data, recreational vessels made up 66 percent of the usage of the Lockport Lock and Dam in 2007. Operation and maintenance of the USACE fish barrier will continue to affect recreational vessels as they have in the past. The majority of these vessels will still be able to transit the RNA under this rule. The potential cost associated with this rule will include alternative transportation methods for vessels under 20 feet in length, bow boat assistance for red flag vessels and the potential costs associated with possible delays or inability to transit the safety zone for those vessels transporting non-potable water attained on one side of the barrier for discharge on the other.

We expect some provisions in this rule will not result in additional costs. These include the no loitering, the no mooring, and the PFD requirements. Similar to prior temporary interim rules, under this final rule vessels are prohibited from mooring or loitering in the RNA and all personnel in the RNA on open decks are required to wear a Coast Guard approved Type I personal flotation device. Most commercial and recreational operators will have required flotation devices on board as a result of other requirements and common safe boating practices. Based on the past temporary interim rules, we observed no information and received no data to confirm there were additional costs as a result of these provisions.

In addition, test results at the current operating parameters indicate that the majority of commercial and recreational vessels that regularly transit the CSSC will be permitted to enter the regulated navigation area and safety zone under certain conditions. Those vessels that will not be permitted to pass through the barrier may be permitted, on a case by case basis, to pass via a dead ship tow by a commercial vessel that is able to transit.

We expect the benefits of this rule will mitigate marine safety risks as a result of the operation and maintenance of the fish barriers by the USACE. This rule will allow commerce to continue through the waters adjacent to and over these barriers. This rule will also mitigate the possibility of an Asian Carp introduction into Lake Michigan, and the Great Lakes system, as a result of commerce through the CSSC.

At this time, based on available information from past temporary interim rules, we anticipate that this rule will not be economically significant under Executive Order 12866 (*i.e.,* have an annual effect on the economy of $100 million or more).

Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider whether regulatory actions 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.

A final RFA analysis is not required under 5 U.S.C. 604(a) as this final rule was determined to be exempt from notice and comment rulemaking under 5 U.S.C. 553(b)(B) (see 75 FR 754). Nonetheless, the Coast Guard certifies under 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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 that this action is one of the category of actions which do not individually or cumulatively have significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2 Figure 2–1, paragraphs (27) and (34)(g) of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves the establishing, disestablishing, or changing of a regulated navigation area and safety zone and thus, paragraphs (27) and (34)(g) of the Instruction apply. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, 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, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.923 to read as follows:

§ 165.923 Safety Zone and Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL.

(a) *Safety Zone.* (1) The following area is a safety zone: All waters of the *Chicago Sanitary and Ship Canal* located between mile marker 296.1 and mile marker 296.7.

(2) *Regulations.* (i) All vessels are prohibited from transiting the safety zone with any non-potable water on board if they intend to release that water in any form within, or on the other side of the safety zone. Non-potable water includes, but is not limited to, any water taken on board to control or maintain trim, draft, stability, or stresses of the vessel. Likewise, it includes any water taken on board due to free communication between the hull of the vessel and exterior water. Potable water is water treated and stored aboard the vessel that is suitable for human consumption.

(ii) Vessels with non-potable water onboard are permitted to transit the safety zone if they have taken steps to prevent the release, in any form, of that water in or on the other side of the safety zone. Alternatively, vessels with non-potable water onboard are permitted to transit the safety zone if they have plans to dispose of the water in a biologically sound manner.

(iii) Vessels with non-potable water aboard that intend to discharge on the other side of the zone must contact the Coast Guard's Ninth District Commander or his or her designated representatives prior to transit and obtain permission to transit and discharge. Examples of discharges that may be approved include plans to dispose of the water in a biologically sound manner or demonstrate through testing that the non-potable water does not contain potential live Silver or Asian carp, viable eggs, or gametes.

(iv) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone by vessels with non-potable water on board is prohibited unless authorized by the Coast Guard's Ninth District Commander, his or her

designated representatives, or an on-scene representative.

(v) The Captain of the Port, Sector Lake Michigan, may further designate an ''on-scene'' representative. The Captain of the Port, Sector Lake Michigan, or the on-scene representative may be contacted via VHF–FM radio Channel 16 or through the Coast Guard Sector Lake Michigan Command Center at (414) 747–7182.

(b) *Regulated Navigation Area.* (1) The following is a regulated navigation area (RNA): All waters of the Chicago Sanitary and Ship Canal, Romeoville, IL located between mile marker 295.5 and mile marker 297.2.

(2) *Regulations.*

(i) The general regulations contained in 33 CFR 165.13 apply.

(ii) Vessels that comply with the following restrictions are permitted to transit the RNA:

(A) All up-bound and down-bound barge tows that consist of barges carrying flammable liquid cargos (Grade A through C, flashpoint below 140 degrees Fahrenheit, or heated to within 15 degrees Fahrenheit of flash point) must engage the services of a bow boat at all times until the entire tow is clear of the RNA.

(B) Vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), may not pass (meet or overtake) in the RNA and must make a SECURITE call when approaching the RNA to announce intentions and work out passing arrangements.

(C) Commercial tows transiting the RNA must be made up with only wire rope to ensure electrical connectivity between all segments of the tow.

(D) All vessels are prohibited from loitering in the RNA.

(E) Vessels may enter the RNA for the sole purpose of transiting to the other side and must maintain headway throughout the transit. All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the RNA.

(F) Except for law enforcement and emergency response personnel, all personnel on vessels transiting the RNA should remain inside the cabin, or as inboard as practicable. If personnel must be on open decks, they must wear a Coast Guard approved personal flotation device.

(G) Vessels may not moor or lay up on the right or left descending banks of the RNA.

(H) Towboats may not make or break tows if any portion of the towboat or tow is located in the RNA.

(I) Persons on board any vessel transiting this RNA in accordance with this rule or otherwise are advised they do so at their own risk.

(c) *Definitions.* The following definitions apply to this section:

Bow boat means a towing vessel capable of providing positive control of the bow of a tow containing one or more barges, while transiting the RNA. The bow boat must be capable of preventing a tow containing one or more barges from coming into contact with the shore and other moored vessels.

Designated representative means the Captain of the Port Lake Michigan and Commanding Officer, Marine Safety Unit Chicago.

On-scene representative means any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan, to act on his or her behalf. The on-scene representative of the Captain of the Port, Sector Lake Michigan, will be aboard a Coast Guard, Coast Guard Auxiliary, or other designated vessel or will be on shore and will communicate with vessels via VHF–FM radio or loudhailer.

Vessel means every description of watercraft or other artificial contrivance used, or capable or being used, as a means of transportation on water. This definition includes, but is not limited to, barges.

(d) *Compliance.* All persons and vessels must comply with this section and any additional instructions or orders of the Coast Guard's Ninth District Commander or his or her designated representatives. Any person on board any vessel transiting this RNA in accordance with this rule or otherwise does so at his or her own risk.

(e) *Waiver.* For any vessel, the Coast Guard's Ninth Coast Commander or his or her designated representatives may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of vessel and mariner safety.

Dated: December 1, 2011.

M.N. Parks,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2011–31706 Filed 12–9–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0970]

RIN 1625–AA00

Safety Zone; Sausalito Yacht Club's Annual Lighted Boat Parade and Fireworks Display, Sausalito, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the San Francisco Bay near Sausalito, California in support of the Sausalito Yacht Club's Annual Lighted Boat Parade and Fireworks Display. This temporary safety zone is established to ensure the safety of participants and spectators from the dangers associated with pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective from 11 a.m. through 8:05 p.m. on December 10, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0970 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2011–0970 in the Docket ID box, pressing Enter, and then clicking the item in the Docket ID column. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Ensign William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at *D11-PF-MarineEvents@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 it would be impracticable to delay this rule because the event would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Any delay in the effective date of this rule would expose mariners to the dangers posed by the pyrotechnics used in the fireworks display.

Basis and Purpose

Sausalito on-the-Waterfront Foundation will sponsor the Sausalito Yacht Club's Annual Lighted Boat Parade and Fireworks Display on December 10, 2011 in the navigable waters of the San Francisco Bay off of Sausalito, California. This safety zone establishes a temporary restricted area on the waters 100 feet around the fireworks barge during the loading of the barge and transit of the barge to the launch site. During the fireworks display the safety zone will extend to 560 feet around the launch site. The fireworks display is meant for entertainment purposes. This safety zone is issued to establish a temporary restricted area on the waters surrounding the fireworks barge during the loading, transit, and display of the fireworks. This restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with pyrotechnics. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

Discussion of Rule

From 11 a.m. until 3 p.m. on December 10, 2011, pyrotechnics will be loaded onto a barge at Pier 50 near position 37°46′28″ N, 122°23′06″ W (NAD 83). From 5:30 p.m. until 7 p.m. the loaded barge will transit from Pier 50 to the launch site located at position 37°51′30.92″ N, 122°28′27.97″ W (NAD 83). The temporary safety zone will extend 100 feet from the nearest point of the barge during the loading, transit, and arrival of the pyrotechnics from Pier 50 to position 37°51′30.92″ N, 122°28′27.97″ W (NAD 83). The fireworks display is scheduled to occur from 7:45 p.m. until 7:55 p.m. on December 10, 2011, during which the safety zone will extend 560 feet from the nearest point of the barge at position 37°51′30.92″ N, 122°28′27.97″ W (NAD 83). At 8:05 p.m. on December 10, 2011 the safety zone shall terminate.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the fireworks site until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels a safe distance from the fireworks display to ensure the safety of participants, spectators, and transiting vessels.

Regulatory Analyses

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

Regulatory Planning and Review

Regulatory Planning and Review

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

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

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 may affect owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of the areas off San Francisco, CA to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

Assistance for Small Entities

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

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

Collection of Information

This rule calls for no new collection of information under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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 that 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. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T11–458 to read as follows:

§ 165.T11–458 Safety zone; Sausalito Yacht Club's Annual Lighted Boat Parade and Fireworks Display, Sausalito, CA.

(a) *Location.* This temporary safety zone is established for the specified waters in San Francisco Bay near Sausalito, California. The temporary safety zone applies to the nearest point of the barge during the loading, transit, and arrival of the pyrotechnics from Pier 50, San Francisco, California to the fireworks launch site located at position 37°51′30.92″ N, 122°28′27.97″ W (NAD 83). From 11 a.m. until 3 p.m. on December 10, 2011, pyrotechnics will be loaded onto a barge at Pier 50 near position 37°46′28″ N, 122°23′06″ W (NAD 83). From 5:30 p.m. until 7 p.m. the loaded barge will transit from Pier 50 to the launch site located at position 37°51′30.92″ N, 122°28′27.97″ W (NAD 83). The temporary safety zone will extend 100 feet from the nearest point of the barge during the loading, transit, and arrival of the pyrotechnics from Pier 50 to position 37°51′30.92″ N, 122°28′27.97″ W (NAD 83). From 7:45 p.m. until 8:05 p.m. on December 10, 2011, the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around the fireworks site within a radius of 560 feet.

(b) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in 33 CFR part 165, subpart C, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone on VHF–16 or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Effective period.* This section is effective from 11 a.m. through 8:05 p.m. on December 10, 2011.

Dated: November 21, 2011.

Cynthia L. Stowe,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2011–31707 Filed 12–9–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 126

[Docket No. USCG–2011–0966]

RIN 1625–AB82

Alternate Tonnage Threshold for Oil Spill Response Vessels

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is establishing an alternate size threshold based on the measurement system established under the International Convention on Tonnage Measurement of Ships, 1969, for Oil Spill Response Vessels (OSRVs), which are properly certificated under 46 CFR subchapter L. The present size threshold of 500 gross registered tons is based on the U.S. regulatory measurement system. This rule provides an alternative for owners and operators of offshore supply vessels (OSVs) that may result in an increase in oil spill response capacity and capability.

DATES: This interim rule is effective December 12, 2011. Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before February 10, 2012 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0966 using any one of the following methods:

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

(2) *Fax:* (202) 493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, email or call Mr. Brian T. Ellis, Coast Guard Marine Safety Center; email *brian.t.ellis@uscg.mil,* telephone (202) 475–5636. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0966), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–0966'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0966'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the

individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

D. Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Abbreviations

DHS Department of Homeland Security
FR **Federal Register**
GRT Gross Register Tons
GT ITC Gross Tonnage International Tonnage Convention
OSV Offshore Supply Vessel
OSRV Oil Spill Response Vessel
U.S.C. United States Code

III. Regulatory History

This rule is issued as an interpretive rule as authorized by section 702 of the Coast Guard Authorization Act of 1996 (the Act) (Pub. L. 104–324; October 19, 1996) (46 U.S.C. 14104). The Conference Report on the Act (H. Rept. 104–854) states that, because this rule is considered to be an interpretive rule under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the notice of proposed rulemaking, the comment requirements, and the 30-day delay of the effective date under 5 U.S.C. 553 are not required.[1] Therefore, this interpretive rule is effective on the date of publication in the **Federal Register**. However, the Coast Guard values input from the public, and as such, we are issuing this interpretive rule as an interim rule, and seeking comments from the public. Please see the section above titled ''Public Participation and Request for Comments.''

IV. Basis and Purpose

This interpretive rule establishes an alternate tonnage threshold at 6000 Gross Tonnage International Tonnage Convention (GT ITC) for oil spill response vessels (OSRVs) that are also certificated as offshore supply vessels (OSVs). The alternate tonnage framework enacted by the Coast Guard Authorization Act of 1996 provided a mechanism for the Coast Guard to regulate vessels under tonnages assigned using the system of the International Convention on Tonnage Measurement of Ships, 1969 (implemented into U.S. law as the ''convention measurement system''), instead of the U.S. domestic measurement system (now referred to in U.S. law as the ''regulatory measurement system'')(46 U.S.C. 14104(b)). The selected alternate tonnage threshold is consistent with a 6000 GT ITC alternate threshold established for OSVs in 1996.[2] As discussed further below, this will allow owners of OSVs regulated under the alternate tonnage framework to also have their vessels certificated as OSRVs without the need to meet significantly higher standards applicable to tank vessels.

Use of alternate tonnage facilitates the design, construction, and operation of vessels without the need for the fitting of undesirable design features, whose sole purpose is to artificially reduce tonnages assigned under the regulatory measurement system. Because the rulemaking provides for optional use of an alternative approach to meet an existing requirement, there is no mandatory cost to the public. The authority for this rulemaking is the 1996 Coast Guard Authorization Act (Pub. L. 104–324), as codified in 46 U.S.C. Sections 3702(f)(2)(A) and 14104(b).

V. Discussion of the Interpretive Rule

Both domestically and internationally, a vessel's gross or net tonnage assignment is the basis for applying requirements of a multitude of laws, regulations, and standards, including the 500 gross register ton (GRT) size threshold that is the subject of this interpretive rule. The primary U.S. domestic measurement system used to assign tonnages to U.S. flag vessels evolved from an older British measurement system and involves a complex series of exemptions and deductions. It is now a subset of the regulatory measurement system, and is called the ''standard measurement system.'' This system is highly susceptible to manipulation through inclusion of costly and inefficient design features, such as so-called ''tonnage openings'' and ''deep frames''. Although in 1986 the U.S. implemented the internationally accepted measurement system of the International Convention on Tonnage Measurement of Ships, 1969, the standard measurement system may still be used to measure any U.S. flag vessel, at the vessel owner's option.

To help facilitate conversion to tonnage assignments under the convention measurement system, in 1996 Congress gave the Coast Guard the authority to establish tonnage thresholds based on the convention measurement system as an alternative to existing thresholds specified in U.S. law that were based on the regulatory measurement system. This authority included a mandate that any regulations used to establish alternate tonnage thresholds be interpretive rules. While the Coast Guard promptly issued an interpretive rule establishing an alternate tonnage threshold bounding the upper size for OSVs (61 FR 66614 dated December 18, 1996), little additional progress has been made on this initiative due to its complexity, broad scope, and competing priorities.

Experience with cleanup of the 2010 *Deepwater Horizon* oil spill generated interest, in both the public and private sectors, for expanding spill response capability and capacity by using certificated OSVs as OSRVs. Many of the newer OSVs that were constructed under the alternate tonnage framework established in 1996 exceed the 500 GRT threshold for multi-service OSRVs specified in 46 U.S.C. 3702(f)(2)(A). Therefore, they are currently precluded from also being certificated as OSRVs, unless they meet tank vessel standards. This rule, in effect, removes this obstacle to OSRV certification. Safety, design and operational standards for OSRVs may be the subject of a future rulemaking by the U.S. Coast Guard.

Tonnage thresholds in all tonnage-based laws of the United States are applied to the vessel using convention measurement system tonnage when a vessel is optionally assigned convention measurement system tonnage only (*i.e.,* GRT tonnage not assigned). This includes the 6000 GT ITC alternate tonnage threshold established under this rule. The vessel's assigned regulatory measurement tonnage is used to apply these thresholds when the option is not exercised. This includes the 500 GRT threshold that is the subject of this rule. There are no restrictions that would preclude the vessel owner, or a future owner, from reverting to a previous decision in this regard.

VI. Regulatory Analyses

We developed this interpretive rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

[1] House Report 104–854 at p. 116.

[2] See Offshore Supply Vessels: Alternate Tonnage, 61 FR 66613 (Dec. 18, 1996), amending 46 CFR 125.160.

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

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

This interpretive rule establishes a tonnage threshold of 6000 GT ITC for OSRVs under the alternate tonnage framework, which offers a mechanism for the Coast Guard to regulate vessels under tonnages assigned using the convention measurement system, instead of the regulatory measurement system. Therefore, this interpretive rule provides an option to owners of vessels certificated as OSVs (under 46 CFR subchapter L) to seek OSRV certification based on this alternate tonnage threshold. We believe that a vessel owner will opt to use the alternate tonnage framework described in this interpretive rule only if it will be beneficial to the owner's business.

We expect this interpretive rule to be beneficial to the public and to the maritime industry because it provides the opportunity to increase oil spill response capacity and capability.

This interpretive rule provides for optional and voluntary use of an alternative approach to meet an existing requirement. Accordingly, there is no mandatory cost to the public.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), this rule is considered an interpretive rule and is not subject to the requirement under 5 U.S.C. 553(b) for publication of a general notice of proposed rulemaking. Therefore, under 5 U.S.C. 601, it is not a rule that is subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

As previously discussed in Section III (Regulatory History) of this preamble, the Coast Guard is issuing this rule as an interpretive rule as authorized by section 702 of the Coast Guard Authorization Act of 1996 (the Act) (Pub. L. 104–324; October 19, 1996). The Conference Report on the Act (H. Rept. 104–854) states that, because this rule is considered to be an interpretive rule under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the notice of proposed rulemaking and comment requirements and the 30-day delay of effective date under 5 U.S.C. 553 would not be required in order to expedite this rulemaking.

This interpretive rule provides for optional and voluntary use of an alternative approach to owners of vessels certificated as OSVs to seek an OSRV certification based on an alternate tonnage threshold. We believe that a vessel owner will opt to use the alternate tonnage framework described in this interpretive final rule only if it will be beneficial to the owner's business. We expect this interim rule to be beneficial to the public and to the maritime industry because it provides the opportunity to increase the availability and capacity of OSRVs.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Brian T. Ellis, U. S. Coast Guard Marine Safety Center, Tonnage Division, (202) 475–5636, *Brian.T.Ellis@uscg.mil.* 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.

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).

D. Collection of Information

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

E. 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.

F. Unfunded Mandates Reform Act

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

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

L. 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.

M. Environment

We have analyzed this interpretive 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 that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This interpretive rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(d) of the Instruction. Exclusion under paragraph (34)(d) applies because this interpretive rule pertains to regulations concerning documentation and admeasurement of vessels. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 126

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 126 as follows:

PART 126—INSPECTION AND CERTIFICATION

■ 1. The authority citation for part 126 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3205, 3306, 3307, 3702, 14104; 46 U.S.C. Chapter 701; Executive Order 11735, 38 FR 21243; 3 CFR 1971–1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 126.225 to read as follows:

§ 126.225 Alternate tonnage for offshore supply vessels seeking oil spill response vessel certification.

An offshore supply vessel certificated under this subchapter that is less than 500 gross register tons (GRT) as measured under section 14502 of Title 46, United States Code, or 6,000 gross tonnage (GT ITC) as measured under section 14302 of Title 46, United States Code when GRT is not assigned, may also be certificated as an oil spill response vessel.

Dated: December 5, 2011.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2011–31708 Filed 12–9–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD92

Special Regulations; Areas of the National Park System, Yellowstone National Park

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule implements the Record of Decision for the 2011 Winter Use Plan/Environmental Impact Statement and governs winter visitation and certain recreational activities in Yellowstone National Park for the 2011–2012 winter season. The rule retains, for one additional year, the regulations and management framework that have been in place for the past two winter seasons (2009–2010 and 2010–2011). Specifically, the rule retains provisions that: require most recreational snowmobiles operating in the park to meet certain National Park Service air and sound emissions requirements; require snowmobiles and snowcoaches in Yellowstone to be accompanied by a commercial guide; set daily entry limits on the numbers of snowmobiles (up to 318) and snowcoaches (up to 78) that may enter the park; and prohibit traveling off designated oversnow routes.

DATES: This rule is effective December 15, 2011.

FOR FURTHER INFORMATION CONTACT: Steve Iobst, Deputy Superintendent, Yellowstone National Park, (307) 344–2002.

SUPPLEMENTARY INFORMATION:

Background

The National Park Service (NPS) has managed winter use in Yellowstone National Park for several decades. A detailed history of the winter use issue, past planning efforts, and litigation is provided in the background section of the 2011 Environmental Impact Statement (EIS), available at *http://parkplanning.nps.gov/yell.* The park has most recently operated under the 2009 interim plan, which was in effect for the past two winter seasons and expired by its own terms on March 15, 2011.

On July 5, 2011, NPS published a proposed long-term regulation to implement the preferred alternative identified in the Draft EIS. Under that alternative, NPS proposed providing four different use-level combinations for snowmobiles and snowcoaches, which would vary according to a seasonal schedule. Snowmobile use would have ranged from 110 to 330 vehicles per day and snowcoach use would have ranged from 30 to 80 vehicles per day.

NPS had intended to issue a Final EIS and final long-term regulation for Yellowstone winter use by December 2011. However, some of the more than 59,000 public comments received on the Draft EIS raised reasonable questions as to long-term effects and options, and NPS has decided to delay implementation of a long-term rule. In order to make a reasoned, sustainable long-term decision, NPS requires additional time to update its analyses.

In the Record of Decision for the 2011 EIS, NPS identified Alternative 8 as the selected action to be implemented. Under Alternative 8, the 2009 interim regulation will remain in effect for one additional year, the 2011–2012 winter season. Accordingly, up to 318 commercially guided, best available technology snowmobiles and 78 commercially guided snowcoaches will be allowed in the park per day; a variety of non-motorized uses will also be allowed.

In the proposed rule (76 FR 39049), NPS stated its intent to implement a

''transition year'' for the 2011–2012 winter season, under the same requirements and restrictions as the 2009 interim regulation. Implementation of the transition year through this regulation will provide the additional time needed to complete the analyses of alternative long-term management strategies. NPS intends to complete a supplemental EIS, make a decision on a plan for long-term winter use, and issue a new regulation for winter use before the 2012–2013 winter season.

Additional information regarding winter use at Yellowstone National Park is available online at: *http://www.nps.gov/yell/parkmgmt/participate.htm.*

Analysis of Public Comments

The public comment period was open from July 5, 2011, to September 6, 2011. Comments were accepted through the mail, hand delivery, and through the Federal eRulemaking Portal: *http://www.regulations.gov.* NPS received approximately 165 timely comments. All of the comments focused on the analysis in the Draft EIS and addressed issues related to long-term management, except for one substantive comment regarding what is being implemented under this rule, the ''transition year.'' NPS will consider the comments received regarding long-term issues as it works on the supplemental EIS and a new proposed and final rule for the long-term winter use plan.

Comment Response

1. *Comment:* Under ''Description of Proposed Rule'' it stated the ''transition year'' would allow 38 snowcoaches per day; it should have stated up to 78 snowcoaches would be allowed per day.

Response: NPS agrees that the number 38 was a typographic error (76 FR 39049), and notes that the correct number, 78 snowcoaches, was printed correctly in a different section on the same page. During the one-year implementation of this regulation, NPS will allow up to 78 snowcoaches per day into the park.

Section by Section Analysis

NPS is revising § 7.13 paragraphs (l)(3)(ii), (l)(4)(vi), (l)(7)(i) and (l)(8)(i) by replacing the terms ''the winter season of 2010–2011'' and ''the winter of 2010–2011'' with the terms ''the winter season of 2011–2012'' and ''the winter of 2011–2012.'' This is the only change to the existing regulations.

Compliance With Other Laws and Executive Orders

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user-fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues. This rule only allows for a one year extension of the previous interim regulation.

Regulatory Flexibility Act (RFA)

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

NPS used two separate baselines for its regulatory flexibility analysis. If no new rule were passed, Baseline 1 would be defined by the no-action alternative in the EIS. Under this baseline, no motorized oversnow vehicles would be allowed in the park. In addition, NPS defined a second baseline, Baseline 2. Baseline 2 represents the continuation of the same levels of use allowed under the 2009 interim regulation in place for the past two winter seasons. Under Baseline 2, there would be a zero net change between the past two years and the actions being implemented under this rule, because the rule extends the management framework in place the past two winter seasons for one additional year. A regulatory flexibility analysis is included in the report titled ''Economic Analysis of Winter Use Regulations in Yellowstone National Park'' (RTI International, 2011).

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule has no effect on methods of manufacturing or production and specifically affects the Greater Yellowstone Area, not national or U.S.-based enterprises.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or Tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required. The rule addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, the rule does not have significant takings implications. Access to private property located adjacent to the park will be afforded the same access during winter as before this rule. No other property is affected. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175)

Under the criteria in Executive Order 13175 we have evaluated this rule and

determined that it has no potential effects on federally recognized Indian Tribes. Numerous Tribes in the area were consulted in the development of the previous winter use planning documents. Their major concern was to reduce the adverse effects on wildlife by snowmobiles. This rule does that through implementation of the guiding requirements and disbursement of snowmobile use through the various entrance stations.

Paperwork Reduction Act (PRA)

This rule does not contain information collection requirements and a submission under the PRA is not required.

National Environmental Policy Act (NEPA)

This winter use plan and rule constitute a major Federal action significantly affecting the quality of the human environment. NPS prepared a 2011 Winter Use Plan/Environmental Impact Statement under the National Environmental Policy Act of 1969. The EIS is available for review at *http://parkplanning.nps.gov/yell*.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211 A statement of Energy Effects is not required.

Administrative Procedure Act (Effective Date)

The National Park Service recognizes that under 5 U.S.C. 553(d) new rules ordinarily go into effect thirty days after publication in the **Federal Register**. However, we have determined under 5 U.S.C. 553(d) and 318 DM 6.25 that good cause exists for this rule to become effective on December 15, 2011, for the following reasons:

(1) A 60-day public comment period was open from July 6, 2011, through September 6, 2011, on the proposed rule, which provided that NPS would implement this winter use plan during the winter 2011–2012 season as a transition year. There was only one public comment related to implementing such a rule for the 2011–2012 season and it simply noted a clerical error in the number of snowcoaches NPS will allow in the park per day.

(2) The rule implements the winter use plan for Yellowstone NP and allows for snowmobile and snowcoach use that otherwise would be prohibited.

(3) NPS intends and has publicly stated that the 2011–2012 winter season for Yellowstone National Park would commence on the traditional date of December 15, and the public and businesses have made decisions based on the widespread public knowledge of this customary opening date.

(4) There would be no benefit to the public in delaying the effective date of this rule, given that there has already been substantial notice of the opening date and that the park will be open under conditions substantially similar to those in effect for the past two years.

Drafting Information

The primary authors of this regulation are David Jacob, Environmental Protection Specialist, National Park Service, and Russel J. Wilson, Chief Regulations and Special Park Uses, National Park Service, Washington, DC.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under 36 U.S.C. 501–511, DC Code 10–137 (2001) and DC Code 50–2201 (2001).

■ 2. In § 7.13 revise paragraphs (l)(3)(ii), (l)(4)(vi), (l)(7)(i) introductory text, and (l)(8)(i) introductory text to read as follows:

§ 7.13 Yellowstone National Park.

* * * * *

(l) * * *

(3) * * *

(ii) The authority to operate a snowmobile in Yellowstone National Park established in paragraph (l)(3)(i) of this section is in effect only through the winter season of 2011–2012.

* * * * *

(4) * * *

(vi) The authority to operate a snowcoach in Yellowstone National Park established in paragraph (l)(4)(i) of this section is in effect only through the winter season of 2011–2012.

* * * * *

(7) * * *

(i) You may operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow routes are designated for snowmobile use through the winter of 2011–2012:

* * * * *

(8) * * *

(i) Authorized snowcoaches may be operated on the routes designated for snowmobile use in paragraphs (l)(7)(i)(A) through (l)(7)(i)(O) of this section. The restricted hours of snowmobile use described in paragraphs (1)(7)(i)(M) through (1)(7)(i)(O) do not apply to snowcoaches. Snowcoaches may also be operated on the following additional oversnow routes through the winter of 2011–2012:

* * * * *

Dated: December 6, 2011.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–31781 Filed 12–9–11; 8:45 am]

BILLING CODE 4312–CT–P

POSTAL SERVICE

39 CFR Part 111

Domestic Shipping Services Pricing and Mailing Standards Changes

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®), to reflect changes to prices and mailing standards for the following Shipping Services: Express Mail®; Priority Mail®; First-Class Package Service™; Parcel Select®; Parcel Return Service; Mailer Services; and Recipient Services.

DATES: *Effective Date:* January 22, 2012.

FOR FURTHER INFORMATION CONTACT: John Gullo (202) 268–8057 or Garry Rodriguez (202) 268–7281.

SUPPLEMENTARY INFORMATION: This final rule describes new prices and product features for Shipping Services, by class of mail, established by the Governors of the United States Postal Service®. New prices are available under Docket Number CP2012–2 on the Postal Regulatory Commission's Web site at *http://www.prc.gov,* and are also located on the Postal Explorer® Web site at *http://pe.usps.com.*

Shipping Services changes are identified by product as follows:

Express Mail

Postage Refunds

Current standards for Express Mail postage refunds are revised to add certain destinations where postage refunds will not be available for money back guarantee. The destinations include Guam, American Samoa, the

Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, and the Federated States of Micronesia. These destinations will continue to have Express Mail postage refunds for loss.

Flat Rate Boxes

Express Mail Flat Rate packaging options are broadened to include Express Mail Flat Rate Boxes for customers who ship domestic parcels at retail, commercial base, and commercial plus prices. Two new Flat Rate Box sizes showing the inside measurements are:

- 11 inches x 8½ inches x 5½ inches
- 11⅞ inches x 3⅜ inches x 13⅝ inches

Both boxes are priced the same, and material mailed in a USPS®—produced Express Mail Flat Rate Box is charged a flat rate, regardless of the actual weight (up to 70 pounds) or domestic destination. All existing Express Mail standards and postage payment methods for retail, commercial base, and commercial plus prices apply.

Express Mail Flat Rate Boxes are available at many retail Post Office™ locations and online at *http://www.usps.com.*

Priority Mail

Board Game Large Flat Rate Box

Priority Mail Flat Rate packaging options are being expanded to include the Priority Mail Board Game Large Flat Rate Box introduced June 2011. The new box is priced the same as the Priority Mail Large Flat Rate Box and also includes the APO/FPO and DPO destination discounted price. All services currently available with Priority Mail are available with the Board Game Large Flat Rate Box. The box is not available at retail Post Office locations but must be ordered online at *http://www.usps.com.*

Regional Rate Boxes

Regional Rate Boxes are available to Priority Mail customers who use USPS-produced packaging, with prices based on one of the three box sizes and zone to which it is shipped. In addition to commercial base and commercial plus prices, if any of the three Regional Rate Boxes is entered at retail, a 75-cent additional charge will be applied. Regional Rate Boxes are not available at retail Post Office locations but must be ordered online at *http://www.usps.com.*

Commercial Plus Cubic Threshold

Commercial plus cubic prices are not based on weight, but are charged on the cubic measurement of the mailpiece and the zone to which it is shipped. With this final rule, the commercial plus cubic volume threshold is reduced from 250,000 to 150,000 pieces to make cubic pricing more accessible to a larger group of customers.

Priority Mail Open and Distribute

Priority Mail Open and Distribute (PMOD) service provides alternatives for mailers who want to expedite mailings of other classes of mail to destination postal facilities.

The current PMOD tray box options are expanded to include a new flat tub tray box. Standards are also revised to add a new commercial plus pricing option for the half tray box, full tray box, extended managed mail (EMM) tray box, and flat tub tray box. The commercial plus PMOD tray box postage option is priced based on the tray box and zone.

Regional Rate Box C

The Postal Service introduces a new third option for Priority Mail Regional Rate—Regional Rate Box C. Box C is available for customers who send Priority Mail parcels and Merchandise Return Service (MRS) parcels when returned at Priority Mail prices. Regional Rate Box C is larger in size than its two counterparts (Box A and Box B), and measures 15 inches x 12 inches x 12 inches (outer dimensions), and 14¾ inches x 11¾ inches x 11½ inches (inner dimensions). Box C has a maximum weight limit of 25 pounds, and is only available as a top-loading box option. Priority Mail customers who ship parcels at retail, commercial base, and commercial plus prices can take advantage of Regional Rate boxes. Box C is not available for mailers using Business Reply Mail (BRM) or Parcel Return Service (PRS).

Customers must use USPS-produced Priority Mail Regional Rate Boxes to qualify for Regional Rate Box prices. Prices are based on box size (Box A, Box B, or the new Box C) and the destination zone. If the Priority Mail Regional Rate Box exceeds the maximum weight or is reconfigured, the applicable Priority Mail prices will be assessed.

All current Priority Mail Regional Rate Box services and mailing standards are applicable with this new packaging option. Customers may order these boxes online at *http://www.usps.com.*

First-Class Package Service

Presort Fee Clarification

First-Class Package Service was introduced on November 7, 2011. It replaced First-Class Mail commercial base and commercial plus parcels. In this final rule, the Postal Service clarifies that an annual mailing fee is only required for mailings entered at presorted First-Class Package Service prices.

Eligibility Standards

Eligibility standards for First-Class Package Service commercial base nonpresorted parcels are revised to require parcels with PC Postage® to have a qualifying shipping label and parcels using IBI meters for postage must electronically submit data to the Postal Service.

Postage Payment Clarification

In this final rule the Postal Service clarifies that postage on commercial base parcels may be affixed in an amount not less than the lowest applicable First-Class Package Service parcel price if authorized by Business Mailer Support.

Parcel Select

Machinable Dimensions

The Postal Service has explored the alignment of minimum and maximum ranges for optimal processing of machinable parcels on all parcel processing equipment. To correct inefficiencies in parcel processing and to align the standards with the current mail processing equipment capability, the Postal Service is revising the machinability dimensional criteria from the current 34 inches x 17 inches x 17 inches to 27 inches x 17 inches x 17 inches.

Eliminate $0.03 Barcode Discount

The $0.03 discount on machinable Parcel Select network distribution center (NDC) and machinable Parcel Select origin NDC (ONDC) barcoded presorted parcels is eliminated since it is expected that all parcels claiming presort or destination entry pricing will be required to bear an Intelligent Mail® package barcode (IMpb), a unique tracking barcode, or an extra services barcode effective January 22, 2012.

Rename Parcel Select Barcoded Nonpresort

As a result of the impending requirement for parcels claiming presort or destination entry pricing to bear an IMpb, a unique tracking, or extra services barcode, the current barcoded nonpresorted Parcel Select category will be renamed ''Parcel Select Nonpresort.'' The Postal Service also clarifies that all Parcel Select mailpieces must bear a unique tracking barcode or an IMpb.

The July 5, 2011 DMM change to standards required Parcel Select mailpieces to be forwarded or returned to sender at Parcel Select Nonpresort

prices. This change necessitates a modification to Parcel Select Nonpresort to provide pricing for mailpieces exceeding 35 pounds up to 70 pounds. The Postal Service will also apply oversized pricing to the revised Parcel Select Nonpresort category similar to the destination entry, NDC, and ONDC presort categories.

Parcel Select Regional Ground

Parcel Select Regional Ground was introduced on April 17, 2011, and was designed as a regional product to provide delivery for mailpieces destinating within the same service area of the USPS processing plant where the mailing is entered. This product was never intended for use to the more distant zones; consequently, the option for mailers to prepare Parcel Select Regional Ground mailpieces, under the ONDC category, to zones 4 through 8 is eliminated. Mailers continue to have the option to mail packages destinating to zones 4 through 8 at Parcel Select Nonpresort prices.

Additionally, the Parcel Select Regional Ground .35 cubic foot maximum size limitation is eliminated. This will save customers time and provide a greater opportunity to use this product.

Parcel Select Lightweight

The Postal Service has obtained approval to create two products from its existing Standard Mail parcels/not flat-machinable (NFMs) product; and to transfer one category (with the exception of nonprofit) to its competitive product line. The category being transferred will become Parcel Select Lightweight, a subcategory of the Parcel Select product.

The Postal Service expects that the transfer of these Standard Mail® parcels into the new Parcel Select Lightweight category will provide for greater pricing flexibility and an expanded and more logical structure within the Parcel Select product line. Parcel Select Lightweight will offer machinable and irregular pricing options for mailpieces less than 1 pound; and will retain the physical standards, eligibility, and entry level pricing currently applicable to Standard Mail parcels. Parcel Select Lightweight postage is based on the price that applies to the weight increment of each addressed piece, charged per ounce or fraction thereof. However, Parcel Select Lightweight pieces will not be subject to carrier route pricing or preparation standards.

A mailing fee must be paid each 12-month period for each permit used to mail Standard Mail and/or Parcel Select Lightweight pieces. Mailers having annual Standard Mail presort permits may also make mailings under the new Parcel Select Lightweight category using their current permits.

Parcel Select Lightweight mailpieces will not be subject to forwarding or return to sender postage charges at the Parcel Select Nonpresort price or to the additional service fee. Undeliverable pieces will receive the same treatment currently provided to Standard Mail pieces.

Parcel Select Lightweight mailpieces will be required to bear a basic ''Parcel Select'' product marking in addition to a ''Parcel Select Lightweight'' price marking. Mailers may begin using these new markings on January 22, 2012, but will not be required to do so until October 1, 2012.

Parcel Select Future Changes

The Postal Service is also signaling its intent, at a future date, to assess an extended delivery area fee for Parcel Select mailpieces entered at specified destination entry locations. This fee will be applied to destination network distribution center (DNDC), destination sectional center facility (DSCF), and destination delivery unit (DDU) Parcel Select and Parcel Select Regional Ground mailpieces, and is intended to contribute to the product cost coverage for mailpieces destinating in areas with higher delivery costs related to geographic area, road infrastructure, or other factors. The Postal Service intends to provide the listing of applicable 5-digit ZIP™ Codes prior to, or concurrent with, the implementation of the new fee.

Parcel Return Service

Machinable Dimensions

To align the standards for machinable parcels with current mail processing equipment capability, the Postal Service revises the dimensional criteria for all machinable parcels from the current 34 inches x 17 inches x 17 inches to 27 inches x 17 inches x 17 inches.

Parcel Return Service RSCF

The Postal Service is expanding Parcel Return Service to provide authorized permit holders, or their agents, greater flexibility in the retrieval of their parcels by adding a new return sectional center facility (RSCF) service option.

Mailer Services

Premium Forwarding Service

Premium Forwarding Service® (PFS®) is revised to include an online application. The PFS online application is available at *http://www.usps.com/premiumforwarding* and is offered only to residential delivery customers. The application fee and recurring weekly installments are processed as services are rendered, and must be paid by credit card. Modifications or cancellation of the service can be done online only when the initial request was completed online.

Package Intercept

Package Intercept™ is a new domestic service that replaces the current recall of mail service. Package Intercept is not available to international and APO/FPO/DPO destinations or on mailpieces requiring a customs label. Customers wishing to use Package Intercept initiate the process by paying a per-piece fee. Package Intercept requests are active for 10 days. The USPS does not guarantee the interception of a mailpiece.

Package Intercept can be used for any mailable Express Mail, Priority Mail, First-Class Mail, First-Class Package Service, Parcel Select, and Package Services, letter, flat, or parcel with a tracking barcode. Parcels may not measure more than 108 inches in length and girth combined. Package Intercept is not available for any mailpiece that indicates surface-only transportation such as Label 127, ''Surface Mail Only'' or bears other hazardous materials markings such as ''Consumer Commodity ORM–D''.

In addition to the fee to initiate the interception, all mailpieces that are redirected to a new address, to a Post Office as Hold For Pickup, or to the sender, will be subject to payment of additional postage to the new destination as applicable.

Package Intercept service will be implemented in three phases. In Phase One, effective January 22, 2012, Package Intercept will only be available by submitting PS Form 1509, *Application for Package Intercept,* at the Post Office of mailing. Redirect to sender will be the only redirection option available.

Phase Two, scheduled for April 2012, will be the introduction of an online application for commercial customers. The redirection options for commercial customers will be expanded to include redirect to a new address and to a Post Office as Hold For Pickup.

Phase Three, scheduled for June 2012, will be the introduction of an online application for retail customers. The redirection options for retail customers will also be expanded at that time to include redirect to a new address and to a Post Office as Hold For Pickup. As a result of the June 2012 phase, PS Form 1509 will then be retired.

The Package Intercept fee in effect January 22, 2012, (See Notice 123—Price List) will remain the same throughout the phase-to-phase implementation.

Recipient Services

Post Office Box™ Service

On July 29, 2011, the Postal Regulatory Commission (PRC) approved the Postal Service's request to move Post Office (PO) Boxes in 6,800 retail Post Office locations to the competitive (Shipping Services) product list.

As part of the Shipping Services price change, PO Box™ fees in some of these 6,800 locations will be priced under fee group C1 while most locations will be priced in six new fee groups, C2 through C7. Fee group prices ranges are being established, with specific fees to be announced later in a Postal Bulletin notice. All existing competitive PO Box service standards apply.

Hold for Pickup

As part of the introduction of First-Class Package Service to replace First-Class Mail commercial base and commercial plus parcels and move from the market dominant product offering, the Postal Service clarifies that Hold For Pickup eligibility is revised to include First-Class Package Service as an option.

Resources

The Postal Service provides additional resources to assist customers with this price change for Shipping Services. These tools include price lists, downloadable price files, and **Federal Register** Notices, which may be found on the Postal Explorer Web site at *http://pe.usps.com.*

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR Part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

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100 Retail Mail

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110 Express Mail

113 Prices and Eligibility

1.0 Express Mail Prices and Fees

1.1 Prices Charged Per Piece

[Revise 1.1 as follows:]

Express Mail postage is charged for each addressed piece according to its weight and zone. Flat Rate Envelopes and Boxes are charged under 1.4.

1.2 Price Application

[Delete the last sentence of 1.2, in its entirety.]

* * * * *

[Revise the heading of 1.4 as follows:]

1.4 Flat Rate Packaging

[Revise the heading and text of 1.4.1 as follows:]

1.4.1 Flat Rate Packaging—Eligibility

Only USPS-produced or approved Flat Rate Envelopes and Boxes are eligible for the Flat Rate price and are charged a flat rate, regardless of the actual weight (up to 70 pounds) of the mailpiece or domestic destination. When sealing a Flat Rate Envelope or Box, the container flaps must be able to close within the normal folds. Tape may be applied to the flaps and seams to reinforce the container provided the design of the container is not enlarged by opening the sides, and the container is not reconstructed in any way.

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[Add new 1.4.3 as follows:]

1.4.3 Flat Rate Boxes—Price Eligibility

Each USPS-produced Express Mail Flat Rate Box is priced at a flat rate regardless of the actual weight (up to 70 pounds) of the mailpiece or domestic destination. See Notice 123–Price List for prices.

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114 Postage Payment Methods

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2.0 Postage Refunds

Postage refunds may not be available if delivery was attempted within the times required for the specific service, or for any of the following reasons:

* * * * *

[Add new item 2.0i as follows:]

i. Postage refunds, other than for loss, may not be obtained if the Express Mail piece is destined to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, or the Federated States of Micronesia (see 608.2.4.1 for ZIP Codes).

* * * * *

120 Priority Mail

123 Prices and Eligibility

1.0 Priority Mail Prices and Fees

1.1 Price Application

[Revise the first sentence of 1.1 as follows:]

Except under 1.3 through 1.6, Priority Mail retail prices are based on weight and zone and are charged per pound; any fraction of a pound is rounded up to the next whole pound. * * *

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1.5 Flat Rate Envelopes and Boxes

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1.5.2 Flat Rate Boxes—Price and Eligibility

[Revise 1.5.2 as follows:]

Only USPS-produced Flat Rate Boxes are eligible for the Flat Rate Box prices. Each USPS-produced Priority Mail Flat Rate Box is charged a flat rate regardless of the actual weight (up to 70 pounds) of the mailpiece or domestic destination. See Notice 123—Price List for applicable prices. Priority Mail Flat Rate Boxes are as follows:

a. Small Flat Rate Box to domestic, APO/FPO, and DPO destinations.

b. Medium Flat Rate Boxes (FRB–1) or (FRB–2) to domestic, APO/FPO, and DPO destinations.

c. Board Game Large Flat Rate Box or Large Flat Rate Box to domestic destinations.

d. Board Game Large Flat Rate Box or Large Flat Rate Box and ''special version of this box'' identified with the additional logo: ''Americasupportsyou.mil.'' to APO/FPO and DPO destinations is priced less than the conventional domestic Large Flat Rate Boxes. If the special version of the APO/FPO Flat Rate Box is used for non-APO/FPO and DPO destination addresses, the domestic or international Large Flat Rate Box prices will apply.

[Renumber 1.6 through 1.10 as 1.7 through 1.11 and add new 1.6 as follows:]

1.6 Regional Rate Boxes

1.6.1 Price and Eligibility

Regional Rate Box prices are available to Priority Mail customers who use USPS-produced Priority Mail Regional Rate Boxes. Prices are based on box size and zone. When sealing a Regional Rate

Box, the container flaps must be able to close within the normal folds. Tape may be applied to the flaps and seams to reinforce the container provided the design of the container is not enlarged by opening the sides and the container is not reconstructed in any way. Regional Rate Boxes exceeding the maximum weight as specified in 1.6.2, or the container flaps do not close within the normal folds will be assessed the applicable single-piece Priority Mail price.

1.6.2 Regional Rate Box Options

Regional Rate Box options are:

a. Box A: (Side loading or top loading box) has a maximum weight limit of 15 pounds.

b. Box B: (Side loading or top loading box) has a maximum weight limit of 20 pounds.

c. Box C: (Top loading box only) has a maximum weight limit of 25 pounds.

* * * * *

125 Mail Preparation

1.0 Preparation

1.1 Priority Mail Packaging Provided by the USPS

[Delete the last sentence of 1.1 in its entirety.]

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200 Commercial Letters and Cards

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210 Express Mail

213 Prices and Eligibility

1.0 Prices and Fees

1.1 Prices Charged per Piece

[Revise the first sentence of 1.1 as follows:]

Except for Flat Rate Envelopes under 1.5, Express Mail postage is charged for each addressed piece according to its weight and zone. * * *

1.2 Price Application

[Delete the fourth sentence of 1.2, in its entirety.]

* * * * *

1.5 Flat Rate Envelopes

[Revise 1.5 as follows:]

Only USPS-produced or approved Flat Rate Envelopes are eligible for the Flat Rate Envelope price and are charged a flat price, regardless of the actual weight (up to 70 pounds) of the piece or its domestic destination. When sealing a Flat Rate Envelope, the container flaps must be able to close within the normal folds. Tape may be applied to the flaps and seams to reinforce the container provided the design of the container is not enlarged by opening the sides and the container is not reconstructed in any way. See Notice 123—Price List.

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214 Postage Payment and Documentation

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3.0 Postage Refunds

Postage refunds may not be available if delivery was attempted within the times required for the specific service, or for any of the following reasons:

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[Add new item 3.0i as follows:]

i. Postage refunds, other than for loss, may not be obtained if the Express Mail piece is destined to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, or the Federated States of Micronesia (see 608.2.4.1 for ZIP Codes).

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240 Standard Mail

243 Prices and Eligibility

1.0 Prices and Fees for Standard Mail

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1.5 Fees

1.5.1 Presort Mailing Fee

[Revise 1.5.1 as follows:]

A mailing fee must be paid each 12-month period for each permit used to mail Standard Mail and/or Parcel Select Lightweight pieces, except for qualifying full-service Intelligent Mail barcode mailings (see Notice 123—Price List).

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300 Commercial Flats

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310 Express Mail

313 Prices and Eligibility

1.0 Prices and Fees

1.1 Prices Charged per Piece

[Revise the first sentence of 1.1 as follows:]

Except for Flat Rate Envelopes under 1.5, Express Mail postage is charged for each addressed piece according to its weight and zone. * * *

1.2 Price Application

[Delete the fourth sentence of 1.2 in its entirety.]

* * * * *

1.5 Flat Rate Envelopes

[Revise 1.5 as follows:]

Only USPS-produced or approved Flat Rate Envelopes are eligible for the Flat Rate Envelope price and are charged a flat price, regardless of the actual weight (up to 70 pounds) of the piece or its domestic destination. When sealing a Flat Rate Envelope, the container flaps must be able to close within the normal folds. Tape may be applied to the flaps and seams to reinforce the container provided the design of the container is not enlarged by opening the sides and the container is not reconstructed in any way. See Notice 123—Price List.

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314 Postage Payment and Documentation

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3.0 Postage Refunds

Postage refunds may not be available if delivery was attempted within the times required for the specific service, or for any of the following reasons:

* * * * *

[Add new item 3.0i as follows:]

i. Postage refunds, other than for loss, may not be obtained if the Express Mail piece is destined to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, or the Federated States of Micronesia (see 608.2.4.1 for ZIP Codes).

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340 Standard Mail

343 Prices and Eligibility

1.0 Prices and Fees for Standard Mail

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1.4 Fees

1.4.1 Presort Mailing Fee

[Revise 1.4.1 as follows:]

A mailing fee must be paid each 12-month period for each permit used to mail Standard Mail and/or Parcel Select Lightweight pieces, except for qualifying full-service Intelligent Mail barcode mailings (see Notice 123—Price List).

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400 Commercial Parcels

401 Physical Standards

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2.0 Additional Physical Standards by Class of Mail

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2.5 Parcel Select

2.5.1 General Standards

These standards apply to Parcel Select:

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[Add new item 2.5.1c as follows:]

c. All Parcel Select mailpieces must bear a unique tracking barcode or Intelligent Mail package barcode prepared under 708.5.0.

2.5.2 Nonmachinable Parcel Select

[Revise the second sentence in the introductory paragraph of 2.5.2 as follows:]

* * * There are no nonmachinable prices for Parcel Select NDC Presort and ONDC Presort parcels. * * *

[Revise item 2.5.2a as follows:]

a. A parcel more than 27 inches long, 17 inches wide, or 17 inches high.

* * * * *

[Add new 2.5.4 as follows:]

2.5.4 Parcel Select Lightweight

Parcel Select Lightweight pieces must weigh less than 16 ounces, cannot exceed 108 inches in combined length and girth, and must be large enough to accommodate postage and other required elements on the address side of the piece.

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402 Elements on the Face of a Mailpiece

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2.0 Placement and Content of Markings

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2.6 Parcel Select, Bound Printed Matter, Media Mail, and Library Mail Markings

2.6.1 Basic Markings

[Revise the first sentence of 2.6.1 to add Parcel Select Lightweight as follows:]

The basic required marking (e.g., ''Parcel Select'', ''Parcel Select Regional Ground'', ''Parcel Select Lightweight'', ''Bound Printed Matter'', ''Media Mail'', ''Library Mail'') must be printed on each piece claimed at the respective price.

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2.6.2 Parcel Select Markings

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[Revise item 2.6.2d as follows:]

d. Nonpresort—''Parcel Select Nonpresort'' or ''Parcel Select NPS''.

[Add new 2.6.2e and 2.6.2f as follows:]

e. Regional Ground—''Parcel Select Regional Ground'' or ''Parcel Select RG''.

1. Origin SCF Entry—''OSCF''.

2. Origin NDC Entry—''ONDC''.

f. Lightweight—''Parcel Select Lightweight'' or ''PS Lightweight''.

* * * * *

410 Express Mail

413 Prices and Eligibility

1.0 Prices and Fees

1.1 Prices Charged per Piece

[Revise the first sentence of 1.1 as follows:]

Except for Flat Rate packaging under 1.5, Express Mail postage is charged for each addressed piece according to its weight and zone. * * *

1.2 Price Application

[Delete the fourth sentence of 1.2 in its entirety.]

* * * * *

[Revise the heading and text of 1.5 as follows:]

1.5 Flat Rate Packaging

Only USPS-produced or approved Flat Rate Envelopes and Boxes are eligible for the Flat Rate price and are charged a flat rate, regardless of the actual weight (up to 70 pounds) of the mailpiece or domestic destination. When sealing a Flat Rate Envelope or Box, the container flaps must be able to close within the normal folds. Tape may be applied to the flaps and seams to reinforce the container provided the design of the container is not enlarged by opening the sides and the container is not reconstructed in any way. For prices, see Notice 123—Price List.

* * * * *

414 Postage Payment and Documentation

* * * * *

3.0 Postage Refunds

Postage refunds may not be available if delivery was attempted within the times required for the specific service, or for any of the following reasons:

* * * * *

[Add new item 3.0i as follows:]

i. Postage refunds, other than for loss, may not be obtained if the Express Mail piece is destined to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, or the Federated States of Micronesia (see 608.2.4.1 for ZIP Codes).

* * * * *

420 Priority Mail

423 Prices and Eligibility

1.0 Prices and Fees

1.1 Price Application

The following price applications apply:

[Revise item 1.1a as follows:]

a. Priority Mail mailpieces are charged per pound; any fraction of a pound is rounded up to the next whole pound. For example, if a piece weighs 1.25 pounds, the weight (postage) increment is 2 pounds. The minimum postage amount per addressed piece is the 1-pound price. See exceptions for prices not based on weight or the minimum 1-pound price below.

* * * * *

[Revise items 1.1c through 1.1f and add new item 1.1g as follows:]

c. Commercial plus items are charged the ½-pound price for items up to ½ pound. Items over ½ pound are rounded up to the next whole pound.

d. Commercial plus cubic prices are not based on weight, but are charged by zone and cubic measurement of the mailpiece with any fraction of a measurement rounded down to the nearest ¼ inch. For example, if a dimension of a commercial plus cubic piece measures 12⅜ inches, it is rounded down to 12¼ inches.

e. Regional Rate Box prices are not based on weight but are priced based on box size and the zone to which it is sent.

f. Priority Mail items mailed under a specific customer agreement are charged according to the individual agreement.

g. Priority Mail Open and Distribute tray boxes are not based on weight but are charged based on the tray box and zone to which it is sent.

1.2 Commercial Base Prices

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1.2.2 Regional Rate Box Prices

[Revise the introductory text of 1.2.2 as follows:]

Regional Rate Box prices are available to Priority Mail commercial base and commercial plus customers who use one of the USPS-produced Priority Mail Regional Rate Boxes and meet the requirements in 1.2.1. Prices are based on box size and zone. When sealing a Regional Rate Box, the container flaps must be able to close within the normal folds. Tape may be applied to the flaps and seams to reinforce the container provided the design of the container is not enlarged by opening the sides and the container is not reconstructed in any way. Regional Rate Boxes that exceed the maximum weight limit as specified in 1.6.2, or the container flaps do not

close within the normal folds will be assessed the applicable Priority Mail single-piece prices. Regional Rate Box options are:

* * * * *

[Add new item 1.2.2c as follows:]

c. Box C: (Top loading box only) has a maximum weight limit of 25 pounds.

* * * * *

1.4 Commercial Plus Cubic

1.4.1 Commercial Plus Cubic Eligibility

[Revise the first sentence of 1.4.1 as follows:]

Commercial plus cubic prices are available to Priority Mail customers whose account volumes exceeded 150,000 pieces in the previous calendar year or who have a customer commitment agreement with the USPS. * * *

* * * * *

1.7 Flat Rate Envelopes and Boxes

* * * * *

1.7.2 Flat Rate Boxes—Price and Eligibility

[*Revise 1.7.2 as follows:*]

Only USPS-produced Flat Rate Boxes are eligible for the Flat Rate Box prices. Each USPS-produced Priority Mail Flat Rate Box is charged a flat rate regardless of the actual weight (up to 70 pounds) of the mailpiece or domestic destination. See Notice 123—Price List for applicable prices. Priority Mail Flat Rate Boxes are as follows:

a. Small Flat Rate Box to domestic, APO/FPO, and DPO destinations.

b. Medium Flat Rate Boxes (FRB–1) or (FRB–2) to domestic, APO/FPO, and DPO destinations.

c. Board Game Large Flat Rate Box or Large Flat Rate Box to domestic destinations.

d. Board Game Large Flat Rate Box or Large Flat Rate Box and ''special version of this box'' identified with the additional logo: ''Americasupportsyou.mil.'' to APO/FPO and DPO destinations is priced less than the conventional domestic Large Flat Rate Boxes. If the special version of the APO/FPO Flat Rate Box is used for non-APO/FPO and DPO destination addresses, the domestic or international Large Flat Rate Box prices will apply.

* * * * *

430 First-Class Mail

433 Prices and Eligibility

1.0 Prices and Fees for First-Class Package Service

* * * * *

1.3 Commercial Base Parcel Prices

* * * Nonpresorted First-Class Package Service parcels no more than 13 ounces in weight mailed under the following conditions are eligible for single-piece commercial base prices:

* * * * *

[Revise item 1.3b as follows:]

b. Nonpresorted mailings may be paid by:

1. Registered end-users of USPS-approved PC Postage products when using a qualifying shipping label, managed by the PC Postage system.

2. USPS-approved IBI postage meters that electronically transmit transactional data to USPS.

3. Permit imprint.

* * * * *

1.6 Presort Mailing Fee

[Revise the first sentence of 1.6 as follows:]

Payment of a presort mailing fee is required once each 12-month period at each office of mailing by any person or organization entering mailings at automation or Presorted First-Class Mail or any presorted First-Class Package Service prices. * * *

* * * * *

434 Postage Payment and Documentation

* * * * *

2.0 Postage Payment for Presorted First-Class Package Service Parcels

* * * * *

2.2 Affixed Postage for First-Class Package Service Parcels

[Revise 2.2 as follows:]

Each presorted First-Class Package Service parcel bearing affixed postage (not permitted for commercial plus parcels) must bear one of the following:

a. The full postage at the First-Class Package Service price for which it qualifies.

b. Postage in an amount not less than the lowest applicable First-Class Package Service parcel price if authorized by Business Mailer Support, plus full postage for additional ounces.

* * * * *

440 Standard Mail

443 Prices and Eligibility

1.0 Prices and Fees for Standard Mail

* * * * *

1.4 Presort Mailing Fee

1.4.1 Annual Mailing Fee

[Revise 1.4.1 as follows:]

A mailing fee must be paid each 12-month period for each permit used to mail Standard Mail and/or Parcel Select Lightweight pieces, except for qualifying full-service Intelligent Mail barcode mailings (see Notice 123—Price List).

* * * * *

450 Parcel Select

453 Prices and Eligibility

1.0 Prices and Fees

1.1 Price Application

[Revise the introductory text of 1.1, starting with the third sentence, as follows:]

* * * Except for Parcel Select Lightweight, the minimum price per piece is the 1-pound price. For DDU and DSCF pieces, postage is based on the price that applies to the weight increment of each addressed piece (see 3.4 for Parcel Select Regional Ground). Parcel Select Lightweight postage is based on the price that applies to the weight increment of each addressed piece, charged per ounce or fraction thereof, with any fraction of an ounce being rounded to the next whole ounce. The price categories for Parcel Select are as follows:

* * * * *

[Revise item 1.1c as follows:]

c. Nonpresort.

[Add a new 1.1d and 1.1e as follows:]

d. Regional Ground.

e. Lightweight.

1.2 Parcel Select Prices

[Revise the first sentence of 1.2 as follows:]

Pricing is available for Parcel Select at the Destination Entry, NDC Presort, ONDC Presort, and Nonpresort levels. * * *

1.3 Annual Mailing Fee

[Revise 1.3 as follows:]

An annual mailing fee is required for Parcel Select destination entry mailings and must be paid once each 12-month period at each Post Office of mailing by or for any mailer who enters mailings at the destination entry level. All destination entry prices are covered under the payment of an annual fee per office of mailing. An annual presort mailing fee is also required to mail at any Standard Mail price or at any Parcel Select Lightweight price; payment of one annual presort fee at each office of mailing covers mailings of both products. During the last 60 days of the current service period, advance payment of the annual mailing fees may be remitted for the subsequent 12-month period only. The established annual mailing fees in effect at the time of remittance will be assessed. See Notice

123—Price List for applicable annual mailing fees.

1.4 Computing Postage

1.4.1 Determining Single-Piece Weight

[Revise 1.4.1 as follows:]

To determine single-piece weight in any mailing of nonidentical-weight pieces, weigh each piece individually. To determine single-piece weight in a mailing of identical-weight pieces, weigh a sample group of at least 10 randomly selected pieces and divide the total sample weight by the number of pieces in the sample. Except for mailers using eVS or preparing Parcel Select lightweight mailings, when determining single-piece weight for Parcel Select mailpieces, express all weights in decimal pounds rounded off to two decimal places. Mailers using eVS may round off to four decimals, and eVS will automatically round to the appropriate decimal place. Mailers using Parcel Select Lightweight must express all single-piece weights in decimal pounds, rounded off to four decimal places. If a customer is using a manifest mailing system, the manifest weight field must be properly completed by adhering to the rules relative to the specific manifest.

1.4.2 Computing Postage for Affixed Postage

[Revise the first sentence of 1.4.2 as follows:]

For each piece, affix correct postage for the weight (including any surcharges) and, if applicable, the zone to which the piece is addressed, as shown in 1.2 through 1.4. * * *

* * * * *

[Revise the heading of 3.0 as follows:]

3.0 Price Eligibility for Parcel Select, Parcel Select Regional Ground and Parcel Select Lightweight

3.1 Destination Entry Price Eligibility

* * * * *

3.1.3 DNDC Prices

For DNDC prices, pieces must meet the applicable standards in 3.0 and the following:

* * * * *

[Revise item 3.1.3b as follows:]

b. Parcels must bear a barcode under 708.5.0 for the ZIP Code of the delivery address.

* * * * *

[Revise the heading and introductory text of 3.3 as follows:]

3.3 Parcel Select Nonpresort Price Eligibility

Parcel Select Nonpresort per piece prices apply to Parcel Select parcels that are barcoded (see Exhibit 3.3). The nonpresort price requires a minimum volume of 50 Parcel Select pieces, except when postage is paid by PC Postage which doesn't require a minimum volume of mailpieces. Mailings must meet one of the following conditions:

* * * * *

3.4 Parcel Select Regional Ground

[Revise the introductory paragraph of 3.4, and delete items 3.4a and b in their entirety as follows:]

Parcel Select Regional Ground is a nonpresort product which requires postage payment by permit imprint. Entry is at the OSCF or ONDC level for zones local, 1, 2, and 3.

3.4.1 General Eligibility

[Revise the introductory text of 3.4.1 as follows:]

Parcel Select Regional Ground prices are available for machinable parcels (see 401.1.5) that weigh 5 pounds or less when customers meet the following requirements:

* * * * *

3.4.3 Parcel Select Regional Ground—ONDC

[Revise 3.4.3 as follows:]

Parcel Select Regional Ground ONDC prices are available for parcels to zones local through 3, with the pieces for the ONDC service area segregated from the pieces outside the ONDC service area according to L601 and that meet requirements in 3.4.1.

* * * * *

[Renumber 3.5 through 3.8 as new 3.6 through 3.9 and add new 3.5 as follows:]

3.5 Parcel Select Lightweight

Parcel Select Lightweight mailings are subject to the following criteria:

a. All pieces must weigh less than 16 ounces.

b. Pieces are subject to specific volume, marking, and preparation requirements.

c. Extra services available with Parcel Select Lightweight are Delivery Confirmation, bulk insurance, bulk certificate of mailing, and return receipt for merchandise service.

d. Parcel Select Lightweight mailings are subject to the ZIP Code Accuracy standards and Move Update standards under 443.3.0.

3.5.1 General Eligibility

Parcel Select Lightweight parcels are presorted machinable or irregular parcels.

The following also applies:

a. Machinable pieces must meet the standards in 401.1.5.

b. Irregular pieces are subject to the requirements in 401.1.6.

c. Postage must be paid by permit imprint, postage evidencing systems (under 604.4.0), or by stamps precanceled by a mailer's postmark that includes the Parcel Select Lightweight price marking.

d. Each mailing must contain at least 200 pieces or 50 pounds of pieces.

e. Pieces must bear a unique IMpb or extra services barcode, including a postal routing code, prepared under 708.5.0. Effective January 7, 2013, parcels must include a unique IMpb with a postal routing code on each parcel.

f. Parcel Select Lightweight mailings may include an alternative addressing format under 602.3.0.

3.5.2 Price Application

Prices for Parcel Select Lightweight apply separately to machinable parcels and irregular parcels that meet the eligibility standards in 2.0 and 3.5 and the preparation standards in 455.8.0, 705.6.0, or 705.8.0. When pieces are combined under 705.6.0, pieces are eligible for the applicable prices when the combined total meets the eligibility standards. For example, when there are 10 pounds of combined machinable parcels and irregular parcels in a 5-digit sack, all pieces are eligible for the 5-digit prices.

3.5.3 Prices for Machinable Parcels

The following prices apply to Parcel Select Lightweight machinable parcels:

a. *5-Digit Price;* the 5-digit price applies to qualifying machinable parcels that are dropshipped to a DNDC (or ASF when claiming DNDC prices), DSCF, or DDU and presented:

1. In a 5-digit/scheme (L606) sack containing at least 10 pounds of pieces or on a 5-digit/scheme (L606) pallet, according to standards in 705.8.10.

2. As one or more parcels that mailers drop ship to a DDU under 456.2.1.1f.

b. *NDC Price;* the NDC price applies to qualifying machinable parcels as follows under either of the following conditions:

1. When dropshipped to an ASF or NDC and presented in an ASF or NDC sack containing at least 10 pounds of parcels; or on an ASF or NDC pallet, according to standards in 705.8.10; or in an NDC/ASF container prepared under 705.21.0.

2. When presented at the origin acceptance office on an ASF or an NDC pallet containing at least 200 pounds of pieces.

c. *Mixed NDC Price;* the mixed NDC price applies to machinable parcels that are not eligible for 5-digit or NDC prices.

Place machinable parcels at mixed NDC prices in origin NDC sacks or on origin NDC pallets, then in mixed NDC sacks or on mixed NDC pallets.

3.5.4 Prices for Irregular Parcels

The following prices apply to Parcel Select Lightweight irregular parcels:

a. *5-Digit Price;* the 5-digit price applies to irregular parcels that are dropshipped to a DNDC (or ASF when claiming DNDC prices), DSCF, or DDU and presented:

1. In a 5-digit/scheme (L606) sack containing at least 10 pounds of pieces.

2. On a 5-digit/scheme (L606) pallet, according to 705.8.10.

3. As one or more parcels that mailers dropship to a DDU under 456.2.1.1f.

4. In 5-digit/scheme containers prepared under 705.21.0.

b. *SCF Price;* the SCF price applies to irregular parcels that are dropshipped and presented to a DSCF or DNDC:

1. In an SCF sack containing at least 10 pounds of parcels.

2. On an SCF pallet, according to 705.8.10.

3. In SCF containers prepared under 705.21.0.

c. *NDC Price;* the NDC price applies to qualifying irregular parcels as follows under either of the following conditions:

1. When dropshipped to an ASF or NDC and presented in an ASF or NDC sack containing at least 10 pounds of parcels; or on an ASF or NDC pallet, according to standards in 705.8.10; or in a NDC/ASF container prepared under 705.21.0.

2. When presented at the origin acceptance office on an ASF or NDC pallet containing at least 200 pounds of pieces.

d. *Mixed NDC Price;* the mixed NDC price applies to irregular parcels in origin NDC or mixed NDC containers that are not eligible for 5-digit, SCF, or NDC prices. Place irregular parcels at mixed NDC prices in origin NDC or mixed NDC sacks under 455.8.3 or on origin NDC or mixed NDC pallets under 705.8.10.

* * * * *

3.9 Hold for Pickup

[Revise renumbered 3.9 as follows:]

Only Parcel Select Nonpresort parcels and Parcel Select Regional Ground parcels are eligible for Hold For Pickup service and are held at a designated Post Office location for pickup by a specified addressee or designee (see 508.8.0).

454 Postage Payment and Documentation

1.0 Basic Standards for Postage Payment

1.1 Postage Payment Options

Mailing fees must be paid for the current 12-month period at the Postal Service facility where postage is paid for the mailing.

[Revise item 1.1a as follows:]

a. Permit imprint may be used for identical-weight pieces provided the mail can be separated at acceptance into groups that each contain pieces subject to the same zone and same combination of prices (e.g., all are zone 4, with an NDC presort discount).

* * * * *

455 Mail Preparation

1.0 General Information for Mail Preparation

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1.8 Parcel Select Markings

* * * The following product markings are required:

* * * * *

[Revise item 1.8d as follows:]

d. Nonpresort—''Parcel Select Nonpresort'' or ''Parcel Select NPS''.

[Add new items 1.8e and 1.8f as follows:]

e. Regional Ground—''Parcel Select Regional Ground'' or Parcel Select RG''.

1. Origin SCF Entry—''OSCF''.

2. Origin NDC Entry—''ONDC''.

f. Lightweight—''Parcel Select Lightweight'' or ''PS Lightweight''.

* * * * *

4.0 Preparing Destination Entry Parcel Select

* * * * *

4.3 Preparing Destination NDC (DNDC) Parcel Select

* * * * *

4.3.2 Basic Standards

Pieces must meet the applicable standards in 4.0 and the following criteria:

* * * * *

[Delete item 4.3.2c in its entirety and renumber items 4.3.2d and 4.3.2e as new items 4.3.2c and 4.3.2d.]

* * * * *

[Revise the heading of 6.0 as follows:]

6.0 Preparing Machinable Parcels

6.1 Definition

[Revise 6.1 as follows:]

Parcel Select machinable parcels must meet the physical standards in 401.1.5.

6.2 Basic Standards

Pieces must meet the applicable standards in 4.0 and the following criteria:

[Revise item 6.2a as follows:]

a. Must be part of a mailing of at least 50 Parcel Select pieces, except there is no minimum volume for nonpresorted parcels when postage is paid using PC Postage.

* * * * *

7.0 Preparing Parcel Select Regional Ground

7.1 Definition

[Revise the first sentence of 7.1 as follows:]

Parcel Select Regional Ground parcels (see 453.3.4.1) are lightweight parcels entered at eligible OSCF and ONDC for zones local, 1, 2, and 3 locations. * * *

7.2 Basic Standards

[Revise 7.2 as follows:]

Parcels must be barcoded, machinable (401.1.5), and weigh 5 pounds or less.

* * * * *

[Add new 455.8.0 as follows:]

8.0 Preparing Parcel Select Lightweight

8.1 Basic Standards

All mailings and all pieces in each mailing at Parcel Select Lightweight machinable and irregular prices are subject to the specific preparation standards in 8.2 and 8.3, and to these general standards:

a. All pieces must meet the standards for basic eligibility in 453.3.5.1.

b. Pieces in each mailing must be all machinable parcels or all irregular parcels as defined in 401.1.0, unless prepared under 8.2.1.

c. All mailings must meet the applicable general preparation standards in 1.0 through 4.0, and labeling standards in 708.6.0.

d. All pieces in the mailing must meet the specific sortation and preparation standards in 8.0 or the palletization standards in 705.8.0.

e. Sortation determines price eligibility under in 453.3.5.2 through 453.3.5.4.

8.2 Preparing Machinable Parcels

8.2.1 Sacking

Mailers may prepare 5-digit sacks only for parcels that will be dropshipped to a DNDC (or ASF when claiming DNDC prices), DSCF, or DDU. Mailers may prepare ASF or NDC sacks only for parcels that will be dropshipped to a DNDC (or ASF when claiming DNDC prices). There is no minimum for parcels prepared in 5-digit/scheme sacks entered at a DDU.

Mailers choosing to combine the preparation of irregular parcels with machinable parcels placed in 5-digit/scheme sacks must prepare those sacks under 8.2.2a.

8.2.2 Sacking and Labeling

Preparation sequence, sack size, and labeling:

a. *5-digit/scheme* (optional, but required for 5-digit price), see definition in 1.4.; allowed only for mail deposited at DNDC (or ASF when claiming DNDC prices), DSCF, or DDU. Sacks must contain a 10-pound minimum except at DDU entry which has no minimum; labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSLW MACH 5D SCH.'' For 5-digit sacks, ''PSLW MACH 5D.''

b. *ASF* (optional), allowed only for mail deposited at an ASF to claim DNDC price; 10-pound minimum; labeling:

1. Line 1: L602, Column B. DNDC price eligibility determined by Exhibit 453.3.1.3.

2. Line 2: ''PSLW MACH ASF.''

c. *NDC,* allowed only for mail deposited at a DNDC to claim the NDC price; 10-pound minimum; labeling:

1. Line 1: L601, Column B. DNDC price eligibility determined by Exhibit 453.3.1.3.

2. Line 2: ''PSLW MACH NDC.''

d. *Origin NDC* (required); no minimum; labeling:

1. Line 1: L601, Column B.

2. Line 2: ''PSLW MACH NDC.''

e. *Mixed NDC* (required); no minimum; labeling:

1. Line 1: ''MXD'' followed by L601, Column B information for NDC serving 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: ''PSLW MACH WKG.''

8.3 Preparing Irregular Parcels

8.3.1 Sacking

Mailers may prepare 5-digit sacks only for parcels that will be dropshipped to a DNDC (or ASF when claiming DNDC prices), DSCF, or DDU. See 8.3.3 for restrictions on SCF, ASF, and NDC sacks. Mailers must prepare a sack when the quantities of mail for a required presort destination reaches 10 pounds of pieces. There is no minimum for parcels prepared in 5-digit/scheme sacks entered at a DDU. Mailers combining irregular parcels with machinable parcels in 5-digit/scheme sacks must prepare those sacks under 8.2.2a. Mailers may not prepare sacks containing irregular and machinable parcels to other presort levels.

8.3.2 Drop Shipment

A mailer using Priority Mail or Express Mail Open and Distribute to dropship Parcel Select Lightweight irregular parcels may prepare sacks containing fewer than 125 pieces or less than 15 pounds of mail.

8.3.3 Sacking and Labeling

Preparation sequence, sack size, and labeling:

a. 5-digit/scheme (optional, but required for 5-digit price), see definition in 1.4; allowed only for mail deposited at DNDC (or ASF when claiming DNDC prices), DSCF, or DDU. Sacks must contain a 10-pound minimum except at DDU entry which has no minimum; labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSLW IRREG 5D SCH.'' For 5-digit sacks, ''PSLW IRREG 5D.''

b. SCF, allowed only for mail deposited at a DSCF or a DNDC to claim SCF price; 10-pound minimum; labeling:

1. For Line 1, L002, Column C.

2. For Line 2, ''PSLW IRREG SCF.''

c. ASF (optional), allowed only for mail deposited at an ASF to claim DNDC price; 10-pound minimum; labeling:

1. Line 1: L602, Column B. DNDC price eligibility determined by Exhibit 446.3.1, NDC/ASF—DNDC Price Eligibility.

2. Line 2: ''PSLW IRREG ASF.''

d. NDC, allowed only for mail deposited at a DNDC to claim the NDC price; 10-pound minimum; labeling:

1. Line 1: L601, Column B. DNDC price eligibility determined by Exhibit 453.3.1.3.

2. Line 2: ''PSLW IRREG NDC.''

e. Origin NDC (required); no minimum; labeling:

1. Line 1: L601, Column B.

2. Line 2: ''PSLW IRREG NDC.''

f. Mixed NDC (required); no minimum; labeling:

1. Line 1: ''MXD'' followed by L601, Column B information for NDC serving 3-digit ZIP Code prefix of entry Post Office.

2. Line 2: ''PSLW IRREG WKG.''

* * * * *

456 Enter and Deposit

* * * * *

2.0 Deposit

* * * * *

2.19 Parcel Select Regional Ground—Deposit at ONDC

[Revise 2.19 as follows:]

Parcel Select Regional Ground mailings deposited at the ONDC may include mailpieces for zones local, 1, 2, and 3, but pieces may be destined for addresses outside that ONDC service area.

* * * * *

500 Additional Mailing Services

503 Extra Services

* * * * *

2.0 Registered Mail

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2.4 Mailing

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[Revise the heading and text of 2.4.10 as follows:]

2.4.10 Redirection of Mail

Registered Mail may be redirected to the sender using Package Intercept under 507.5.

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4.0 Insured Mail

* * * * *

4.2 Basic Information

* * * * *

4.2.2 Eligible Matter

The following types of mail may be insured:

* * * * *

[Revise item 4.2.2b as follows:]

b. Standard Mail and Parcel Select Lightweight pieces prepared as machinable or irregular parcels (bulk insurance only).

* * * * *

6.0 Return Receipt

* * * * *

6.2 Basic Information

* * * * *

6.2.2 Eligible Matter

Return receipt service is available for:

* * * * *

[Revise item 6.2.2c as follows:]

c. Standard Mail parcels or Parcel Select Lightweight pieces, when bulk insurance (for more than $200.00) is purchased at the time of mailing.

* * * * *

7.0 Restricted Delivery

* * * * *

7.2 Basic Information

* * * * *

7.2.2 Eligible Matter

Restricted Delivery service is available for:

* * * * *

[Revise item 7.2.2b as follows:]

b. Standard Mail parcels or Parcel Select Lightweight pieces, when bulk insurance (for more than $200.00) is purchased at the time of mailing.

* * * * *

8.0 Adult Signature

* * * * *

8.2 Basic Information

* * * * *

8.2.3 Eligible Matter

Adult Signature Required and Adult Signature Restricted Delivery are available for:

* * * * *

[Revise item 8.2.3c as follows:]

c. Parcel Select Nonpresort.

* * * * *

8.2.4 Ineligible Matter

Adult Signature Required and Adult Signature Restricted Delivery are not available for:

* * * * *

[Revise item 8.2.4b as follows:]

b. Standard Mail and Parcel Select Lightweight.

* * * * *

11.0 Signature Confirmation

* * * * *

11.2 Basic Information

* * * * *

11.2.3 Ineligible Matter

Signature Confirmation is not available for the following:

[Revise item 11.2.3a as follows:]

a. Express Mail, Periodicals, Standard Mail, and Parcel Select Lightweight.

* * * * *

12.0 Collect on Delivery (COD)

* * * * *

12.2 Basic Information

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12.2.2 Eligible Matter

[Revise the introductory text of 12.2.2 as follows:]

COD service may be used for Express Mail, First-Class Mail, Priority Mail (excluding Critical Mail), and any Package Services or Parcel Select (except Parcel Select Lightweight) subcategory if:

* * * * *

13.0 Special Handling

* * * * *

13.2 Basic Information

* * * * *

13.2.2 Eligible Matter

[Revise 13.2.2 as follows:]

Special handling service is available only for First-Class Mail, Priority Mail (excluding Critical Mail), Package Services, and Parcel Select (except Parcel Select Lightweight) pieces.

* * * * *

505 Return Services

5.0 Parcel Return Service

5.1 Basic Information

5.1.1 Description

[Revise 5.1.1 as follows:]

Parcel Return Service (PRS) applies to parcels that are picked up in bulk by authorized permit holders or their agents. Permit holders guarantee payment of postage for all parcels mailed with a PRS label. By providing an approved PRS label to its customers, the merchant or other party designates the permit holder identified on the label as their agent for receipt of mail bearing that label, and authorizes the USPS to provide that mail to the permit holder or its designee. The permit holder must retrieve parcels at each of the return network distribution centers (RNDC). For this purpose, an RNDC is each NDC (but not any ASFs) listed in Exhibit 453.3.1.3. PRS permit holders also may retrieve parcels at one or more designated return sectional center facility (RSCF) or designated return delivery units (RDU). Payment for parcels returned under PRS is deducted from a separate advance deposit (postage-due) account funded through the Centralized Account Processing System (CAPS). The permit holder must be authorized to use eVS (see 705.2.9).

* * * * *

5.1.5 Application

Companies who wish to participate in PRS must send a request on company letterhead to the manager, Business Mailer Support (see 608.8.0 for address). The request must contain the following information:

* * * * *

[Revise item 5.1.5 c as follows:]

c. The price category or categories to be used, and the proposed retrieval locations (delivery units, sectional center facilities and network distribution centers).

* * * * *

5.1.6 Approval

The manager, Business Mailer Support reviews each request and proceeds as follows:

[Revise item 5.1.6a as follows:]

a. If the applicant meets the criteria, the manager, Business Mailer Support approves the letter of request and sends an authorization letter outlining the terms and conditions for the program.

* * * * *

5.1.9 Pickup Schedule and Location

[Revise 5.1.9 as follows:]

Permit holders or their agents must set up recurring or standing appointments to retrieve PRS parcels. If the permit holder (or agent) has existing appointments to deliver Parcel Select parcels to destination facilities and those facilities are one of the NDCs, designated RSCFs, or designated RDUs, those appointments can be used for retrieving PRS parcels at the same time. Permit holders or their agents must retrieve parcels on a regular schedule as follows:

* * * * *

[Renumber items 5.1.9b and 5.1.9c as 5.1.9c and 5.1.9d and add new item 5.1.9b as follows:]

b. From all listed RSCFs, at a minimum of every 24 hours, excluding Saturdays, Sundays and USPS holidays. The Postal Service maintains a list of active RSCFs and provides permit holders 30 days notice of changes to the list. This list may be obtained by contacting the manager, New Business Opportunities. (see 608.8.0 for address).

* * * * *

5.2 Postage and Fees

5.2.1 Postage

[Revise the introductory text of 5.2.1 as follows:]

There are three PRS price categories:

* * * * *

[Renumber item 5.2.1b as 5.2.1c and add new item 5.2.1b as follows:]

b. Parcel Return Service—RSCF. Parcels returned as Parcel Post to, and retrieved in bulk from, a designated SCF.

* * * * *

5.3 Prices

[Renumber 5.3.1 through 5.3.3 as 5.3.2 through 5.3.4. Add new 5.3.1 as follows:]

5.3.1 Parcel Return Service Prices

Parcel Return Service prices are based on the price that applies to the weight increment of each addressed piece, and on the designated return facility, RDU, RSCF, or RNDC. The price is charged

per pound or fraction thereof; any fraction of a pound is considered a whole pound. For example, if an item weighs 4.225 pounds, the weight increment is 5 pounds. The minimum price per piece is the 1-pound price.

[Revise the heading and text of renumbered 5.3.2 as follows:]

5.3.2 Parcel Return Service—Nonmachinable Prices

Parcels exceeding the maximum machinable dimensions in 401.1.5 or are considered an outside parcel under 401.1.7 are subject to nonmachinable prices.

[Revise the heading and text of renumbered 5.3.3 as follows:]

5.3.3 Balloon and Oversized Prices

RSCF and RNDC parcels that weigh less than 20 pounds but measure more than 84 inches in combined length and girth are charged the applicable price for a 20-pound parcel (balloon price). Regardless of weight, any parcel that measures more than 108 inches (but not more than 130 inches) in combined length and girth must pay the oversized price.

* * * * *

6.0 Bulk Parcel Return Service

* * * * *

6.3 General Information

6.3.1 Description

[Revise the first sentence of 6.3.1 as follows:]

Bulk parcel return service (BPRS) allows mailers of large quantities of Standard Mail or Parcel Select Lightweight machinable parcels that are either undeliverable-as-addressed or opened and remailed by addressees to be returned to designated postal facilities. * * *

6.3.2 Availability

A mailer may be authorized to use BPRS when the following conditions apply:

[Revise items 6.3.2a and 6.3.2b as follows:]

a. All returned parcels are initially prepared as regular or Nonprofit Standard Mail, or Parcel Select Lightweight, and are machinable parcels as defined in 401.1.0.

b. At least 10,000 Standard Mail or Parcel Select Lightweight machinable parcels will be returned to a designated postal facility during a 12-month period.

* * * * *

[Revise item 6.3.2i as follows:]

i. Standard Mail or Parcel Select Lightweight parcels that qualify for a single-piece Package Services price under the applicable standards and that contain the name of the Package Services price in the mailer's ancillary service endorsement are not eligible for BPRS.

* * * * *

507 Mailer Services

1.0 Treatment of Mail

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1.5 Treatment for Ancillary Services by Class of Mail

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[Revise the heading and introductory text of 1.5.3 as follows:]

1.5.3 Standard Mail and Parcel Select Lightweight

Undeliverable-as-addressed (UAA) Standard Mail and Parcel Select Lightweight pieces are treated as described in Exhibit 1.5.3a and Exhibit 1.5.3k, with these additional conditions:

[Revise item 1.5.3a as follows:]

a. Standard Mail and Parcel Select Lightweight are forwarded only to domestic addresses.

[Revise the heading of Exhibit 1.5.3a as follows:]

Exhibit 1.5.3a Treatment of Undeliverable Standard Mail and Parcel Select Lightweight

* * * * *

[Revise Exhibit 1.5.3a footnotes 5c and 5d as follows:]

c. The endorsement ''Change Service Requested'' is not permitted for Standard Mail or Parcel Select Lightweight pieces containing hazardous materials under 601.10.0. Standard Mail containing hazardous materials must bear the endorsement ''Address Service Requested,'' ''Forwarding Service Requested,'' or ''Return Service Requested.''

d. Standard Mail or Parcel Select Lightweight pieces can be forwarded or returned at the appropriate Media Mail or Library Mail price if the content of the mail qualifies as Media Mail or Library Mail under 173, 373, or 473 and the mail is marked ''Media Mail'' or ''Library Mail'' directly below the ancillary service endorsement.

* * * * *

[Revise Exhibit 1.5.3a footnotes 5f and 5g as follows:]

f. If a Standard Mail or Parcel Select Lightweight piece or any attachment to that piece is not opened by the addressee and the sender has guaranteed forwarding and return postage, the addressee may refuse delivery of the piece and have it returned to the sender without affixing postage. If a Standard Mail or Parcel Select Lightweight piece or any attachment to that piece is opened by the addressee, the addressee must affix the required postage to return the piece to the sender.

g. Standard Mail or Parcel Select Lightweight with bulk insurance or return receipt for merchandise must be endorsed ''Address Service Requested,'' ''Forwarding Service Requested,'' or ''Return Service Requested.'' Standard Mail with Delivery Confirmation must be endorsed ''Address Service Requested,'' ''Forwarding Service Requested,'' ''Return Service Requested,'' or ''Change Service Requested.''

* * * * *

1.5.4 Package Services and Parcel Select

* * * * *

[Add new item 1.5.4g as follows:]

g. See 1.5.3 for instructions for undeliverable Parcel Select Lightweight pieces.

* * * * *

Exhibit 1.5.4 Treatment of Undeliverable Package Services Mail and Parcel Select

* * * * *

[Under Mailer Endorsement ''Address Service Requested,'' revise the first bullet under ''If no change of address order on file'' to remove the word ''barcode'' as follows:]

• Parcel Select: At the Parcel Select Nonpresort price plus the additional service fee.

* * * * *

[Under Mailer Endorsement ''Address Service Requested,'' revise the second sentence in the first bullet and item a under ''If change of address order on file'' by removing the word ''barcoded'' as follows:]

• *Months 1 through 12:* * * * Parcel Select forwarded as postage due to addressee at the Parcel Select Nonpresort price plus the additional service fee for Parcel Select.* * *

a. Parcel Select: At the Parcel Select Nonpresort price plus the additional service fee.

* * * * *

[Under Mailer Endorsement ''Forwarding Service Requested,'' revise the first bullet under ''If no change of address order on file'' to remove the word ''barcode'' as follows:]

• Parcel Select: At the Parcel Select Nonpresort price plus the additional service fee.

* * * * *

[Under Mailer Endorsement ''Forwarding Service Requested,'' revise the second sentence in the first bullet

and item a under ''If change of address order on file'' to remove the word ''barcode'' as follows:]

• *Months 1 through 12:* * * * Parcel Select forwarded as postage due to addressee at the Parcel Select Nonpresort price plus the additional service fee for Parcel Select. * * *

a. Parcel Select: At the Parcel Select Nonpresort price plus the additional service fee.

* * * * *

[Under Mailer Endorsement ''Return Service Requested,'' revise the first bullet under ''In all cases'' to remove the word ''barcode'' as follows:]

• Parcel Select: At the Parcel Select Nonpresort price plus the additional service fee.

* * * * *

2.0 Forwarding

* * * * *

2.3 Postage for Forwarding

* * * * *

[Revise the heading and first two sentences of 2.3.5 as follows:]

2.3.5 Standard Mail and Parcel Select Lightweight

Generally, Standard Mail and Parcel Select Lightweight are subject to collection of additional postage from the mailer when forwarding service is provided by charging the Standard Mail weighted fee on all returns. Shipper Paid Forwarding, used in conjunction with Address Change Service (4.0), provides mailers of Standard Mail and Parcel Select Lightweight parcels an option of paying forwarding postage at the applicable single-piece First-Class Mail or Priority Mail price. * * *

2.3.6 Package Services and Parcel Select

[Revise the first sentence and add a new second sentence of 2.3.6 as follows:]

Package Services and Parcel Select pieces are subject to the collection of additional postage at the applicable price for forwarding; Parcel Select at the Parcel Select Nonpresort price plus the additional service fee and Package Services at the single-piece price for the specific class of mail. See 2.3.5 for forwarding instructions for Parcel Select Lightweight. * * *

* * * * *

3.0 Premium Forwarding Service

3.1 Prices and Fees

* * * * *

3.1.2 Weekly Reshipment Charge

[Revise 3.1.2 as follows:]

There is a reshipment charge for each Priority Mail shipment to one temporary address for each week of service requested. Except for online customers under 3.2.2b, upon submission of the application, the amount due for the total weeks requested must be paid in full.

3.1.3 Extension of Service

[Revise 3.1.3 as follows:]

Premium Forwarding Service (PFS) customers may contact the Post Office responsible for delivery to the primary address prior to the last shipment date and extend PFS service (up to 1 year maximum service from the initial start date) as needed. An extension of service may also be performed online at *http://www.usps.com/premiumforwarding* for customers who completed their application online. Except for online customers under 3.2.2b, an extension is processed only after the Post Office receives payment of the reshipment charges due for the total weeks of extension requested.

3.1.4 Early Termination of Service

[Revise 3.1.4 as follows:]

Except for online customers under 3.2.2b, a customer who terminates PFS early (e.g., a customer prepays for 10 weeks but returns to a primary address after 8 weeks, either temporarily or permanently) may request a refund for any unused weekly shipment charges from the Post Office serving the primary address. The application fee is nonrefundable.

3.2 Basic Standards

3.2.1 Description

[Revise the first sentence in 3.2.1 as follows:]

Except as provided in 3.2.2b, Premium Forwarding Service (PFS) provides residential delivery customers, and certain Post Office Box customers, an option to have all mail addressed to their primary address reshipped or rerouted to a temporary address mainly by means of a weekly Priority Mail shipment. * * *

3.2.2 Use

Participation in PFS is subject to the following standards:

[Revise items 3.2.2a and 3.2.2b as follows:]

a. Except as provided in 3.2.2b, PFS is available to residential delivery customers and to Post Office Box customers with a size-one or size-two Post Office Box.

b. Customers may submit a completed Form 8176, *Premium Forwarding Service (PFS) Application,* at the Post Office serving the primary address or online. Customer may complete an online application at *http://www.usps.com/premiumforwarding*. A PFS application completed online is only available for residential delivery customers. The application fee and recurring weekly installments are processed as services are rendered and must be paid by credit card. Modification or cancellation of the service can only be done online when the initial request was completed online.

* * * * *

3.3 Preparation

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[Revise the heading and first sentence of 3.3.6 as follows:]

3.3.6 Standard Mail or Parcel Select Lightweight Parcels Not Requiring a Scan or Signature at Delivery

Eligible Standard Mail or Parcel Select Lightweight parcels that do not require a scan or signature at delivery are included in the weekly Priority Mail shipment provided they will fit. * * *

* * * * *

[Renumber current 5.0 through 8.0 as new 6.0 through 9.0 and add new 5.0 as follows:]

5.0 Package Intercept

5.1 Description of Service

Package Intercept service provides a method for customers to authorize redirection of any mailable domestic mailpiece to sender. If the mail item is found and redirected, additional postage is charged as provided under 5.2. Package Intercept requests are active for 10 days.

5.1.1 Eligibility

Package Intercept service is available for any Express Mail, Priority Mail, First-Class Mail, First-Class Package Service, Parcel Select, and Package Services, letter, flat, or parcel measuring not more than 108 inches in length and girth combined, with a tracking barcode.

5.1.2 Ineligible

Package Intercept is not available to international and APO/FPO/DPO destinations or on mailpieces requiring a customs label (608.2.4). Package Intercept is also not available for any mailpiece that indicates surface-only transportation such as Label 127, ''Surface Mail Only'' or bears other hazardous materials markings such as ''Consumer Commodity ORM–D''.

5.2 Postage and Fees

Customers must pay a nonrefundable per-piece fee to initiate the process of attempting to intercept the mailpiece.

All mailpieces that are redirected to the sender may be additionally subject to payment of the applicable postage. Payment of the Package Intercept fee may be made by cash, check, credit card, or debit card. Postage for the redirection to sender will be charged based on how the piece was originally mailed and collected as postage due.

5.3 Adding Extra Services

Extra Services cannot be added to mailpieces intercepted and redirected to sender.

5.4 Registered Mail

Package Intercept is available for eligible matter mailed using Registered Mail service. The maximum declared value for intercepted Registered Mail is $15,000,000. In addition to 5.2 and 5.5, customers requesting to intercept Registered Mail must write on the receipt ''Withdrawn'' and sign and surrender the receipt to the Post Office.

5.5 Request for Intercept

Retail and commercial customers may request Package Intercept by submitting PS Form 1509, *Application for Package Intercept,* at the Post Office of mailing along with valid photo identification. Intercepted mailpieces are only redirected to sender. Only the sender or authorized representative can request Package Intercept.

[Revise the heading of renumbered 6.0 as follows:]

6.0 Requesting Withdrawal and Disposal of a Mailing

[Delete renumbered 6.1 through 6.1.4, in their entirety. Renumber 6.2 through 6.2.4 as new 6.1 through 6.1.4. Revise the heading of new 6.1 as follows:]

6.1 Request Process

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508 Recipient Services

* * * * *

7.0 Hold for Pickup

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7.2 Basic Information

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7.2.2 Basic Eligibility

[Revise the second sentence in 7.2.2 as follows:]

* * * Hold For Pickup service is also available with online and commercial mailings of Priority Mail (except Critical Mail), First-Class Package Service, Parcel Select Nonpresort parcels, and Parcel Select Regional Ground parcels when:

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

604 Postage Payment Methods

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5.0 Permit Imprint (Indicia)

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5.3 Indicia Design, Placement, and Content

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[Revise the heading and first sentence of 5.3.7 as follows:]

5.3.7 Standard Mail, Parcel Select and Package Services Format

A Standard Mail, Parcel Select or Package Services permit imprint indicia must contain the same information required in 5.3.6, except that the Standard Mail, the applicable Parcel Select (Parcel Select, Parcel Select Regional Ground, or Parcel Select Lightweight), or the applicable Package Services (Parcel Post, Bound Printed Matter, Media Mail or Library Mail) marking must be used instead of ''First-Class Mail.'' * * *

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5.3.11 Indicia Formats

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Exhibit 5.3.11 Indicia Formats for Official Mail and Other Classes

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[Insert a new ''Parcel Select'' category title immediately above the current ''Package Services'' category title, move the current ''Parcel Select'' imprint example under the new ''Parcel Select'' category title and add two additional imprint examples as follows:]

Parcel Select

PARCEL SELECT US POSTAGE PAID NEW YORK, NY PERMIT NO. 1

PARCEL SELECT REGIONAL GROUND US POSTAGE PAID NEW YORK, NY PERMIT NO. 1

PARCEL SELECT LIGHTWEIGHT US POSTAGE PAID NEW YORK, NY PERMIT NO. 1

Package Services

[Delete the words ''Parcel Select'' from the Package Service/Parcel Select sub heading.]

* * * * *

700 Special Standards

703 Nonprofit Standard Mail and Other Unique Eligibility

* * * * *

2.0 Overseas Military Mail

2.1 Basic Standards

* * * * *

2.1.2 APO/FPO Priority Mail Flat Rate Boxes

[Revise 2.1.2 as follows:]

Only USPS-produced Flat Rate Boxes are eligible for the Flat Rate Box prices and are charged a flat rate regardless of the actual weight (up to 70 pounds) of the mailpiece or domestic destination. The Board Game Large Flat Rate Box, and Large Flat Rate Box and ''special version of this box'' identified with the additional logo: ''Americasupportsyou.mil.'' addressed to APO/FPO and DPO destinations are priced less than the conventional domestic Large Flat Rate Boxes. If the special version of the APO/FPO Flat Rate Box is used for non-APO/FPO and DPO destination addresses, the domestic or international Large Flat Rate Box prices will apply.

* * * * *

2.6 Express Mail Military Service (EMMS)

2.6.1 Availability

[Revise 2.6.1 as follows:]

EMMS, including Express Mail Flat Rate packaging under 113.1.4, is available between the United States and designated APOs and FPOs to provide Department of Defense personnel stationed overseas, and others entitled to APO and FPO mailing privileges, an expedited delivery service to or from the United States.

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

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2.0 Manifest Mailing System

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2.9 Electronic Verification System

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2.9.2 Availability

eVS may be used only for mail paid with a permit imprint and the following classes and subclasses of mail:

* * * * *

[Revise item 2.9.2g as follows:]

g. *Parcel Select.* Includes Parcel Select Lightweight; DNDC prices, DSCF prices, and DDU prices (including balloon and oversized prices); machinable parcels and nonmachinable parcels; origin NDC and NDC presort prices.

[Delete item 2.9.2h in its entirety and renumber items 2.9.2i through 2.9.2k as items 2.9.2h through 2.9.2j.]

* * * * *

6.0 Combining Mailings of Standard Mail, Package Services, and Parcel Select Parcels

[Revise the heading of 6.1 as follows:]

6.1 Basic Standards for Combining Parcels

6.1.1 Basic Standards

[Revise the introductory text of 6.1.1 as follows:]

Standard Mail parcels, Parcel Select Lightweight parcels, Package Services parcels, and other Parcel Select parcels (except Parcel Select Regional Ground) in combined mailings must meet the following standards:

* * * * *

[Revise the heading and text of 6.2 as follows:]

6.2 Combining Parcels—DNDC Entry

Mailers may combine Standard Mail Marketing Parcels 6 ounces or more, machinable Parcel Select Lightweight parcels, machinable Package Services parcels, and Parcel Select machinable parcels for entry at a NDC when authorized by the USPS under 6.1.4.

6.2.1 Eligible Prices

[Revise the first sentence of 6.2.1 as follows:]

Combined pieces may be eligible for Standard Mail, Parcel Post, Parcel Select Lightweight, Parcel Select DNDC/ASF, single-piece and Presorted Media Mail, single-piece and Presorted Library Mail, Bound Printed Matter DNDC, and single-piece and Presorted Bound Printed Matter prices. * * *

6.2.2 Additional Standards

[Revise the introductory text of 6.2.2 as follows:]

Standard Mail machinable parcels, Standard Mail marketing parcels 6 ounces or more, Parcel Select Lightweight machinable parcels, and Package Services and Parcel Select machinable parcels prepared for DNDC entry must meet the following conditions in addition to the basic standards in 6.1:

[Revise item 6.2.2a as follows:]

a. Each piece in a combined Standard Mail, Package Services, and Parcel Select mailing must meet the criteria for machinable parcels in 401.1.5 or the criteria in 401.2.4.2 for Standard Mail marketing parcels 6 ounces or more.

* * * * *

[Revise item 6.2.2e as follows:]

e. Mailers must deposit combined machinable parcels at NDCs or ASFs (see Exhibit 446.3.1) under applicable standards in 16.0.

* * * * *

6.3 Combining Parcels—Parcel Select ONDC Presort, NDC Presort, DSCF, and DDU Prices

6.3.1 Qualification

Combination requirements for specific discounts and prices are as follows:

[Revise item 6.3.1a as follows:]

a. When claiming Parcel Select ONDC or NDC Presort discounts, machinable Parcel Select Lightweight parcels, machinable Standard Mail parcels, and Standard Mail marketing parcels weighing 6 ounces or more may be combined with machinable Package Services parcels under 6.3 only if the mailpieces are palletized and each pallet or pallet box contains a 200-pound minimum.

[Delete item 6.3.1b in its entirety, and renumber items 6.3.1c and 6.3.1d as items 6.3.1b and 6.3.1c. Revise renumbered items 6.3.1b and 6.3.1c as follows:]

b. When claiming the DSCF price for Parcel Select, Parcel Select Lightweight, Bound Printed Matter parcels, all Standard Mail parcels may be combined with Package Services and Parcel Select parcels under 6.3.

c. All Standard Mail parcels may be combined with Package Services, Parcel Select parcels and Parcel Select Lightweight parcels prepared for DDU prices under 6.3.

6.3.2 Preparation and Prices

Combined parcels must be prepared as follows:

* * * * *

[Revise the second sentence of item 6.3.2b as follows:]

b. * * * All other requirements for Parcel Select DSCF prices, Parcel Select Lightweight prices and Standard Mail prices, as applicable, must be met.

* * *

[Revise the last sentences of items 6.3.2b1 and 6.3.2b2 as follows:]

1. * * * After the minimum sack volume has been met, Standard Mail parcels and Parcel Select Lightweight parcels may be included in the sack or in overflow sacks.

2. * * * After the minimum pallet volume has been met, Standard Mail parcels and Parcel Select Lightweight parcels may be included on the pallet or in overflow sacks.

[Revise items 6.3.2b3 and 6.3.2b4 as follows:]

3. If palletized under the alternate pallet preparation where no pallet may contain fewer than 35 pieces and 200 pounds provided the average number of pieces on pallets qualifying for the DSCF price is at least 50, Standard Mail parcels or Parcel Select Lightweight parcels may not be combined with Package Services and Parcel Select parcels.

4. If palletized under the option to prepare 5-digit scheme or 5-digit pallets under the 36-inch-high (mail only) pallet minimum, any combination of Standard Mail, Parcel select Lightweight, Package Services, and Parcel Select parcels may be used to meet the minimum pallet height requirement.

* * * * *

[Revise item 6.3.2b6 as follows:]

6. Standard Mail parcels and Parcel Select Lightweight parcels are eligible for presorted prices according to 443 and 353.3.5 respectively.

[Revise the third sentence in the introductory text of item 6.3.2c as follows:]

c. * * * All other requirements for Parcel Select ONDC Presort or NDC Presort prices, Parcel Select Lightweight prices and Standard Mail prices must be met. The following additional requirements apply:

[Revise item 6.3.2c1 as follows:]

1. The minimum height requirement for each pallet or pallet box on a pallet may be met using any combination of Standard Mail, Parcel Select Lightweight, Package Services, and Parcel Select parcels.

* * * * *

[Revise the introductory sentence of item 6.3.2d as follows:]

d. Package Services, Parcel Select, Standard Mail, and Parcel Select Lightweight parcels qualifying for DDU prices:

* * * * *

6.4 Combining Package Services, Parcel Select, and Standard Mail—Optional 3-Digit SCF Entry

6.4.1 Entry at Designated SCFs

[Revise 6.4.1 as follows:]

Mailers may deposit pieces otherwise eligible for the Package Services, Parcel Select, Standard Mail, and Parcel Select Lightweight DNDC prices and the Standard Mail and Parcel Select Lightweight DSCF price at an SCF designated by the USPS for destination ZIP Codes listed in labeling list L607.

6.4.2 Qualification and Preparation

[Revise the introductory text of 6.4.2 as follows:]

Parcel Select and Bound Printed Matter machinable parcels, and Standard Mail parcels and Parcel Select Lightweight parcels, may be prepared for entry at designated SCFs under these standards:

[Revise item 6.4.2a as follows:]

a. Standard Mail parcels and Parcel Select Lightweight pieces that weigh

less than 2 ounces and Standard Mail and Parcel Select Lightweight parcels that are tubes, rolls, triangles, and similar pieces may not be included.

* * * * *

[Revise item 6.4.2d as follows:]

d. Standard Mail machinable parcels, Standard Mail marketing parcels 6 ounces or more, and machinable Parcel Select Lightweight are eligible for the NDC presort level, DNDC price; Standard Mail marketing parcels less than 6 ounces and irregular Standard Mail and Parcel Select Lightweight parcels are eligible for the 3-digit presort level, DSCF price.

* * * * *

8.0 Preparing Pallets

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8.5 General Preparation

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8.5.2 Required Preparation

[Revise the introductory text of 8.5.2 as follows:]

The following standards apply to Periodicals, Standard Mail, Parcel Select, and Package Services, except Parcel Select mailed at NDC Presort, ONDC Presort, DSCF, and DDU prices.

* * * * *

8.6 Pallet Placards

* * * * *

8.6.5 Line 2 (Content Line)

Line 2 (content line) must meet these standards:

* * * * *

b. *Codes.* The codes shown below must be used as appropriate on Line 2 of sack, tray, and pallet labels.

CONTENT TYPE CODE

* * * * *

[In alphabetical order add new row ''Parcel Select Lightweight'' under ''Content Type'' column, and the corresponding entry ''PSLW'' under the ''Code'' column (right above the Periodicals row).]

* * * * *

17.0 Express Mail Open and Distribute and Priority Mail Open and Distribute

17.1 Prices and Fees

17.1.1 Basis of Price

[Revise 17.1.1 as follows:]

The basis of price for Express Mail and Priority Mail Open and Distribute is as follows:

a. Express Mail postage is based on the weight of the contents of the Open and Distribute shipment. Do not include the tare weight of the external container. The maximum weight for each container is 70 pounds.

b. Priority Mail commercial plus tray box postage is based on the tray box and zone. The maximum weight for each container is 70 pounds.

c. Except as provided above, Priority Mail postage is based on the weight of the contents of the Open and Distribute shipment. Do not include the tare weight of the external container. Do not apply Priority Mail dimensional weight pricing or Periodicals container prices to the external container. The minimum weight requirement for Open and Distribute sacks is 5 pounds, except for Open and Distribute sacks that contain qualified trays (trays prepared under the standards for the applicable class of mail). The maximum weight for each container is 70 pounds.

* * * * *

17.1.5 Payment Method

Postage payment methods are as follows:

* * * * *

[Revise item 17.1.5c as follows:]

c. Priority Mail postage may be paid under any of the options listed in 424.1.1, except Click-N-Ship. Priority Mail postage must be affixed to or hand-stamped on green Tag 161, pink Tag 190, the Open and Distribute tray box, or be part of the address label.

* * * * *

17.5.5 Tray Boxes—Express Mail Open and Distribute and Priority Mail Open and Distribute

[Revise the second sentence of 17.5.5 as follows:]

* * * Mailers must place a 1-foot or 2-foot managed mail tray, extended managed mail tray, or flat tub into the appropriate size tray box.

* * * * *

21.0 Optional Combined Parcel Mailings

21.1 Basic Standards for Combining Parcel Select, Package Services, and Standard Mail Parcels

21.1.1 Basic Standards

[Revise the introductory text of 21.1.1 as follows:]

Package Services parcels, Parcel Select parcels (including Parcel Select Lightweight but not Parcel Select Regional Ground parcels), and Standard Mail parcels in a combined parcel mailing must meet the following standards:

* * * * *

d. Combined mailings must meet the following minimum volume requirements:

[Revise items 21.1.1d1 and 21.1.1d2 as follows:]

1. Standard Mail—Minimum 200 pieces or 50 pounds of Standard Mail parcels.

2. Package Services and Parcel Select—Minimum 50 parcels combined.

* * * * *

21.2 Price Eligibility

* * * * *

21.2.2 Price Application

Apply prices based on the criteria in 400 and the following standards:

[Revise the first sentence of item 21.2.2a as follows:]

a. Standard Mail and Parcel Select machinable and irregular parcels are based on the container level and entry.

* * *

* * * * *

21.3 Mail Preparation

21.3.1 Basic Standards

Prepare combined mailings as follows:

a. Different parcel types must be prepared separately for combined parcel mailings as indicated below:

[Revise items 21.3.1a1 through 21.3.1a4 as follows:]

1. Standard Mail, Parcel Select, Parcel Select Lightweight, and Package Services machinable parcels, or as provided under 401.1.5.2 for lightweight machinable parcels. Use ''STD/PSVC MACH'' for line 2 content labeling.

2. Standard Mail, Parcel Select, Parcel Select Lightweight, and Package Services irregular parcels weighing at least 2 ounces and up to, but not including, 6 ounces (APPS-machinable pieces), except for tubes, rolls, triangles, and other similarly irregularly shaped pieces. Use ''STD/PSVC'' for line 2 content labeling.

3. Standard Mail, Parcel Select, Parcel Select Lightweight and Package Services tubes, rolls, triangles, and similarly irregularly shaped parcels; and all parcels weighing less than 2 ounces (not APPS-machinable pieces). Use ''STD/PSVC IRREG'' for line 2 content labeling.

4. All parcel types may be combined in 5-digit and 5-digit scheme containers. Use ''STD/PSVC PARCELS'' for line 2 content labeling.

* * * * *

[Revise the heading and introductory text of 21.3.2 as follows:]

21.3.2 Combining Standard Mail, Parcel Select, and Package Services Machinable Parcels

Prepare and enter Standard Mail, Parcel Select, Parcel Select Lightweight,

and Package Services machinable parcels, and Standard Mail Marketing parcels 6 ounces or more, as combined machinable parcels as shown in the table below.

* * * * *

[Revise the heading and introductory text of 21.3.3 as follows:]

21.3.3 Combining Standard Mail, Parcel Select, and Package Services Parcels (APPS-Machinable)

Prepare and enter Standard Mail, Parcel Select, Parcel Select Lightweight, and Package Services irregular parcels, and Standard Mail Marketing parcels (weighing at least 2 ounces, but less than 6 ounces, that are not tubes, rolls, triangles, or similarly irregularly shaped parcels) as combined APPS-machinable parcels as shown in the table below.

* * * * *

[Revise the heading and introductory text of 21.3.4 as follows:]

21.3.4 Combining Standard Mail, Parcel Select, and Package Services Irregular Parcels (Not APPS-Machinable)

Prepare and enter Standard Mail, Parcel Select, Parcel Select Lightweight, and Package Services, and Standard Mail Marketing parcels under 2 ounces, as combined not APPS-machinable parcels as shown in the table below.

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708 Technical Specifications

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6.0 Standards for Barcoded Tray Labels, Sack Labels, and Container Placards

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6.2 Specifications for Barcoded Tray and Sack Labels

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6.2.4 3-Digit Content Identifier Numbers

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Exhibit 6.2.4 3-Digit Content Identifier Numbers

CLASS AND MAILING CIN HUMAN-READABLE CONTENT LINE

* * * * *

STANDARD MAIL

* * * * *

[Delete the heading for ''STD Not-Flat-Machinable Pieces Less Than 6 Ounces—Nonautomation'' and the six rows immediately beneath it in their entirety.]

[Delete the heading for ''STD Not-Flat-Machinable 6 Ounces or More—Nonautomation'' under the ''Standard Mail'' category and the five rows immediately beneath it in their entirety.]

* * * * *

PACKAGE SERVICES

* * * * *

[Insert a new category designator heading ''Parcel Select'' immediately above the ''Parcel Select Machinable Parcels'' subcategory as follows:]

PARCEL SELECT

* * * * *

[Insert headings and text for two new subcategories of Parcel Select Lightweight immediately above the ''Combined Package Services and Parcel Select Parcels'' subcategory as follows:]

PARCEL SELECT LIGHTWEIGHT MACHINABLE PARCELS

5-digit sacks ..	670	STD MACH 5D.
5-digit scheme sacks.	670	STD MACH 5D SCH.
ASF sacks	672	STD MACH ASF.
NDC sacks	673	STD MACH NDC.
mixed NDC sacks.	674	STD MACH WKG.

PARCEL SELECT LIGHTWEIGHT IRREGULAR PARCELS

5-digit sacks ..	590	STD IRREG 5D.
5-digit scheme sacks.	590	STD IRREG 5D SCH.
SCF sacks	596	STD IRREG SCF.
ASF sacks	571	STD IRREG ASF.
NDC sacks	570	STD IRREG NDC.
mixed NDC sacks.	594	STD IRREG WKG.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2011–31747 Filed 12–9–11; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 501

Authority To Manufacture and Distribute Postage Evidencing Systems

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: This rule clarifies the responsibility of the providers of Postage Evidencing Systems (PES) to safeguard customer information and maintain regulatory controls over agents operating third-party locations at domestic or international (off shore) facilities.

DATES: This rule is effective January 11, 2012.

ADDRESSES: Mail or deliver written comments to the Manager, Payment Technology, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 3660, Washington, DC 20260–0911. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Payment Technology office.

FOR FURTHER INFORMATION CONTACT: Hank Heren, Business Programs Specialist, Payment Technology, U.S. Postal Service, at (309) 671–8926.

SUPPLEMENTARY INFORMATION: This final rule is intended to assure that the same general rules apply to third-party organizations as apply to the PES providers. The PES providers must ensure that any third party acting on their behalf performing any function maintains the same facilities, records, and procedures to safeguard the security of the PES.

List of Subjects in 39 CFR Part 501

Postal Service.

Accordingly, for the reasons stated, 39 CFR part 501 is amended as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS

■ 1. The authority citation for 39 CFR part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605, Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended); 5 U.S.C. App. 3.

■ 2. Section 501.3 is amended by revising paragraph (d) and adding paragraph (e) as follows:

§ 501.3 Postage Evidencing System provider qualification.

* * * * *

(d) As the provider bears the ultimate responsibility to ensure customer information will not be compromised at any domestic or off shore locations, the provider (as well as its agent operating domestic or off shore locations) will not cause or permit data to be released other than for the operation of the third-party location. The provider shall notify its customer that data relating to its systems is being housed by a third-party location, and shall provide a copy thereof to the Postal Service of such notice to its customers. To the extent that any unauthorized release takes

place, the vendor shall notify the Postal Service immediately upon discovery of any unauthorized use or disclosure of data or any other breach or improper disclosure of data of this agreement by the provider (as well as its agent operating the third-party location) and will cooperate with the Postal Service in every reasonable way to help the Postal Service regain possession of the data and prevent its further unauthorized use or disclosure. In the event that the Postal Service cannot regain possession of the data or prevent its further unauthorized use or disclosure, the provider shall indemnify the Postal Service from damages resulting from its (or such third-party) actions.

(e) Have, or establish, and keep under its active supervision and control adequate facilities for the control, distribution, and maintenance of PES and their replacement or secure disposal or destruction when necessary and appropriate.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2011–31726 Filed 12–9–11; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0872; FRL–9504–7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; General Conformity Requirements for Federal Agencies Applicable to Federal Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Virginia State Implementation Plan (SIP). The revision consists of a regulation adopted by Virginia to incorporate revisions to Federal general conformity requirements promulgated in July of 2006 and in April of 2010. EPA is approving this Virginia SIP revision to update its state general conformity requirements rule for Federal agencies applicable to Federal actions (Virginia's General Conformity Rule) to align with the Federal General Conformity Requirements Rule. This approval action is being taken in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on February 10, 2012, without further notice, unless EPA receives adverse written comment by January 11, 2012. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0872 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0872, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0872. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, or by email at *rehn.brian@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. The following outline is provided to aid in locating information in this preamble.

I. Summary of General Conformity Requirements and the SIP Revision
A. What is general conformity and how does it affect air quality?
II. Virginia's General Conformity SIP Revision
III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia
IV. What action is EPA taking?
V. Statutory and Executive Order Reviews
A. General Requirements
B. Submission to Congress and the Comptroller General
C. Petitions for Judicial Review

I. Summary of General Conformity Requirements and the SIP Revision

A. What is general conformity and how does it affect air quality?

The intent of the general conformity requirement is to prevent the air quality impacts of Federal actions from causing or contributing to a violation of a National Ambient Air Quality Standard (NAAQS) or interfering with the purpose of a SIP. Under the CAA as amended in 1990, Congress recognized that actions taken by Federal agencies could affect state and local agencies' abilities to attain and maintain the NAAQS. Section 176(c) of the CAA, as codified in Title 42 of the United States Code (42 U.S.C. 7506), requires Federal agencies assure that their actions conform to the applicable SIP for attaining and maintaining compliance with the NAAQS. General conformity is defined to apply to NAAQS established pursuant to section 109 of the CAA,

including NAAQS for carbon monoxide (CO), nitrogen dioxide (NO_2), ozone, particulate matter, and sulfur dioxide (SO_2). Because certain provisions of section 176(c) of the CAA apply only to highway and mass transit funding and approval actions, EPA published two sets of regulations to implement section 176(c) of the CAA—one set for transportation conformity and one set for general conformity. The Federal General Conformity Requirements Rule was published in the November 30, 1993 edition of the **Federal Register** (58 FR 63214) and codified in the Code of Federal Regulations at 40 CFR 93.150.

EPA revised the Federal General Conformity Requirements Rule via a final rule issued in the April 5, 2006 edition of the **Federal Register** (65 FR 17003). EPA had promulgated a new NAAQS in July 1997 (62 FR 38652) that established a separate NAAQS for fine particulate smaller than 2.5 micrometers in diameter ($PM_{2.5}$). The prior coarse particulate matter NAAQS promulgated in 1997 pertains to particulate matter under 10 micrometers in diameter (PM_{10}). EPA's 2006 revision to the Federal General Conformity Requirements Rule added requirements for $PM_{2.5}$ for the first time, including annual emission limits of $PM_{2.5}$ above which covered federal actions in NAAQS nonattainment or maintenance areas would be subject to general conformity applicability.

On April 5, 2010, EPA revisited the Federal General Conformity Requirements Rule to clarify the conformity process, authorize innovative and flexible compliance approaches, remove outdated or unnecessary requirements, reduce the paperwork burden, provide transition tools for implementing new standards, address issues raised by Federal agencies affected by the rules, and provide a better explanation of conformity regulations and policies. EPA's April 2010 revised rule simplified state SIP requirements for general conformity, eliminating duplicative general conformity provisions codified at 40 CFR part 93 subpart B and 40 CFR part 51, subpart W. Finally, the April 2010 revision updated Federal General Conformity Requirements Rule to reflect changes to governing laws passed by Congress since EPA's 1993 rule. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) passed by Congress in 1995 contains a provision eliminating the CAA requirement for states to adopt general conformity SIPs. As a result of SAFETEA–LU, EPA's April 2010 rule eliminated the Federal regulatory requirement for states to adopt and submit general conformity SIPs, instead making submission of a general conformity SIP a state option.

II. Virginia's General Conformity SIP Revision

On July, 1, 2011, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision consists of Virginia's General Conformity Rule, Revision F10 to the Virginia Administrative Code (codified at 9VAC5 Chapter 160, with an effective date of March 2, 2011). The purpose of Virginia's SIP revision is to update the Commonwealth's General Conformity Rule to include new Federal general conformity requirements promulgated on July 17, 2006 (71 FR 40420) and on April 5, 2010 (75 FR 17254), described above.

Virginia's General Conformity Rule (9 VAC5 Chapter 160), adopted on December 17, 2010 and effective March 2, 2011 makes numerous changes to the prior, SIP-approved version of the Virginia General Conformity rule (effective January 1, 1998). Specifically, these changes include:

a. Modification of section 5–160–20—Definitions to add the terms ''applicability analysis,'' ''confidential business information (CBI),'' ''conformity determination,'' ''conformity evaluation,'' ''continuing program responsibility,'' ''continuous program to implement,'' ''emissions inventory,'' ''mitigation measure,'' ''restricted information,'' and ''take or state federal action;''

b. Modification of section 5–160–20—Definitions of the terms ''applicable implementation plan,'' ''areawide air quality modeling analysis,'' ''direct emissions,'' ''emissions budgets,'' ''EPA,'' ''Federal Clean Air Act,'' ''indirect emissions,'' ''local air quality modeling analysis,'' ''maintenance area,'' ''metropolitan planning organization,'' ''new source review (NSR) program,'' ''precursors of a criteria pollutant,'' and ''reasonably foreseeable emissions;''

c. Modification of section 5–160–20—Definitions to delete the terms ''emissions that a Federal agency has a continuing program responsibility for'' and ''regionally significant action;''

d. Modification of section 5–160–30—Applicability to reflect that areas newly designated nonattainment for a NAAQS are subject to conformity one year after the nonattainment effective date; and adds applicability provisions for $PM_{2.5}$ nonattainment areas (with respect to de minimus applicability limits of SO_2, nitrogen oxides (NO_X), volatile organic compounds (VOCs), and ammonia emissions); and makes miscellaneous updates to Chapter–160–30—Applicability to reflect the August 2010 revised Federal General Conformity Rule;

e. Modification of section 5–160–110—General to remove outdated provisions;

f. Retitling and modification of Chapter 160–120 to reflect updated cross-references and changes in terminology;

g. Modification of section 5–160–130—Reporting Requirements to reflect to add a section on restricted information and CBI provisions and to add cross-references to that new section;

h. Modification of section 5–160–140—Public Participation to add a new paragraph E addressing treatment of restricted information and CBI, and to add cross-references to that new section;

i. Retitling and modification of section 5–160–150 to update provisions for reevaluation of conformity and to update or remove outdated provisions;

j. Modification of section 5–160–160—Criteria for Determining Conformity of General Federal Actions to update cross references; to allow emissions from the action to be accounted for in a reasonable progress milestone or facility-wide emissions budget; and to allow direct and indirect emissions from a nonattainment or maintenance area to be offset from a nearby area of equal or higher classification, provided emissions from that area contributed to violations in the area of the action; and added language committing the Virginia Department of Environmental Quality (VA DEQ) to update its SIP within 18 months of a conformity demonstration based on a commitment by the Commonwealth to include emissions from the action in the SIP;

k. Modification of section 5–160–170—Procedures for Conformity Demonstrations to make miscellaneous minor corrections and to update outdated provisions; and to modify the cases for which air quality modeling analysis apply;

l. Modification of section 5–160–180—Mitigation of Air Quality Impacts to update cross-references;

m. Addition of section 5–160–181—Conformity Evaluation for Federal Installations With Facility-Wide Emission Budgets to facilitate the use of facility-wide emissions budgets in evaluating conformity;

n. Addition of section 5–160–182—Emissions Beyond the Time Period Covered by the Applicable Implementation Plan to address how Virginia treats Federal agencies that demonstrate conformity for an action

that causes emissions beyond the time period covered by the SIP;

o. addition of section 5–160–183—Timing of Offsets and Mitigation Measures to address timing of offsets and mitigation with respect to a subject federal action, in that such mitigation and offsets are to occur at the same time as the project emission increases; or in the alternative where offsets or mitigation are non-contemporaneous with the action, that said reductions be greater than the resultant emission increases at least as great as applicable NSR ratios for the area; and that the time period for such alternative offset or mitigation schedules not exceed two times the project period; and that such non-contemporaneous offsets shall not cause or contribute to a new violation of, increase the severity of, or delay timely attainment of any NAAQS;

p. Addition of section 5–160–184—Inter-Precursor Mitigation Measures and Offsets to allow the use of inter-precursor offset and mitigation measures, where they are allowed by VADEQ under the approved SIP, technically justified, and have a demonstrated benefit;

q. Addition of section 5–160–185—Early Emission Reduction Credit Programs at Federal Facilities and Installation Subject to Federal Oversight to allow the creation of emissions credits prior to the project (meeting VA DEQ specified requirements) that may then serve as mitigation or offsets for demonstrating conformity instead of being included as part of the baseline emissions analysis for the project; and

r. Repeal of section 5–160–200, which is no longer relevant.

Virginia's prior General Conformity Rule (9VAC5 Chapter 160, effective January 1, 1998) was approved by EPA as part of the Virginia SIP via a final rule published on January 7, 2003 (68 FR 663). Virginia's July 1, 2011 SIP revision that is the subject of this action supersedes the prior approved Virginia SIP.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity Law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211, or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. What action is EPA taking?

EPA has reviewed Virginia's July 1, 2011 SIP revision and found the Commonwealth's SIP to be in compliance with section 176(c) of the CAA and with the requirements of the Federal General Conformity Requirements Rule, codified at 40 CFR part 93, subpart B. Virginia's SIP serves to reduce the impact of Federal actions (not otherwise subject to transportation conformity, which is addressed under a separate Virginia SIP revision), and will prevent subject Federal actions from causing or contributing to a new violation of a NAAQS, or in interfering with attainment or maintenance of a NAAQS or otherwise interfering with the Virginia SIP.

Virginia's July 1, 2011 SIP revision meets the requirements set forth in section 110 of the CAA with respect to adoption and submission of SIP revisions. The approval of Virginia's general conformity SIP revision will strengthen the Virginia SIP and will assist the Commonwealth in complying with Federal NAAQS.

Therefore, EPA is approving Virginia's revision to its general conformity SIP. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on February 10, 2012 without further notice unless EPA receives adverse comment by January 11, 2012. If EPA receives adverse comment, EPA will publish a timely withdrawal in the

Federal Register informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

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 10, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking.

This action to approve Virginia's general conformity SIP revision 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 29, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended under Chapter 160 by:
■ a. Revising the chapter title;
■ b. Removing the two existing entries for section 5–160–20.
■ c. Adding a new entry for section 5–160–20 in numerical order.
■ d. Revising the entries for sections 5–160–30 and 5–160–110.
■ e. Revising the entry for section 5–160–120.
■ f. Revising the entries for sections 5–160–130 and 5–160–140.
■ g. Revising the entries for sections 5–160–150 and 5–160–160.
■ h. Revising the entries for section 5–160–170 and 5–160–180.
■ i. Adding new entries for sections 5–160–181, 5–160–182, 5–160–183, 5–160–184, and 5–160–185 in numerical order.
■ j. Removing the entry for section 5–160–200.

The amendments read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	* * * *	*	*	*
9 VAC 5, Chapter 160 General Conformity				
	Part I General Definitions			
*	* * * *	*	*	*
5–160–20	Terms defined	3/2/11	12/12/11 *[Insert page number where the document begins].*	Number of terms added—10. Number of terms revised—11. Number of Terms deleted—2.
	Part II General Provisions			
5–160–30	Applicability	3/2/11	12/12/11 *[Insert page number where the document begins].*	
*	* * * *	*	*	*
	Part III Criteria and Procedures for Making Conformity Determinations			
5–160–110	General	3/2/11	12/12/2011 *[Insert page number where the document begins].*	
5–160–120	Federal agency conformity responsibility	3/2/11	12/12/11 *[Insert page number where the document begins].*	
5–160–130	Reporting requirements	3/2/11	12/12/11 *[Insert page number where the document begins].*	
5–160–140	Public participation	3/2/11	12/12/11 *[Insert page number where the document begins].*	
5–160–150	Reevaluation of conformity	3/2/11	12/12/11 *[Insert page number where the document begins].*	
5–160–160	Criteria for determining conformity of general conformity actions.	3/2/11	12/12/11 *[Insert page number where the document begins].*	
5–160–170	Procedures for conformity determinations	3/2/11	12/12/11 *[Insert page number where the document begins].*	
5–160–180	Mitigation of air quality impacts	3/2/11	12/12/11 *[Insert page number where the document begins].*	
5–160–181	Conformity evaluation for federal installations with facility-wide emission budgets.	3/2/11	12/12/11 *[Insert page number where the document begins].*	
5–160–182	Emissions beyond the time period covered by the applicable implementation plan.	3/2/11	12/12/11 *[Insert page number where the document begins].*	
5–160–183	Timing of offsets and mitigation measures	3/2/11	12/12/11 *[Insert page number where the document begins].*	
5–160–184	Inter-precursor mitigation measures and offsets	3/2/11	12/12/11 *[Insert page number where the document begins].*	
5–160–185	Early emission reduction credit programs at federal facilities and installation subject to federal oversight.	3/2/11	12/12/11 *[Insert page number where the document begins].*	
*	* * * *	*	*	*

* * * * *

[FR Doc. 2011–31664 Filed 12–9–11; 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–1228]

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.
Arkansas:					
Benton	City of Bella Vista (11–06–1141P).	September 7, 2011; September 14, 2011; *The Bella Vista Weekly Vista.*	The Honorable Frank E. Anderson, Mayor, City of Bella Vista, 406 Town Center Northeast, Bella Vista, AR 72714.	January 12, 2012	050511
Benton	City of Bentonville (11–06–1914P).	August 30, 2011; September 6, 2011; *The Benton County Daily Record.*	The Honorable Bob McCaslin, Mayor, City of Bentonville, 117 West Central Avenue, Bentonville, AR 72712.	January 4, 2012	050012
Benton	Unincorporated areas of Benton County (11–06–1914P).	August 30, 2011; September 6, 2011; *The Benton County Daily Record.*	The Honorable Robert Clinard, Benton County Judge, 215 East Central Avenue, Bentonville, AR 72712.	January 4, 2012	050419
New Jersey:					

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.
Bergen	Township of Mahwah (11–02–0617P).	February 7, 2011; February 14, 2011; *The Record*.	The Honorable John DaPuzzo, Mayor, Township of Mahwah, 475 Corporate Drive, Mahwah, NJ 07430.	June 14, 2011	340049
Bergen	Borough of Ramsey (11–02–0617P).	February 7, 2011; February 14, 2011; *The Record*.	The Honorable Christopher C. Botta, Mayor, Borough of Ramsey, 33 North Central Avenue, Ramsey, NJ 07446.	June 14, 2011	340064
Middlesex	Township of Cranbury (10–02–0830P).	September 16, 2011; September 23, 2011; *The Cranbury Press*.	The Honorable David J. Stout, Mayor, Township of Cranbury, 23–A North Main Street, Cranbury, NJ 08512.	December 8, 2010	340258
New York: Dutchess.	Town of East Fishkill (10–02–0092P).	February 23, 2011; March 2, 2011; *The Poughkeepsie Journal*.	The Honorable John J. Hickman, Jr., Supervisor, Town of East Fishkill, 330 State Route 376, Hopewell Junction, NY 12533.	August 16, 2011	361336
Oklahoma: Oklahoma.	City of Oklahoma City (10–06–1424P).	September 13, 2011; September 20, 2011; *The Journal Record*.	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma City, OK 73102.	January 18, 2012	405378
Pennsylvania: Lycoming.	Township of Muncy (10–03–0172P).	February 23, 2011; March 2, 2011; *The Williamsport Sun-Gazette*.	The Honorable Paul Wentzler, Chairman, Township of Muncy Board of Supervisors, 1922 Pond Road, Pennsdale, PA 17756.	June 30, 2011	421847
Texas:					
Collin	City of Wylie (11–06–0830P).	August 24, 2011; August 31, 2011; *The Wylie News*.	The Honorable Eric Hogue, Mayor, City of Wylie, 300 Country Club Road, Building 100, Wylie, TX 75098.	December 29, 2011	480759
Kendall	City of Boerne (10–06–3371P).	August 12, 2011; August 19, 2011; *The Boerne Star*.	The Honorable Mike Schultz, Mayor, City of Boerne, 402 East Blanco Road, Boerne, TX 78006.	December 19, 2011	480418
Kendall	Unincorporated areas of Kendall County (10–06–3371P).	August 12, 2011; August 19, 2011; *The Boerne Star*.	The Honorable Gaylan Schroeder, Kendall County Judge, 201 East San Antonio Street, Suite 120, Boerne, TX 78006.	December 19, 2011	480417

(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. 2011–31724 Filed 12–9–11; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 76, No. 238
Monday, December 12, 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–2011–1319; Directorate Identifier 2011–NM–143–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 777–200 and –300 series airplanes equipped with Rolls-Royce RB211 Trent 800 engines. This proposed AD was prompted by reports of events related to thermal damage of the thrust reverser (T/R) inner wall on Rolls-Royce RB211 Trent 800 engines. This proposed AD would require replacing the bleed valve parts and tubing with new parts and tubing on the left and right engines. Additionally, this proposed AD would require installing Aero-Engine database (AEDB) software in the airplane information management system (AIMS) hardware. We are proposing this AD to eliminate T/R thermal damage caused by excessive heat downstream of the 8th stage IP8 exhaust ports, which could result in T/R structural failure. This failure could result in large pieces of the T/R or adjacent components departing the airplane. A separated T/R piece could result in a rejected takeoff (RTO) and cause asymmetric thrust and consequent loss of control of the airplane during reverse thrust operations. Separated components could also cause structural damage to the airplane, damage to other airplanes, or injury to people on the ground.

DATES: We must receive comments on this proposed AD by January 26, 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 Boeing 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; phone: (206) 544–5000, extension 1; fax: (206) 766–5680; email: *me.boecom@boeing.com;* Internet: *https://www.myboeingfleet.com.* For Rolls-Royce service information identified in this AD, contact Rolls-Royce plc, P.O. Box 31, DERBY, DE24 8BJ, UK; telephone 011 44 1332 242424; fax 011 44 1332 249936. 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: Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; *phone:* (425) 917–6509; *fax:* (425) 917–6590; *email: Rebel.Nichols@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–2011–1319; Directorate Identifier 2011–NM–143–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 14 reports of events related to thermal damage of the T/R inner wall on Rolls-Royce RB211 Trent 800 engines. The events have included air turnbacks, in-flight engine shutdowns, T/R inner wall panel sections and parts being separated from the airplane, collapse of the inner T/R inner wall panel, and engine fire loop fault messages.

Boeing issued Alert Service Bulletin 777–78A0059, dated February 24, 2005; and Special Attention Service Bulletin 777–78–0060, dated February 24, 2005; to provide instructions for inspecting the T/R inner wall panel structure and sealing the insulation blankets to prevent hot under-cowl air from contacting the T/R inner wall panel. Since those service bulletins were released, there have been four T/R events on airplanes on which those service bulletins had not been fully accomplished and 10 T/R events on airplanes on which those service bulletins had been accomplished.

There are two separate causes of the thermal degradation. The first cause is the IP8 exhaust washing the outer side of the inner wall. This cause is addressed by this proposed AD through modification of the IP8 bleed system. The second cause is the inadequate thermal protection system. We are considering further rulemaking to address this cause.

This thermal degradation, if not corrected, could result in the T/R being damaged by excessive heat, which could result in thrust reverser structural failure. This failure could result in large pieces of the T/R or adjacent components departing the airplane. A separated T/R piece could result in an RTO and cause asymmetric thrust and consequent loss of control of the airplane during reverse thrust operations. Separated components could also cause structural damage to the airplane, damage to other airplanes, or injury to people on the ground.

Relevant Service Information

We reviewed Boeing Service Bulletin 777–75A0002, Revision 1, dated October 26, 2011. This service information describes procedures for replacing bleed valve parts and tubing (including IP8 bleed valve ducts, duct bases, HP3 air tubes and associated parts) with new parts and tubing on the left and right Rolls-Royce RB211 Trent 800 engines.

Boeing Service Bulletin 777–75A0002, Revision 1, dated October 26, 2011, refers to Boeing Special Attention Service Bulletin 777–31–0177, dated September 23, 2010, as a concurrent requirement. This concurrent service bulletin describes procedures for installing the AEDB software, software part number 3110–BCG–00R–06, media set part number 243W0033–7, in the airplane AIMS hardware.

Additionally, Boeing Service Bulletin 777–75A0002, Revision 1, dated October 26, 2011, refers to Rolls-Royce Service Bulletin RB.211–75–G466, dated June 20, 2011, as an additional source of guidance for replacing bleed valve parts and tubing.

Other Relevant Rulemaking

We issued AD 2005–07–24, Amendment 39–14049 (70 FR 18285, April 11, 2005), for Model 777–200 and –300 series airplanes equipped with Rolls-Royce Model RB211 TRENT 800 engines. That AD requires inspecting the thrust reversers for damage of the insulation blankets, the inner wall, and the compression and drag link fittings; and repair if necessary. That AD also requires applying sealant to certain areas of the thrust reverser. That AD refers to Boeing Alert Service Bulletin 777–78A0059, dated February 24, 2005, for doing the required actions. That AD was prompted by two reports of thrust reverser failure; investigation revealed that the inner wall of the thrust reversers had collapsed from exposure to hot engine core compartment air. We issued that AD to prevent failure of a thrust reverser and adjacent components and their consequent separation from the airplane, which could result in an RTO and cause asymmetric thrust and consequent loss of control of the airplane during reverse thrust operation. If an RTO does not occur, these separated components could cause structural damage to the airplane or damage to other airplanes and possible injury to people on the ground.

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 Boeing service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 55 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	16 work-hours × $85 per hour = $1,360	$75,000	$76,360	$4,199,800
Installation of AEDB software	1 work-hour × $85 per hour = $85	0	85	4,675

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

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–2011–1319; Directorate Identifier 2011–NM–143–AD.

(a) Comments Due Date

We must receive comments by January 26, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200 and –300 series airplanes, certificated in any category, equipped with Rolls-Royce RB211 Trent 800 engines, as identified in Boeing Service Bulletin 777–75A0002, Revision 1, dated October 26, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 78, Exhaust.

(e) Unsafe Condition

This AD was prompted by reports of events related to thermal damage of the thrust reverser (T/R) inner wall on Rolls-Royce RB211 Trent 800 engines. We are issuing this AD to eliminate T/R thermal damage caused by excessive heat downstream of the 8th stage IP8 exhaust ports, which could result in T/R structural failure. This failure could result in large pieces of the T/R or adjacent components departing the airplane. A separated T/R piece could result in a rejected takeoff and cause asymmetric thrust and consequent loss of control of the airplane during reverse thrust operations. Separated components could also cause structural damage to the airplane, damage to other airplanes, or injury to people on the ground.

(f) Compliance

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

(g) Replacement of Bleed Valve Parts and Tubing

Within 36 months after the effective date of this AD, replace the bleed valve parts and tubing with new parts and tubing on the left and right engines, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–75A0002, Revision 1, dated October 26, 2011.

Note 1: The service bulletin accomplishment instructions 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.

(h) Concurrent Requirements

Prior to or concurrently with doing the actions required by paragraph (g) of this AD, install Aero-Engine database software, software part number 3110–BCG–00R–06, media set part number 243W0033–7, in the airplane information management system hardware, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–31–0177, dated September 23, 2010.

(i) Maintenance

Note 2: After accomplishing the actions required by paragraphs (g) and (h) of this AD, maintenance and/or preventative maintenance under 14 CFR part 43 is permitted provided the maintenance does not result in changing the AD-mandated configuration (reference 14 CFR 39.7).

(j) Credit for Actions Accomplished in Accordance With Previous Service Information

Replacing the bleed valve parts and tubing with new parts and tubing on the left and right engines in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–75A0002, dated January 12, 2011, before the effective date of this AD is acceptable for compliance with the corresponding replacements required by paragraph (g) of this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle 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.

(l) Related Information

(1) For more information about this AD, contact Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; *phone:* (425) 917–6509; *fax:* (425) 917–6590; *email: Rebel.Nichols@faa.gov.*

(2) For Boeing 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; *phone:* (206) 544–5000, extension 1; *fax:* (206) 766–5680; *email: me.boecom@boeing.com; Internet: https://www.myboeingfleet.com.*

(3) For Rolls-Royce service information identified in this AD, contact Rolls-Royce plc, P.O. Box 31, DERBY, DE24 8BJ, UK; telephone 011 44 1332 242424; fax 011 44 1332 249936. 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 December 5, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–31738 Filed 12–9–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1318; Directorate Identifier 2010–NM–274–AD]

RIN 2120–AA64

Airworthiness Directives; 328 Support Services GmbH Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all 328 Support Services GmbH (Type Certificate previously held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and –300 airplanes that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

An incident has been reported with a Dornier 328–100 aeroplane, where the right-hand (RH) power lever jammed in flight-idle position during the landing roll-out. The aeroplane was stopped by excessive braking.

The reason for the jamming was that the cockpit door locking device * * * had fallen off the RH cockpit wall, blocking the RH power/condition lever pulley/cable cluster below the door. * * *

This condition, if not corrected, could cause interference with the engine and/or flight control cables, possibly resulting in reduced control of the aeroplane.

* * * * *

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

DATES: We must receive comments on this proposed AD by January 26, 2012.

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

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

- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact 328 Support Services GmbH, Global Support Center, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany; telephone +49 8153 88111 6666; fax +49 8153 88111 6565; email *gsc.op@328support.de;* Internet *http://www.328support.de.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1318; Directorate Identifier 2010–NM–274–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On September 30, 2009, we issued AD 2009–21–06, Amendment 39–16043 (74 FR 53151, October 16, 2009). That AD required actions intended to address an unsafe condition on 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and –300 airplanes.

Since we issued AD 2009–21–06, Amendment 39–16043 (74 FR 53151, October 16, 2009), the manufacturer has provided two options to fix the locking device, depending on airplane configuration: Installing an improved locking device for the cockpit door, or installing a gap filler between the cockpit door and the cockpit wall. We have determined these actions are necessary to address the identified unsafe condition. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0169, dated August 13, 2010 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> An incident has been reported with a Dornier 328–100 aeroplane, where the right-hand (RH) power lever jammed in flight-idle position during the landing roll-out. The aeroplane was stopped by excessive braking.
>
> The reason for the jamming was that the cockpit door locking device Part Number (P/N) 001A252A3914012 had fallen off the RH cockpit wall, blocking the RH power/condition lever pulley/cable cluster below the door. Although the affected aeroplane had been modified, the technical investigation showed that a loose Cockpit Door Locking device could also occur on 328–100 and 328–300 aeroplanes with a standard installation.
>
> This condition, if not corrected, could cause interference with the engine and/or flight control cables, possibly resulting in reduced control of the aeroplane.
>
> To address that unsafe condition, EASA issued AD 2009–0082 [which corresponds to FAA AD 2009–21–06, Amendment 39–16043 (74 FR 53151, October 16, 2009)] as an interim solution, to require a one-time inspection of the cockpit door locking device and the surrounding area and the reporting of all findings to the TC [type certificate] holder.
>
> Since that AD was issued, the TC holder has developed an improved cockpit door locking device, P/N 001A252A3914016. Consequently, this [EASA] AD retains the requirements of [EASA] AD 2009–0082 [FAA AD 2009–21–06, Amendment 39–16043 (74 FR 53151, October 16, 2009)], which is superseded, and requires the replacement of the current P/N 001A252A3914012 with new designed P/N 001A252A3914016 cockpit door locking device, or the removal of the cockpit door locking device P/N 001A252A3914012 and the installation of a gap filler, as applicable to aeroplane configuration.

The required actions include performing operational tests, and repair if necessary. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

328 Support Services has issued the following service bulletins:

- SB–328–25–492, dated March 18, 2010 (for Model 328–100 airplanes);
- SB–328J–25–244, dated March 18, 2010 (for Model 328–300 airplanes);
- SB–328–25–491, dated March 18, 2010 (for Model 328–100 airplanes); and
- SB–328J–25–243, dated March 18, 2010 (for Model 328–300 airplanes).

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 59 products of U.S. registry.

The actions that are required by AD 2009–21–06, Amendment 39–16043 (74 FR 53151, October 16, 2009), and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it would take 6 work-hours per product, depending on airplane configuration, to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost $2,315 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $166,675, or $2,825 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–16043 (74 FR 53151, October 16, 2009) and adding the following new AD:

328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH): Docket No. FAA–2011–1318; Directorate Identifier 2010–NM–274–AD.

Comments Due Date

(a) We must receive comments by January 26, 2012.

Affected ADs

(b) This AD supersedes AD 2009–21–06, Amendment 39–16043 (74 FR 53151, October 16, 2009).

Applicability

(c) This AD applies to 328 Support Services GmbH (Type Certificate previously held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and –300 airplanes; certificated in any category; all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

An incident has been reported with a Dornier 328–100 aeroplane, where the right-hand (RH) power lever jammed in flight-idle position during the landing roll-out. The aeroplane was stopped by excessive braking.

The reason for the jamming was that the cockpit door locking device * * * had fallen off the RH cockpit wall, blocking the RH power/condition lever pulley/cable cluster below the door. * * *

This condition, if not corrected, could cause interference with the engine and/or flight control cables, possibly resulting in reduced control of the aeroplane.

* * * * *

Compliance

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

Restatement of Certain Requirements of AD 2009–21–06, Amendment 39–16043 (74 FR 53151, October 16, 2009)

(g) Within 3 months after November 20, 2009 (the effective date of AD 2009–21–06, Amendment 39–16043 (74 FR 53151, October 16, 2009)), do a detailed visual inspection of the cockpit door locking device and the surrounding area for proper installation, in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328–25–485 or SB–328J–25–235, both dated January 28, 2009, as applicable.

(h) If any discrepancy is found during the inspection specified in paragraph (g) of this AD, before further flight, do the corrective action, in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328–25–485 or SB–328J–25–235, both dated January 28, 2009, as applicable.

New Requirements of This AD

(i) Within 4,000 flight hours or 24 months after the effective date of this AD, whichever occurs first, do the applicable actions specified in paragraph (i)(1) or (i)(2) of this AD.

(1) For airplanes on which a door locking device with Option 521K010 is installed: Remove the locking device of the cockpit door, part number (P/N) 001A252A3914012, install the gap filler parts, and do operational tests, in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328–25–492, dated March 18, 2010 (for Model 328–100 airplanes); or 328 Support Services Service Bulletin SB–328J–25–244, dated March 18, 2010 (for Model 328–300 airplanes).

(2) For airplanes on which a door locking device with Option 521K010 is not installed: Replace the locking device of the cockpit door, P/N 001A252A3914012, with a new locking device, P/N 001A252A3914016, and do operational tests, in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328–25–491, dated March 18, 2010 (for Model 328–100 airplanes); or 328 Support Services Service Bulletin SB–328J–25–243, dated March 18, 2010 (for Model 328–300 airplanes).

(j) If any operational test fails during the actions specified in paragraph (i)(1) or (i)(2) of this AD, before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or EASA (or its delegated agent).

(k) As the effective date of this AD, no person may install a locking device of the cockpit door having P/N 001A252A3914012 on any airplane.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

(1) Although the MCAI specifies that after doing the modification, installing the affected part is prohibited, this AD specifies that as of the effective date of this AD, installing the affected part is prohibited.

(2) Although the MCAI tells you to submit information to the manufacturer, this AD specifies that such submittal is not required.

Other FAA AD Provisions

(l) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be emailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(m) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0169, dated August 13, 2010; and the service bulletins specified in paragraphs (m)(1) through (m)(5) of this AD; for related information.

(1) 328 Support Services Service Bulletin SB–328–25–485, dated January 28, 2009.

(2) 328 Support Services Service Bulletin SB–328J–25–235, dated January 28, 2009.

(3) 328 Support Services Service Bulletin SB–328–25–491, dated March 18, 2010.

(5) 328 Support Services Service Bulletin SB–328J–25–243, dated March 18, 2010.

(4) 328 Support Services Service Bulletin SB–328–25–492, dated March 18, 2010.

(5) 328 Support Services Service Bulletin SB–328J–25–244, dated March 18, 2010.

Issued in Renton, Washington, on December 5, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–31739 Filed 12–9–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 50, 55, and 58

[Docket No. FR–5423–P–01]

RIN 2501–AD51

Floodplain Management and Protection of Wetlands

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update and modify HUD's regulations governing the protection of wetlands and floodplains. With respect to wetlands, the proposed rule would codify existing procedures for Executive Order 11990 (E.O. 11990), Protection of Wetlands. HUD's current policy is to require the use of E.O. 11990's 8 Step Process for floodplains for actions performed by the Department or actions performed with HUD financial assistance. This rule will codify this policy and thereby improve consistency and increase transparency by placing the E.O. requirements in regulation. In certain instances, the new wetlands procedures will allow recipients of HUD assistance to use permits issued under section 404 of the Clean Water Act in lieu of five steps of the E.O. 11990's 8 Step Process, thereby streamlining the wetlands decision-making processes. With respect to floodplains, the proposed rule would prohibit HUD funding (*e.g.,* Community Development Block Grants, HOME Investment Partnerships Program, Choice Neighborhoods, etc.) or Federal Housing Administration (FHA) mortgage insurance for the construction of new structures in Coastal High Hazard Areas. The current regulations allow for such new construction so long as the construction, is in accordance with certain standards. This change is anticipated to have minimal effect, since HUD receives few requests to fund or insure mortgages for new construction in these areas.

The proposal would also make several other changes to HUD's floodplain and wetland regulations; the changes are designed to streamline floodplain and wetland environmental procedures and avoid unnecessary delays in processing. The procedures proposed by this rule would apply to HUD and to state, tribal, and local governments when they are responsible for environmental reviews under HUD programs.

DATES: *Comment Due Date:* February 10, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Charles Bien, Acting Director Office of Environment and Energy, Office of Community Planning and Development,

Department of Housing and Urban Development, 451 7th Street SW., Room 7250, Washington, DC 20410–8000. For inquiry by phone or email, contact Jerimiah Sanders, Environmental Review Division, Office of Environment and Energy, Office of Community Planning and Development, at (202) 402–4571 (this is not a toll-free number), or via email at *Jerimiah.J.Sanders@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Federal departments and agencies (agencies) are charged by executive orders with incorporating floodplain management goals and wetland protection considerations in their respective agency's planning, regulatory, and decision-making processes. A floodplain refers to the lowland and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands that, at a minimum, are subject to a one percent or greater chance of flooding in any given year (often referred to as the ''100-year'' flood). Wetlands refer to those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

Executive Order 11988 (E.O. 11988) entitled ''Floodplain Management,'' dated May 24, 1977 (42 FR 26951), requires each Federal agency to identify and evaluate practicable alternatives to locating in the floodplain. If it is not practicable to avoid the floodplain, then each Federal agency must identify and evaluate the potential effects of any actions it may take in or affecting a floodplain. The goals of the Executive Order are: to avoid adversely impacting the natural functions of floodplains wherever possible; to ensure that the agency's planning programs and budget requests reflect consideration of flood hazards and floodplain management, including the restoration and preservation of such land areas as natural undeveloped floodplains; and to prescribe procedures to implement the policies and procedures of this Executive Order.

Executive Order 11990 (E.O. 11990), entitled ''Protection of Wetlands,'' dated May 24, 1977, (42 FR 26961) directs each agency to provide leadership and take action to minimize the destruction, loss, or degradation of wetlands. E.O. 11990 also directs each agency to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for: (1) Acquiring, managing, and disposing of Federal lands and facilities; (2) providing federally undertaken, financed, or assisted construction or improvements; and (3) conducting Federal activities and programs affecting land use.

Although HUD has regulations on floodplain management at 24 CFR part 55, these regulations do not codify procedures for implementing E.O. 11990. Consistent with the intent of the executive orders, as noted above, HUD has relied to date on existing procedures established for floodplain management under 24 CFR part 55 to guide wetland protection considerations in planning, regulatory, and decision making processes. This rule proposes to codify in 24 CFR part 55 the procedures applicable to wetlands and authorized by E.O. 11990. Additionally, the hurricanes of 2005, particularly Hurricane Katrina, emphasized the need to review existing procedures on the protection of wetlands to determine how such procedures may be made more effective.

II. This Proposed Rule

Proposed Changes—Basis for Proposed Changes

First, this rule proposes to codify procedures authorized by E.O. 11990. As noted in the preceding section of this preamble, HUD has not promulgated regulations to reflect E.O. 11990. E.O. 11990 was issued in furtherance of the National Environmental Policy Act of 1969 (NEPA) as amended (42 U.S.C. 4321 *et seq.*). Through this rule, HUD proposes to adopt in regulation the procedures of E.O. 11990, in order to aid in the consistent application of policy and to increase compliance with it, by making the policy readily available in HUD's environmental regulations.

The wetland procedures authorized by E.O. 11990 require the completion of an eight-step process, referred to below as the ''8 Step Process.'' The 8 Step Process is administered by HUD, state governments, or units of local or tribal governments. Step 1 requires a determination of whether or not the proposed project to be developed with HUD financial assistance will be in a wetland. If so, Step 2 requires that a public notice be issued to inform interested parties that a proposal to consider an action in a wetland has been made. Following this notice, Step 3 requires the identification and evaluation of practicable alternatives to avoid locating the project in a wetland. Such an evaluation of alternatives shall include, for example, alternative locations outside the floodplain, feasible technological alternatives, and social values such as aesthetics, historic and cultural values, and land use patterns. Step 4 requires the identification and evaluation of the potential direct and indirect impacts associated with the occupancy or modification of wetlands. Step 4 also requires the identification of the potential direct and indirect support of floodplain and wetlands development that could result from the proposed action. Direct support consists of projects located in the floodplain such as housing, public service structures, or office buildings that require additional investment such as food service or parking. Indirect support for floodplain or wetland development can be caused by infrastructure that can induce further development due to proximity to the floodplain or wetland. Examples of indirect support include water and waste water systems, power supplies, roads, airports, and mass transit systems. Step 5 requires an analysis of practicable modifications and changes to the proposal to minimize adverse impacts to the wetlands and to the project as a result of its proposed location in wetlands. Under Step 6, the alternatives and the proposed wetland site are then reevaluated. If it is determined that there is no practicable alternative to the proposed wetland development, Step 7 requires a second notice to be issued to the public stating that the decision has been made and providing details associated with the decision. After this second notice, Step 8 implements the action, including any mitigating measures that were established during the decision-making process. This evaluation process requires the same eight steps as E.O. 11988, Floodplain Management, which is currently being implemented by HUD and other Federal agencies.

The rule also proposes to require appropriate and practicable compensatory mitigation for adverse impacts to more than one acre of wetlands. Compensatory mitigation resulting from other Federal, state, or local governmental requirements can be used to fulfill this requirement. Compensatory mitigation approaches include permittee-responsible mitigation, mitigation banking, in-lieu

fee mitigation, the use of preservation easements or protective covenants, and any form promoted and approved by the authority of the state governments or the Federal Government. In certain situations, compensatory mitigation may not be practicable or appropriate due to the cost of compensatory mitigation in a state or watershed, a lack of funds within the project, or other reasons that make compensatory mitigation impossible. One example would be an Alaska Native village that is mainly in a wetland and is surrounded by Federal and state land. The cost in this situation could make compensatory mitigation inappropriate or impracticable.

Second, this rule proposes to allow HUD and HUD's recipients of assistance to use permits issued under section 404 of the Clean Water Act (33 U.S.C. 1344) (Section 404) in lieu of performing the first five steps of the 8 Step Process. This streamlined option will reduce costs and the processing time for complying with parts of the 8 Step Process for which adhering to the standard process affords minimal substantive benefit. The Clean Water Act establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating water quality standards for surface waters.[1] Section 404 of the Clean Water Act requires a landowner to obtain a permit from the U.S. Army Corps of Engineers (USACE) prior to beginning any nonexempt activity involving the placement of dredged or fill material in waters of the United States, including wetlands.

If the applicant has obtained an individual USACE Section 404 permit and submits the permit with its application for a HUD program, then HUD or the responsible entity will be required to complete only the last three steps of the 8 Step Process, and thus will be able to skip § 55.20(a) through (e). The last three steps include the publication of a single public notice, which will fulfill the early notice requirement of E.O. 11990 and thereby avoid the requirement under the usual 8 Step Process for the publication of two notices. If HUD or the responsible entity determines that a reevaluation or repeat of any of the steps is necessary to comply with E.O. 11990, HUD or the responsible entity will reevaluate and complete the necessary steps of the 8 Step Process. None of the 8 steps or any provisions of this rule should be interpreted as being requirements of the USACE's regulatory program. USACE has its own regulations, policies, and procedures, none of which are impacted by this proposed rulemaking.

Although Section 1(b) of E.O. 11990 excludes the issuance of permits for activities in nonfederal wetlands from coverage under the Executive Order, reliance on the Section 404 permitting process fulfills the Executive Order's intent. The exclusion for permits reflects the use of similar procedures and criteria for approval of a permitting action, including an initial public notice, consideration of practicable alternatives, and minimization of harm.

The issuance of a Section 404 permit may not substitute for processing under the 8 Step Process and compliance with E.O. 11988 where the property is also located in a floodplain. Section 404 of the Clean Water Act also allows states to administer an individual and general permit program in lieu of the USACE permit program. Section 404 permits issued by state agencies may be used in lieu of the first five steps of the E.O. 11990 process under this regulation.

All wetlands subject to Section 404 of the Clean Water Act are wetlands for the purposes of E.O. 11990. However, the combined process proposed by this rule will not apply in all instances, because wetlands not considered waters of the United States under Section 404 of the Clean Water Act are typically wetlands for the purposes of E.O. 11990. Wetlands not subject to Section 404 of the Clean Water Act must be processed under the proposed 8 Step Process.

Third, the proposed rule would broaden the use of the current 5 Step Process for repairs, rehabilitations, and improvements. The 5 Step Process is an abbreviated 8 Step Process that omits Steps 2, 3, and 7. Steps 2, 3, and 7 require the publication of two notices and the consideration of alternative sites. The 5 Step Process is currently used for a variety of activities specified in 24 CFR 55.12(a), such as disposition of HUD-owned properties and mortgage insurance for the purchase, refinancing, or rehabilitation of existing multifamily structures, which are not subject to certain additional conditions. An 8 Step Process is currently required for financial assistance, other than mortgage insurance, for rehabilitation of nonresidential or residential structures with more than four housing units located in floodplains. Rehabilitations subject to the 5 Step Process are any repair, reconstruction, modernization, or improvement of a structure that does not result in a 20 percent increase in the number of dwelling units or in the average peak number of customers and employees. The proposed rule will allow these rehabilitations of residential properties and nonresidential properties, including weatherization, to forego Steps 2, 3, and 7 of the 8 Step Process. As outlined above, Steps 2, 3, and 7 are the consideration of alternatives at Step 3 and the publication of the preliminary and final notice at Steps 2 and 7, respectively. This change will streamline project approvals and allow more resources to be devoted toward projects with greater impacts on floodplains and wetlands.

Fourth, the proposed rule would update a provision in HUD's regulations to require the use of preliminary flood maps and advisory base flood elevations in post-disaster situations where the Federal Emergency Management Agency (FEMA) has determined that existing Flood Insurance Rate Maps (FIRMs) may not be the ''best available information'' for floodplain management purposes. Currently, HUD's regulations at 24 CFR 55.2(b)(1) indicate that FIRMs are the only source of data for compliance with the 8 Step Process. In the wake of Hurricane Katrina, FEMA determined that the existing FIRMs may not reflect actual flood risk and issued Advisory Base Flood Elevations and Preliminary FIRMs. This change in map usage requirements will bring HUD's regulations into alignment with the requirement that agencies are to use the ''best available information'' located at Section 2(a)(1) of E.O. 11988. In addition, this change will provide greater consistency with floodplain management activities across HUD and FEMA programs.

Fifth, the proposed rule would exempt certain activities from the 8 Step Process for floodplain management compliance. Exempted activities include leasing structures insured with the National Flood Insurance Program (NFIP)[2] and not located in a floodway or Coastal High Hazard Area. The exemption for leased structures also

[1] The Federal Water Pollution Control Act enacted in 1948 was significantly reorganized and expanded in 1972. ''Clean Water Act'' became the Act's common name with amendments in 1977.

[2] Congress established the National Flood Insurance Program with the passage of the National Flood Insurance Act of 1968. The NFIP is a Federal program enabling property owners in participating communities to purchase insurance as a protection against flood losses in exchange for state and community floodplain management regulations that reduce future flood damages. Participation in the NFIP is based on an agreement between communities and the Federal Government. If a community adopts and enforces a floodplain management ordinance to reduce future flood risk to new construction in floodplains, the Federal Government will make flood insurance available within the community as a financial protection against flood losses. This insurance is designed to provide an insurance alternative to disaster assistance to reduce the escalating costs of repairing damage to buildings and their contents caused by floods. See *http://www.fema.gov/library/viewRecord.do?id=1480*.

requires that: (1) The leased structure is an existing structure; and (2) the structure is insured for its total value or up to the NFIP maximum as of the commencement of the lease term. If HUD or the grantee does not want to obtain flood insurance for the leased structure, the project can proceed by performing the 8 Step Process. Critical actions (*e.g.,* hospitals, nursing homes, and emergency services) in a 100- or 500-year floodplain are not covered by this exemption. Other exempt activities include special projects to increase access for those with special needs, activities involving ships or water-borne vessels, and activities that restore and preserve natural and beneficial functions of floodplains and wetlands. These changes will reduce unnecessary delays.

Sixth, the proposed rule would prohibit HUD funding or FHA mortgage insurance for the construction of new structures in Coastal High Hazard Areas. This change would not affect existing structures. Existing structures would be eligible to receive funding, and disaster assistance would continue to be available for reconstruction of structures destroyed by a disaster. FHA mortgage insurance would continue to be available as long as the mortgage insurance is not used to finance new construction. HUD's current regulations allow new construction in Coastal High Hazard Areas, if new structures are constructed to FEMA's standards at 44 CFR 60.3(e) and are not critical actions. (''Critical action'' refers to any activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons, or damage to property. See 24 CFR 55.2.) This change will prevent new development in Coastal High Hazard Areas, which will result in less development in areas of higher risk to lives and property. However, as discussed later in this preamble, HUD currently receives few requests to fund new construction or provide FHA mortgage insurance for new construction in Coastal High Hazard Areas. The change will also further align HUD's development standards with those of FEMA grant programs.

Seventh, 24 CFR 55.26 would be amended to make clear that under the executive orders, HUD or a responsible entity may adopt previous review processes that were performed by another responsible entity or HUD. This change will prevent duplicative processing in cases where a project may have multiple recipients contributing funding or has funding that may not allow the responsible entity to perform the review. Nothing in the proposed rule or part is binding or applicable to the USACE or USACE processes. USACE has its own regulations, policies, and procedures, which are not impacted by this part.

Finally, the proposed rule will amend 24 CFR 58.35(a)(3)(i) by modifying the categorical exclusion from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) for minor rehabilitation of one- to four-unit residential properties, by removing the qualification that the footprint of the structure may not be increased in a floodplain or wetland. Currently, four units can be constructed in a floodplain or wetland as an individual action under the categorical exclusion in § 58.35(a)(4)(i), but rehabilitated structures in a floodplain or wetland require a full environmental assessment. It is logically inconsistent to require a greater review for minor rehabilitations than for new construction. The proposed rule resolves this inconsistency but will still require part 55 processing for construction in floodplains and wetlands. HUD believes that this change will eliminate needless assessments without contributing to environmental degradation. HUD is basing its conclusion on a recent survey of its environmental experts.

Solicitation of Specific Comment

In addition to these proposed changes, HUD is also specifically soliciting public comment regarding a potential change to § 55.20(e). The change would require that all new construction of ''critical actions'' in the 100- or 500-year floodplain be elevated to the 500-year base flood elevation. A ''critical action'' is ''any activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons, or damage to property.'' Examples of critical actions include hospitals, nursing homes, emergency response centers, and flammable or explosive materials storage facilities. This potential change would make HUD's regulations in 24 CFR part 55 more consistent with guidance documents issued by the Water Resources Council and consistent with FEMA's E.O. 11988 regulations at 44 CFR 9.11(d)(3). This change would increase the current elevation standard for critical actions from the 100-year base flood level to the 500-year level.

Specific Regulations Proposed for Amendment

The specific regulatory revisions proposed to be made to HUD's regulations are as follows:

Protection and Enhancement of Environmental Quality (Part 50)

Section 50.4 of HUD's regulations in 24 CFR part 50, which address related Federal laws and authorities, would be amended to have § 50.4(b), which addresses flood insurance, floodplain management, and wetlands protection, reflect the change in the title of 24 CFR part 55 to include ''Protection of Wetlands'' and reflect implementation of E.O. 11990 in 24 CFR part 55.

Floodplain Management (Part 55)

A. Purpose and Basic Responsibility

Section 55.1, which addresses the purpose and basic responsibilities of floodplain management, would be updated to better describe how to evaluate impacts on floodplains and wetlands and to provide that part 50 now explicitly address procedures on wetland protection. The mandatory purchase of flood insurance under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) is currently required for federally funded construction and acquisition in FEMA's identified special flood hazard areas. The requirements of section 582 of the National Flood Insurance Reform Act of 1994 (42 U.S.C. 5154a), currently stated in HUD's regulations at 24 CFR 58.6, would be added to 24 CFR part 55 to support compliance with the mandatory purchase of flood insurance. Finally, the prohibition on floodway activities would be edited to allow for activities that support beneficial floodplain functions.

B. Terminology

Section 55.2, which defines terms used in floodplain management, would be amended to update existing terms in this section and add new terminology. To the extent that the names of these terms as designated by FEMA's regulations need to be updated, the proposed amendments would do so without any change to the basic meaning of these terms. With respect to new terms, the term ''Compensatory mitigation'' would be added consistent with the definition of the term promulgated by the Environmental Protection Agency and the United States Army Corps of Engineers (USACE) in 2008 (See Compensatory Mitigation for Losses of Aquatic Resources, 73 FR 19594). The terms ''Wetlands'' and ''New Construction'' would be added

consistent with those defined by E.O. 11990. The definition of wetlands also includes a process for identifying wetlands and utilizing appropriate wetlands professionals. These are the only new terms added under the proposed rule.

C. Assignment of Responsibilities

Section 55.3, which delineates floodplain management responsibilities, would be amended to reflect the existence of ''responsible entities'' under 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities) and the addition of E.O. 11990 wetland procedures.

D. Environmental Review Procedures

Section 55.10, which addresses the environmental review procedures under 24 CFR parts 50 and 58, would be amended to explicitly add wetland protection and reflect implementation of E.O. 11990 in part 55 as an element of the environmental review process.

Section 55.11, which addresses the applicability of floodplain management decision making as provided in 24 CFR part 55, subpart C, would be amended to incorporate the purpose of floodplain management, as provided in E.O. 11988, and the purpose of wetlands protection, as provided in E.O. 11990. The proposed rule also amends this section to adopt the previously explained 8 Step Process for wetlands. This process will provide a standardized and efficient method for addressing E.O. 11990. The proposed rule also would address adverse effects to floodplains and wetlands.

E. Inapplicability

Section 55.12, which addresses the inapplicability of floodplain management to certain categories of proposed actions, would be amended to remove HUD programs that no longer exist and add exemptions from the full process. Financial assistance for weatherizations and rehabilitations of multifamily structures would be granted the use of a shortened 5 Step Process that currently applies to mortgage insurance actions for rehabilitation and improvements. Floodplain and wetland restoration activities, including demolition, would be exempt from § 55.20 processing. Leasing of an existing structure would also be granted an exemption from the 8 Step Process, so long as the structure is not in a floodway or Coastal High Hazard Area, and the structure is insured with the National Flood Insurance Program. Additionally, the leasing exemption does not apply to critical actions in the 100- or 500-year floodplain. An exemption also would be added for special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and persons with disabilities. Financial assistance for ships and water-borne vessels would also be exempt from § 55.20 processing. These changes would reduce unnecessary processing and result in a decreased amount of analysis for projects that have no or little adverse impact or have beneficial effects.

F. Decision Making Process

Section 55.20, which currently addresses the decision making process for floodplain management, would be amended to include the decision making process for wetlands protection. Step 3 of the 8 Step Process, which requires the consideration of practicable alternatives, would also be amended to require that mitigation costs be considered.

G. Conveyance Restrictions

Section 55.22, which addresses conveyance restrictions for the disposition of multifamily real property, would be amended by adding the word ''wetland'' in each place where the term floodplains is addressed by the section.

H. Documentation

Section 55.27, which addresses documentation required in floodplain management, would add ''wetlands'' and remove a reference to 24 CFR 570.3 to allow for a general definition of ''unit of general local government.''

I. Responsible Entities

Sections 55.21, 55.25, 55.26, and 55.27, which address notification of floodplain hazard, areawide compliance, adoption of another agency's review under the executive orders, and documentation, respectively, would change the terms ''grant recipient'' to ''responsible entity.'' This would add specificity and consistency to 24 CFR part 55. Section 55.26 will also be edited to make it clear that HUD can adopt a review performed by a responsible entity, and that a responsible entity may adopt a review performed by HUD or another responsible entity.

J. Use of Individual Permits Under Section 404 of the Clean Water Act for EO 11990 Processing

A new § 55.28 would be added to allow for HUD to process wetlands impacts and for recipients of HUD assistance to use permits issued under section 404 of the Clean Water Act in lieu of five steps of the E.O. 11990's eight-step process. Processing under this section will reduce the time devoted to environmental processes, by allowing an existing individual Section 404 permit to substitute for the first five steps of the 8 Step Process for wetlands located outside the floodplain.

K. Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (Part 58)

Section 58.5 of HUD's regulations, which address related Federal laws and authorities, would be amended to have § 58.5(b), which addresses flood insurance, floodplain management, and wetlands protection, reflect the change in the title of 24 CFR part 55 to include ''Protection of Wetlands'' and reflect implementation of E.O. 11990 in 24 CFR part 55. This proposed rule would also amend § 58.6, which addresses other requirements, by adding a new paragraph (a)(4) that would state that flood insurance requirements cannot be fulfilled by self-insurance except as authorized by law for assistance to state-owned projects within states approved by the FEMA Administrator consistent with 44 CFR 75.11. Additionally, HUD also proposes to amend § 58.35, which addresses Categorical Exclusions, by revising the categorical exclusion from environmental assessment under NEPA for minor rehabilitation of one- to four-unit residential properties by removing in § 58.35(a)(3)(i) the qualification that the footprint of the structure may not be increased in a floodplain or wetland.

III. Findings and Certifications

E.O. 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under E.O. 12866 (entitled ''Regulatory Planning and Review''). The proposed rule has been determined to be a ''significant regulatory action,'' as defined in section 3(f) of the Order, but not economically significant, as provided in section 3(f)(1) of the Order.

The majority of the regulatory changes proposed by this rule will have minor economic effects. The primary purpose of this rule is to streamline the existing procedures pertaining to floodplain management and protection of wetlands that are already in place. However, two changes proposed by HUD are anticipated to have some economic effect. These two changes are: (1) HUD's proposal to streamline the approval process for rehabilitations, repairs, and improvements of HUD-funded properties in floodplains and wetlands; and (2) HUD's proposal to prohibit new

construction that would either be funded by HUD or have mortgages insured by FHA in Coastal High Hazard Areas. The proposed streamlined process for rehabilitations will lower costs for projects, which could induce more improvement activities. The proposal to prohibit new construction in Coastal High Hazard Areas could affect the siting of properties, but these projects are rarely proposed or approved even in the absence of a prohibition.

Streamlined Procedures for Rehabilitations, Repairs, and Improvements of Multifamily Properties in Floodplains. HUD or responsible entities reviewing proposals for rehabilitations, repairs, and improvements to multifamily properties located in floodplains are required to follow the 8 Step Process to minimize the impact to floodplains. The proposed change would abbreviate the process for these proposals, because the process no longer requires public notices or the consideration of alternatives for floodplain executive order compliance. The benefits of this proposed change arise from the reduced compliance costs associated with the eliminated steps. Total labor compliance costs for the entire 8 Step Process have been estimated at $320 per project. A more detailed step-by-step cost estimate is not available. However, if eliminating the three steps saves 10 to 15 percent of the total labor cost of compliance, then each rehabilitation project would save between $32 and $48. Costs to publish the notices would be added to this amount for the overall cost of compliance. The precise number of proposed rehabilitation, repair, and improvement projects is not available, although the overall number is estimated to be less than 100 annually. Although the reduced compliance costs could, on the margin, induce an increase in the requests for funding, that increase is unlikely considering that the cost of these projects generally range from thousands to millions of dollars. For this analysis, HUD estimates an annual total of 100 projects, including the induced projects. One hundred such projects would produce benefits ranging from $3,200 and $4,800 plus minimal costs of publication. Since these assessments rarely lead to a different outcome for rehabilitation, repair, and improvement projects, the lost benefits of not conducting a full floodplain assessment—the cost of this provision—are negligible.

Prohibition on New Construction in Coastal High Hazard Areas. Prohibiting new construction in Coastal High Hazard Areas would force developers to locate HUD-funded or FHA-insured properties out of hazard areas subject to high velocity waters. This prohibition would not affect developments that are destroyed by floods and that need to be rebuilt. Existing property owners interested in developing in Coastal High Hazard Areas would either incur transaction costs from selling the existing property and purchasing an alternative site, or obtain a more expensive source of funding/assistance. However, based on HUD's records, it is extremely rare for HUD to fund, or provide mortgage insurance for, a new construction proposal in these coastal areas. HUD found only one project that that been completed in a Coastal High Hazard Area, and one additional project is currently under review. These projects were approximately 6 years apart. Thus, HUD believes that this provision will not have a significant impact.

Accordingly, this proposed rule is expected to create an annual economic impact ranging from $3,200 to $4,800, which are avoided costs resulting from a streamlined approval process for rehabilitations of properties located in floodplains. Thus, the implementation of this rule will not create an impact exceeding the $100 million threshold established by E.O. 12866.

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.

The proposed rule would codify HUD's policies and procedures implementing E.O. 11990, Protection of Wetlands. The goal of the Executive Order is to prevent adverse impacts associated with the destruction or modification of wetlands. E.O. 11990 establishes a uniform set of requirements designed to meet this goal and that are applicable to both large and small entities. The proposed rule would also broaden the use of the abbreviated 8 Step Process also known as the 5 Step Process, used by HUD and responsible entities when considering the impact on floodplains in connection with the repair of existing structures. Specifically, the rule proposes to authorize the use of the abbreviated process for all of HUD's rehabilitation programs. The current regulations limit the use of the abbreviated process to repairs financed under HUD's mortgage insurance programs.

The proposed rule clarifies existing requirements, streamlines processes, and increases access to expedited approval procedures in certain circumstances. These changes would decrease burdens on small entities. Therefore, the undersigned has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

E.O. 13132 Federalism

E.O. 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This rule does not have federalism implications and would not

impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of respondents	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
§ 55.20 Decisionmaking process	275	1	8	2,200
§ 55.21 Notification of floodplain hazard	300	1	1	300
Totals	575	2	9	2,500

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this 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.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR–5423–P–01) and be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395–6947, and

Reports Liaison Officer, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit comments, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

List of Subjects

24 CFR Part 50

Environmental impact statements.

24 CFR Part 55

Environmental impact statements, Floodplains, Wetlands.

24 CFR Part 58

Community development block grants, Environmental impact statements, Grant programs—housing and community development, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble above, HUD proposes to amend 24 CFR parts 50, 55, and 58 as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

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

Authority: 42 U.S.C. 3535(d) and 4332; and Executive Order 11991, 3 CFR, 1977 Comp., p. 123.

2. Revise § 50.4(b)(2) and (b)(3) to read as follows:

§ 50.4 Related federal laws and authorities.

* * * * *

(b) * * *

(2) HUD procedure for the implementation of E.O. 11988 (Floodplain Management), (3 CFR, 1977 Comp., p. 117)—24 CFR part 55, Floodplain Management and Protection of Wetlands.

(3) HUD procedure for the implementation of E.O. 11990 (Protection of Wetlands), (3 CFR, 1977 Comp., p. 121)—24 CFR part 55, Floodplain Management and Protection of Wetlands.

* * * * *

3. Revise the part heading for part 55 to read as set forth below.

PART 55—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

4. The authority citation for part 55 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), 4001–4128 and 5154a; E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990, 42 FR 26961, 3 CFR, 1977 Comp., p. 121.

5. Amend § 55.1 as follows:

a. Revise paragraph (a);

b. Redesignate paragraph (b) as paragraph (b)(1);

c. Add a new paragraph (b)(2);

d. Revise paragraphs (c)(1);

e. Revise paragraphs of (c)(3) and (c)(3)(i), to read as follows:

§ 55.1 Purpose and basic responsibility.

(a)(1) The purpose of Executive Order 11988—Floodplain Management is ''to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative.''

(2) The purpose of Executive Order 11990—Protection of Wetlands is ''to avoid to the extent possible the long and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative.''

(3) This part implements the requirements of Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands, and employs the principles of the Unified National Program for Floodplain Management. These regulations apply to all HUD (or responsible entity) actions that are subject to potential harm by location in floodplains or wetlands. Covered actions include the proposed acquisition, construction, demolition, improvement, disposition, financing, and use of properties located in a floodplain or wetlands for which approval is required either from HUD under any applicable HUD program or from a responsible entity authorized by 24 CFR part 58.

(4) This part does not prohibit approval of such actions (except for certain actions in high hazard areas), but provides a consistent means for implementing the Department's interpretation of the Executive Orders in the project approval decision making processes of HUD and of responsible entities subject to 24 CFR part 58. The implementation of Executive Orders 11988 and 11990 under this part shall be conducted by HUD for Department-administered programs subject to environmental review under 24 CFR part 50 and by authorized responsible entities that are responsible for environmental review under 24 CFR part 58.

(5) Non-structural alternatives to floodplain development and the destruction of wetlands are both favored and encouraged to reduce the loss of life and property caused by floods, and to restore the natural resource and functions of floodplains and wetlands. Nonstructural alternatives should be discussed in the decision making where practicable.

(b) * * *

(2) Under section 582 of the National Flood Insurance Reform Act of 1994 (42 U.S.C. 5154a), HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration of damage to any personal, residential, or commercial property if:

(i) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

(ii) The person failed to obtain and maintain the flood insurance.

(c) * * *

(1) Any action other than a functionally dependent use or floodplain function restoration activity, located in a floodway;

(2) * * *

(3) Any non-critical action located in a Coastal High Hazard Area, unless the action is a functionally dependent use, an improvement of an existing structure, or reconstruction of a structure destroyed by a disaster. If the action is not a functionally dependent use, the action must be designed for location in a Coastal High Hazard Area. An action will be considered designed for a Coastal High Hazard Area if:

(i) In the case of reconstruction or substantial improvement, the work meets the current standards for V zones in FEMA regulations (44 CFR 60.3(e)) and, if applicable, the Minimum Property Standards for such construction in 24 CFR 200.926d(c)(4)(iii); or

* * * * *

6. Amend § 55.2 to:

a. Revise paragraph (a);

b. Revise paragraphs (b) and (b)(1);

c. Redesignate existing paragraphs (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), and (b)(8) as paragraphs (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), (b)(9), and (b)(10), respectively;

d. Add new paragraphs (b)(2) and (b)(8);

e. Revise newly designated paragraph (b)(9); and

f. Add new paragraph (b)(11) to read as follows:

§ 55.2 Terminology.

(a) With the exception of those terms defined in paragraph (b) of this section, the terms used in this part shall follow the definitions contained in section 6 of E.O. 11988, section 7 of E.O. 11990, and the Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030, February 10, 1978), issued by the Water Resources Council; the terms ''special flood hazard area,'' ''criteria,'' and ''Regular Program'' shall follow the definitions contained in FEMA regulations at 44 CFR 59.1; and the terms ''Letter of Map Revision'' and ''Letter of Map Amendment'' shall refer to letters issued by FEMA as provided in 44 CFR part 65 and 44 CFR part 70, respectively.

(b) For purposes of this part, the following definitions apply:

(1) *Coastal high hazard area* means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a Flood Insurance Rate Map (FIRM) under FEMA regulations. FIRMs are also relied upon for the designation of ''100-year floodplains'' (§ 55.2(b)(9)), ''500-year floodplains'' (§ 55.2(b)(4)), and ''floodways'' (§ 55.2(b)(5)). Where FIRMs are declared by FEMA not to be the ''best available information'', the latest interim FEMA information, such as an Advisory Base Flood Elevation (ABFE), shall be used as the source of these designations. If FEMA information is unavailable or insufficiently detailed, other Federal, state, or local data may be used as ''best available information'' in accordance with E.O. 11988. However, a base flood elevation from an interim or preliminary or non-FEMA source cannot be used if it is lower than the current FIRM.

(2) *Compensatory mitigation* means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

Examples include, but are not limited to:

(i) *Permittee-Responsible Mitigation:* On-site or off-site mitigation undertaken by the holder of a wetlands permit under Section 404 of the Clean Water Act (or an authorized agent or contractor), for which the permittee retains full responsibility;

(ii) *Mitigation Banking:* A permittee's purchase of credits from a wetlands mitigation bank, comprising wetlands that have been set aside to compensate for conversions of other wetlands; the mitigation obligation is transferred to the sponsor of the mitigation bank; and

(iii) *In-Lieu Fee Mitigation:* A permittee's provision of funds to an in-lieu fee sponsor (public agency or nonprofit organization) that builds and maintains a mitigation site, often after the permitted adverse wetland impacts have occurred; the mitigation obligation is transferred to the in-lieu fee sponsor.

* * * * *

(8) *New construction* includes draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun after the effective date of E.O. 11990. (See Section 7(b) of E.O. 11990.)

(9) *100-year floodplain* means the floodplain of concern for this part and is the area subject to inundation from a flood having a one percent or greater chance of flooding in any given year. (See § 55.2(b)(1) for appropriate data sources.)

* * * * *

(11) *Wetlands* means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances does or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. This definition includes those wetlands areas separated from their natural supply of water as a result of activities such as the construction of structural flood protection methods or solid-fill road beds and activities such as mineral extraction and navigation improvements. This definition includes both wetlands subject to and those not subject to section 404 of the Clean Water Act. The following process shall be followed in making the wetlands determination:

(i) HUD or, for programs subject to 24 CFR part 58, the responsible entity, shall make a determination whether the action is new construction that is located in a wetland. These actions are subject to processing under the § 55.20 decision-making process for the protection of wetlands.

(ii) As primary screening, HUD or the responsible entity shall verify whether the project area is located in proximity to wetlands identified on the National Wetlands Inventory (NWI). If so, HUD or the responsible entity should make a reasonable attempt to consult with the Department of the Interior, Fish and Wildlife Service (FWS) for information concerning the location, boundaries, scale, and classification of wetlands within the area. If an NWI map indicates the presence of wetlands, FWS staff, if available, must find that no wetland is present in order for the action to proceed without further processing. Where FWS staff is unavailable to resolve any NWI map ambiguity or controversy, an appropriate wetlands professional must find that no wetland is present in order for the action to proceed without § 55.20 processing.

(iii) As secondary screening used in conjunction with NWI maps, HUD or the responsible entity is encouraged to use the Department of Agriculture, Natural Resources Conservation Service (NRCS) National Soil Survey (NSS) and any state and local information concerning the location, boundaries, scale, and classification of wetlands within the action area.

(iv) Any challenges from the public or other interested parties to the wetlands determinations made under this part must be made in writing to HUD (or the responsible entity authorized under 24 CFR part 58) during the commenting period and must be substantiated with verifiable scientific information. Commenters may request a reasonable extension of the time for the commenting period for the purpose of substantiating any objections with verifiable scientific information. HUD or the responsible entity shall consult FWS staff, if available, on the validity of the challenger's scientific information prior to making a final wetlands determination.

7. In § 55.3, revise paragraphs (a)(1), (b)(1), (b)(2), and (c); and add new paragraph (d), to read as follows:

§ 55.3 Assignment of responsibilities.

(a)(1) The Assistant Secretary for Community Planning and Development (CPD) shall oversee:

(i) The Department's implementation of Executive Orders 11988 and 11990 and this part in all HUD programs; and

(ii) The implementation activities of HUD program managers and, for HUD financial assistance subject to 24 CFR part 58, of grant recipients and responsible entities.

* * * * *

(b) *Other HUD Assistant Secretaries, the General Counsel, and the President of the Government National Mortgage Association (Ginnie Mae)* shall:

(1) Ensure compliance with this part for all actions under their jurisdiction that are proposed to be conducted, supported, or permitted in a floodplain or wetland;

(2) Ensure that actions approved by HUD or responsible entities are monitored and that any prescribed mitigation is implemented;

* * * * *

(c) *Responsible Entity Certifying Officer.* Certifying Officers of responsible entities administering or reviewing activities subject to 24 CFR part 58 shall comply with part 55 in carrying out HUD-assisted programs. Certifying Officers of responsible entities subject to 24 CFR part 58 shall monitor approved actions and ensure that any prescribed mitigation is implemented.

(d) *Recipient.* Recipients subject to 24 CFR part 58 shall monitor approved actions and ensure that any prescribed mitigation is implemented. Recipients shall:

(1) Supply HUD (or the responsible entity authorized by 24 CFR part 58) with all available, relevant information necessary for HUD (or the responsible entity) to perform the compliance required by this part; and

(2) Implement mitigating measures required by HUD (or the responsible entity authorized by 24 CFR part 58) under this part or select alternate eligible property.

8. The heading for subpart B is revised to read as follows:

Subpart B—Application of Executive Orders on Floodplain Management and Protection of Wetlands

9. Revise § 55.10 to read as follows:

§ 55.10 Environmental review procedures under 24 CFR parts 50 and 58.

(a) Where an environmental review is required under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321), and 24 CFR part 50 or part 58, compliance with this part shall be completed before the completion of an environmental assessment (EA), including a finding of no significant impact (FONSI), or an environmental impact statement (EIS), in accordance with the decision points listed in 24 CFR 50.17(a)–(h), or before the preparation of an EA under 24 CFR 58.40 or an EIS under 24 CFR 58.37. For types of proposed actions that are categorically excluded from NEPA requirements under 24 CFR part 50 (or part 58), compliance with this part shall be completed before the Department's initial approval (or approval by a responsible entity authorized by 24 CFR part 58) of proposed actions in a floodplain or wetland.

(b) The categorical exclusion of certain proposed actions from environmental review requirements under NEPA and 24 CFR parts 50 and 58 (see 24 CFR 50.20 and 58.35(a)) does not exclude those actions from compliance with this part.

10. Revise § 55.11 to read as follows:

§ 55.11 Applicability of Subpart C decision making process.

(a) Before reaching the decision points described in § 55.10(a), HUD (for Department-administered programs) or the responsible entity (for HUD financial assistance subject to 24 CFR

part 58) shall determine whether E.O. 11988, E.O. 11990, and this part apply to the proposed action.

(b) If E.O. 11988 or 11990 and this part apply, the approval of a proposed action or initial commitment shall be made in accordance with this part. The primary purpose of E.O. 11988 is ''to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative.'' The primary purpose of E.O. 11990 is ''to avoid to the extent possible the long and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative.''

(c) The following table indicates the applicability, by location and type of action, of the decision making process for implementing E.O. 11988 and E.O. 11990 under subpart C of this part.

TABLE 1

Type of proposed action (new reviewable action or an amendment) [1]	Type of proposed action			
	Floodways	Coastal high hazard areas	Wetlands or 100-year floodplain outside coastal high hazard area and floodways	Non-wetlands area outside of the 100-year and within the 500-year floodplain
Critical actions as defined in § 55.12(b)(2).	Critical actions not allowed	Critical actions not allowed	Allowed if the proposed critical action is processed under § 55.20 [2].	Allowed if the proposed critical action is processed under § 55.20 [2].
Non-critical actions not excluded under § 55.12(b) or (c).	Allowed only if the proposed non-critical action is a functionally dependent use and processed under § 55.20 [2]. Allowed only if the proposed non-critical action: (A)(1) Is either (a) reconstruction of a structure destroyed by a disaster, or (b) an improvement of an existing structure; (2) is designed for a Coastal High Hazard Area under § 55.1(c)(3); and (3) is processed under § 55.20; [2] or (B) Is a functionally dependent use processed under § 55.20	Allowed if proposed non-critical action is processed under § 55.20 [2].	Any non-critical action is allowed without processing under this part..	

[1] Under E.O. 11990, the decision making process in § 55.20 only applies to Federal assistance for new construction in wetlands locations.
[2] Or those paragraphs of § 55.20 that are applicable to an action listed in § 55.12(a).

11. Revise 55.12 to read as follows:

§ 55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.

(a) The decision making steps in § 55.20(b), (c), and (g) (steps 2, 3, and 7) do not apply to the following categories of proposed actions:

(1) HUD's or the recipient's actions involving the disposition of acquired multifamily housing projects or ''bulk sales'' of HUD-acquired (or under part 58 of recipients') one- to four-family properties in communities that are in the Regular Program of the National Flood Insurance Program and in good standing (*i.e.,* not suspended from program eligibility or placed on probation under 44 CFR 59.24). For programs subject to part 58, this subsection applies only to recipients' disposition activities that are subject to review under 24 CFR part 58.

(2) HUD's actions under the National Housing Act (12 U.S.C. 1701) for the purchase or refinancing of existing multifamily housing projects, hospitals, nursing homes, assisted living facilities, board and care facilities, and intermediate care facilities, in communities that are in good standing under the NFIP.

(3) HUD's or the recipient's actions under any HUD program involving the repair, rehabilitation, modernization, weatherization, or improvement of existing multifamily housing projects, hospitals, nursing homes, assisted living facilities, board and care facilities, intermediate care facilities, and one- to four-family properties, in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and are in good standing, provided that the number of units is not increased more than 20 percent, the action does not involve a conversion from nonresidential to residential land use, and the footprint of the structure and paved areas is not significantly increased.

(4) HUD's (or the recipient's) actions under any HUD program involving the repair, rehabilitation, modernization, weatherization, or improvement of existing nonresidential buildings and structures, in communities that are in the Regular Program of the NFIP and are in good standing, and provided that the footprint of the structure and paved areas are not significantly increased.

(b) The decision making process in § 55.20 shall not apply to the following categories of proposed actions:

(1) HUD's mortgage insurance actions and other financial assistance for the purchasing, mortgaging or refinancing of existing one- to four-family properties in communities that are in the Regular Program of the NFIP and in good standing (*i.e.,* not suspended from program eligibility or placed on probation under 44 CFR 59.24), where the action is not a critical action and the property is not located in a floodway or Coastal High Hazard Area;

(2) Financial assistance for minor repairs or improvements on one- to four-family properties that do not meet the thresholds for ''substantial improvement'' under § 55.2(b)(10);

(3) HUD or a recipient's actions involving the disposition of individual HUD-acquired, one- to four-family properties; and

(4) HUD guarantees under the Loan Guarantee Recovery Fund Program (24 CFR part 573) of loans that refinance existing loans and mortgages, where any new construction or rehabilitation financed by the existing loan or mortgage has been completed prior to the filing of an application under the program, and the refinancing will not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance.

(5) The approval of financial assistance to lease an existing structure located within the floodplain, but only if—

(i) The structure is located outside the floodway or Coastal High Hazard Area, and is in a community that is in the Regular Program of the NFIP and in good standing (*i.e.,* not suspended from program eligibility or placed on probation under 44 CFR 59.24);

(ii) The project is not a critical action; and

(iii) The entire structure is or will be fully insured or insured to the maximum under the NFIP for at least the term of the lease.

(c) This part shall not apply to the following categories of proposed HUD actions:

(1) HUD-assisted activities described in 24 CFR 58.34 and 58.35(b);

(2) HUD-assisted activities described in 24 CFR 50.19, except as otherwise indicated in § 50.19;

(3) HUD's implementation of the full disclosure and other registration requirements of the Interstate Land Sales Disclosure Act (15 U.S.C. 1701–1720);

(4) An action involving a repossession, receivership, foreclosure, or similar acquisition of property to protect or enforce HUD's financial interests under previously approved loans, grants, mortgage insurance, or other HUD assistance;

(5) Policy-level actions described at 24 CFR 50.16 that do not involve site-based decisions;

(6) A minor amendment to a previously approved action with no additional adverse impact on or from a floodplain or wetland;

(7) HUD's or the responsible entity's approval of a project site, an incidental portion of which is situated in an adjacent floodplain, including the floodway or Coastal High Hazard Area, or wetland, but only if:

(i) The proposed construction and landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding, seeding, or other similar activities) do not occupy or modify the 100-year floodplain (or the 500-year floodplain for critical actions) or the wetland;

(ii) Appropriate provision is made for site drainage, that would not have an adverse effect on a wetland; and

(iii) A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland;

(8) HUD's or the responsible entity's approval of financial assistance for a project on any nonwetland site in a floodplain for which the Federal Emergency Management Agency (FEMA) has issued:

(i) A final Letter of Map Amendment (LOMA), final Letter of Map Revision (LOMR), or final Letter of Map Revision Based on Fill (LOMR–F) that removed the property from a FEMA-designated floodplain location; or

(ii) A conditional LOMA, conditional LOMR, or conditional LOMR–F if HUD or the responsible entity's approval is subject to the requirements and conditions of the conditional LOMA or conditional LOMR;

(9) Issuance or use of Housing Vouchers, Certificates under the Section 8 Existing Housing Program, or other forms of rental subsidy where HUD, the awarding community, or the public housing agency that administers the contract awards rental subsidies that are not project-based (*i.e.,* do not involve site-specific subsidies);

(10) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to the elderly and persons with disabilities;

(11) The approval of financial assistance for acquisition, leasing, construction, rehabilitation, repair, maintenance, or operation of ships and other water-borne vessels that will be used for transportation or cruises and will not be permanently moored; and

(12) The approval of financial assistance for restoring and preserving the natural and beneficial functions and values of floodplains and wetlands, including through acquisition of such floodplain and wetlands property, but only if:

(i) The property is cleared of all existing structures and related improvements;

(ii) The property is dedicated for permanent use for flood control, wetlands protection, park land, or open space; and

(iii) A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetlands from future development.

12. The heading for subpart C is revised to read as follows:

Subpart C—Procedures for Making Determinations on Floodplain Management and Protection of Wetlands

13. Amend § 55.20 as follows:

a. Revise the introductory paragraph;

b. Revise paragraph (a);

c. Revise paragraphs (b) and (b)(3);

d. Revise paragraphs (c), (d), and (e);

e. Revise paragraphs (f), (g)(1), and (h)

to read as follows:

§ 55.20 Decision making process.

Except for actions covered by § 55.12(a), the decision making process for compliance with this part contains eight steps, including public notices and an examination of practicable alternatives when addressing floodplains and wetlands. The steps to be followed in the decision making process are as follows:

(a) *Step 1.* Determine whether the proposed action is located in wetlands or the 100-year floodplain (500-year floodplain for critical actions). If the action does not occur in a floodplain or wetland, then no further compliance with this part is required. The following process shall be followed by HUD (or the responsible entity) in making wetlands determinations.

(1) Refer to § 55.28(a) where an applicant has submitted with its application to HUD (or to the recipient under programs subject to 24 CFR part 58) an individual Section 404 permit (including approval conditions and related environmental review).

(2) Refer to § 55.2(b)(11) for making wetlands determinations under this part.

(3) For proposed actions occurring in both wetlands and a floodplain,

completion of the decision making process under § 55.20 is required regardless of the issuance of a Section 404 permit. In such a case, the wetlands will be considered among the primary natural and beneficial functions and values of the floodplain.

(b) *Step 2.* Notify the public and agencies responsible for floodplain management or wetlands protection at the earliest possible time of a proposal to consider an action in a 100-year floodplain (or a 500-year floodplain for a critical action) or wetlands and involve the affected and interested public and agencies in the decision making process.

* * * * *

(3) A notice under this paragraph shall state: The name, proposed location, and description of the activity; the total number of acres of floodplain or wetlands involved; the related natural and beneficial functions and values of the floodplain or wetlands that may be adversely affected by the proposed activity; the HUD approving official (or the Certifying Officer of the responsible entity authorized by 24 CFR part 58); and phone number to contact for information. The notice shall indicate the hours and the HUD or responsible entity's office, and any Web site at which a full description of the proposed action may be reviewed.

(c) *Step 3.* Identify and evaluate practicable alternatives to locating the proposed action in a 100-year floodplain (or a 500-year floodplain for a critical action) or wetland.

(1) Except as provided in paragraph (c)(2) of this section, HUD's or the responsible entity's consideration of practicable alternatives to the proposed site selected for a project should include:

(i) Locations outside and not affecting the 100-year floodplain (or the 500-year floodplain for a critical action) or wetland;

(ii) Alternative methods to serve the identical project objective, including feasible technological alternatives; and

(iii) A determination not to approve any action proposing the occupancy or modification of floodplains or wetland.

(2) Practicability of alternative sites should be addressed in light of the following:

(i) Natural values such as topography, habitat, and hazards;

(ii) Social values such as aesthetics, historic and cultural values, land use patterns, and environmental justice; and

(iii) Economic values such as the cost of space, construction, services, and relocation.

(3) For multifamily projects involving HUD mortgage insurance that are initiated by third parties, HUD's consideration of practicable alternatives should include a determination not to approve the request.

(d) *Step 4.* Identify and evaluate the potential direct and indirect impacts associated with the occupancy or modification of the 100-year floodplain (or the 500-year floodplain for a critical action) or the wetlands and the potential direct and indirect support of floodplain and wetlands development that could result from the proposed action.

(1) *Floodplain evaluation:* The focus of the floodplain evaluation should be on adverse impacts to lives and property, and on natural and beneficial floodplain values. Natural and beneficial values include:

(i) Water resources such as natural moderation of floods, water quality maintenance, and groundwater recharge;

(ii) Living resources such as flora and fauna;

(iii) Cultural resources such as archaeological, historic, and recreational aspects; and

(iv) Agricultural, aquacultural, and forestry resources.

(2) *Wetlands evaluation:* In accordance with Section 5 of E.O. 11990, the decision maker shall consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors that should be evaluated are:

(i) Public health, safety, and welfare, including water supply, quality, recharge, and discharge; pollution; flood and storm hazards and hazard protection; and sediment and erosion;

(ii) Maintenance of natural systems, including conservation and long-term productivity of existing flora and fauna; species and habitat diversity and stability; natural hydrologic function; wetland type; fish; wildlife; timber; and food and fiber resources;

(iii) Cost increases attributed to wetland-required new construction and mitigation measures to minimize harm to wetlands that may result from such use; and

(iv) Other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

(e) *Step 5.* Where practicable, design or modify the proposed action to minimize the potential adverse impacts to and from the 100-year floodplain (or the 500-year floodplain for a Critical Action) or the wetlands and to restore and preserve its natural and beneficial functions and values.

(1) Minimization techniques for floodplain and wetlands purposes include, but are not limited to: the use of permeable surfaces, natural landscape enhancements that maintain or restore natural hydrology through infiltration, native plant species, bioswales, evapotranspiration, stormwater capture and reuse, green or vegetative roofs with drainage provisions, and Natural Resource Conservation Service conservation easements. Floodproofing and elevating structures, including freeboarding above the required base flood elevations, are also minimization techniques for floodplain purposes.

(2) Appropriate and practicable compensatory mitigation is recommended for unavoidable adverse impacts to more than one acre of wetlands. Compensatory mitigation includes, but is not limited to: permitee-responsible mitigation, mitigation banking, in-lieu fee mitigation, the use of preservation easements or protective covenants, and any form of mitigation promoted by state or Federal agencies. The use of compensatory mitigation may not substitute for the requirement to avoid and minimize impacts to the maximum extent practicable.

(3) Actions covered by § 55.12(a) must be rejected if the proposed minimization is financially or physically unworkable. All critical actions in the 500-year floodplain shall be designed and built at or above the 100-year floodplain (in the case of new construction) and modified to include:

(i) Preparation of and participation in an early warning system;

(ii) An emergency evacuation and relocation plan;

(iii) Identification of evacuation route(s) out of the 500-year floodplain; and

(iv) Identification marks of past or estimated flood levels on all structures.

(f) *Step 6.* Reevaluate the proposed action to determine:

(1) Whether the action is still practicable in light of exposure to flood hazards in the floodplain or wetland, possible adverse impacts on the floodplain or wetland, the extent to which it will aggravate the current hazards to other floodplains or wetlands, and the potential to disrupt the natural and beneficial functions and values of floodplains or wetlands; and

(2) Whether alternatives preliminarily rejected at Step 3 (paragraph (c)) of this section are practicable in light of information gained in Steps 4 and 5 (paragraphs (d) and (e)) of this section.

(i) The reevaluation of alternatives shall include the potential impacts avoided or caused inside and outside the floodplain or wetlands area. The impacts should include the protection of human life, real property, and the natural and beneficial functions and

values served by the floodplain or wetland.

(ii) A reevaluation of alternatives under this step should include a discussion of economic costs. For floodplains, the cost estimates should include savings or the costs of flood insurance, where applicable, flood proofing, and elevation to at least the base flood elevation for sites located in floodplains, as appropriate. For wetlands, the cost estimates should include the cost of filling the wetlands and mitigation.

(g) *Step 7.* (1) If the reevaluation results in a determination that there is no practicable alternative to locating the proposal in the 100-year floodplain (or the 500-year floodplain for a Critical Action) or the wetland, publish a final notice that includes:

(i) The reasons why the proposal must be located in the floodplain or wetland;

(ii) A list of the alternatives considered in accordance with § 55.20(c)(1) and (2); and

(iii) All mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial functions and values.

* * * * *

(h) *Step 8.* Upon completion of the decision making process in Steps 1 through 7, implement the proposed action. There is a continuing responsibility on HUD (or on the responsible entity authorized by 24 CFR part 58) and the recipient (if other than the responsible entity) to ensure that the mitigating measures identified in Step 7 are implemented.

§ 55.21 [Amended]

14. Amend § 55.21 by removing the term ''grant recipient'' and adding in its place the term ''responsible entity.''

15. Revise § 55.24 to read as follows:

§ 55.24 Aggregation.

Where two or more actions have been proposed, require compliance with subpart C of this part, affect the same floodplain or wetland, and are currently under review by HUD (or by a responsible entity authorized by 24 CFR part 58), individual or aggregated approvals may be issued. A single compliance review and approval under this section is subject to compliance with the decision making process in § 55.20.

§ 55.25 [Amended]

16. Revise § 55.25 as follows:

a. Remove, in paragraph (c), the term ''grant recipient'' and add in its place the term ''responsible entity''; and

b. Remove in paragraph (d)(2) the term ''grant recipients'' and add in its place the term ''responsible entities.''

17. In § 55.26, revise the introductory paragraph and paragraph (a), to read as follows:

§ 55.26 Adoption of another agency's review under the Executive Orders.

If a proposed action covered under this part is already covered in a prior review performed under either or both of the executive orders by another agency, including HUD or a different responsible entity, that review may be adopted by HUD or by a responsible entity authorized under 24 CFR part 58, provided that:

(a) There is no pending litigation relating to the other agency's review for floodplain management or wetlands protection;

* * * * *

18. Amend § 55.27 as follows:

a. Revise paragraph (a);

b. Remove, in paragraph (b), the term ''grant recipient'' and add, in its place, the words ''responsible entity'' and;

c. Remove, in paragraph (c), the term ''grant recipients'' and add, in its place, the words ''responsible entities'', to read as follows:

§ 55.27 Documentation.

(a) For purposes of compliance with § 55.20, the responsible HUD official who would approve the proposed action (or Certifying Officer for a responsible entity authorized by 24 CFR part 58) shall require that the following actions be documented:

(1) When required by § 55.20(c), practicable alternative sites have been considered outside the floodplain or wetland, but within the local housing market area, the local public utility service area, or the jurisdictional boundaries of a recipient unit of general local government, whichever geographic area is most appropriate to the proposed action. Actual sites under review must be identified and the reasons for the nonselection of those sites as practicable alternatives must be described; and

(2) Under § 55.20(e)(2), measures to minimize the potential adverse impacts of the proposed action on the affected floodplain or wetland as identified in § 55.20(d) have been applied to the design for the proposed action.

* * * * *

19. Add new § 55.28 to read as follows:

§ 55.28 Use of individual permits under section 404 of the Clean Water Act for HUD 11990 processing where all wetlands are covered by the permit.

(a) *Processing requirements.* HUD (or the responsible entity subject to 24 CFR part 58) shall not be required to perform the steps at § 55.20(a), (b), (c), (d), and (e) upon adoption by HUD (or the responsible entity) of the terms and conditions of a Section 404 permit so long as:

(1) The project involves new construction on a property located outside of the 100-year floodplain (or the 500-year floodplain for critical actions);

(2) The applicant has submitted, with its application to HUD (or to the recipient under programs subject to 24 CFR part 58), an individual Section 404 permit (including approval conditions) issued by the Army Corps of Engineers (USACE) for the proposed project; and

(3) All wetlands adversely affected by the action are covered by the permit.

(b) Unless a project is excluded under § 55.12, processing under all of § 55.20 is required for new construction in wetlands that are not subject to USACE jurisdiction and for new construction for which the USACE issues a general permit under Section 404.

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

20. The authority citation for part 58 continues to read as follows:

Authority: 12 U.S.C. 1707 note; 42 U.S.C. 1437o(i)(1) and (2), 1437x, 3535(d), 3547, 4332, 4852, 5304(g), 11402, and 12838; E.O. 11514, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123.

21. Revise § 58.5(b)(2) to read as follows:

§ 58.5 Related federal laws and authorities.

* * * * *

(b) * * *

(2) E.O. 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121, as interpreted in HUD regulations at 24 CFR part 55, particularly sections 2 and 5 of the order.

* * * * *

22. Add § 58.6(a)(4).

§ 58.6 Other requirements.

* * * * *

(a) * * *

(4) Flood insurance requirements cannot be fulfilled by self-insurance except as authorized by law for assistance to state-owned projects within states approved by the FEMA Administrator consistent with 44 CFR 75.11.

* * * * *

23. Revise § 58.35(a)(3)(i) to read as follows:

§ 58.35 Categorical exclusions.

* * * * *

(a) * * *

(3) * * *

(i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, and the land use is not changed;

* * * * *

Dated: November 14, 2011.

Mercedes M. Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2011–31629 Filed 12–9–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0999]

RIN 1625–AA00

New York Fun Factory Fireworks Display, Western Long Island Sound; Mamaroneck, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the navigable waters of western Long Island Sound in the vicinity of Mamaroneck, NY in support of the New York Fun Factory Fireworks display. This action is necessary to provide for the safety of life on the navigable waters and to protect mariners and spectators from the hazards associated with fireworks display. Vessels will be prohibited from entering, transiting, mooring or anchoring within the proposed zone during the enforcement period unless authorized by the Captain of the Port (COTP) New York or the designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before February 10, 2012.

Requests for public meetings must be received by the Coast Guard on or before January 3, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0999 using any one of the following methods:

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

(2) *Fax:* (202) 493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Lieutenant Eunice James, Coast Guard Sector New York Waterways Management Division; (718) 354–4163, email *Eunice.A.James@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0999), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–0999'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0999'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before January 3, 2012, using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1226, 1231, 1233; 46 U.S.C. Chapter 454, 701, 3306, 3703; 50 U.S.C. 191, 195; Public Law 107–295, 116 Stat.

2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones.

On May 10, 2012 New York Fun Factory Events is sponsoring a fireworks display on the waters of western Long Island Sound, Mamaroneck, NY, no rain date is scheduled for this event. Due to the need to protect mariners and spectators from the hazards associated with fireworks display, such as the accidental discharge of fireworks, dangerous projectiles and falling embers or other debris, vessel traffic will be temporarily restricted within 240 yards radius of the launch platform.

Discussion of Proposed Rule

The Coast Guard proposes to establish a temporary safety zone on the waters of western Long Island Sound to ensure the safety of spectators and vessels from hazards associated with the fireworks display.

The fireworks display is scheduled to occur on May 10, 2012 from 9:30 p.m. until 9:45 p.m. In order to ensure the area is clear of persons and vessels before the display begins, and to allow sufficient time after the fireworks end to ensure no explosive hazards remain, this proposed rule will be enforced from 9 p.m. until 10:15 p.m. on May 10, 2012.

In the interest of public safety, general navigation within the proposed safety zone will be restricted during the specified date and times. All persons and vessels will be required to comply with the instructions of the COTP New York or the designated representative. Vessels entering into, transiting through, mooring or anchoring within the proposed zone during the enforcement period will be prohibited unless authorized by the COTP New York, or the designated representative, who may be contacted via VHF Channel 16.

Public notifications will be made to the local maritime community prior to the event through the Local Notice to Mariners and Broadcast Notice to Mariners.

Regulatory Analyses

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

Regulatory Planning and Review

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation under Executive Order 12866.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons: The safety zone will be in effect for a limited duration, the zone is of limited size, vessels may transit around the restricted area, and notifications will be made to the local maritime community via the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of this event.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because the zone will only be in place for a limited duration, one hour and 15 minutes; it is limited in size; and maritime advisories will be issued allowing mariners to adjust their plans accordingly.

This proposed rule would affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in that portion of western Long Island Sound from 9 p.m. to 10:15 p.m. on May 10, 2012.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

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

Federalism

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

Unfunded Mandates Reform Act

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

more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a safety zone around a fireworks display. The fireworks will be launched from a barge and the safety zone is intended to keep mariners away from potential hazards associated with fireworks displays. As such, it appears that this action will qualify for Coast Guard Categorical Exclusions (34)(g), as described in figure 2–1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T01–0999 to read as follows:

§ 165.T01–0999 Safety Zone; New York Fun Factory Fireworks Display, Western Long Island Sound; Mamaroneck, NY.

(a) *Regulated Area.* The following area is a safety zone: All navigable waters of western Long Island Sound in the vicinity of Mamaroneck, NY and within 240-yards from a fireworks barge located in approximate position 40°56′22.51″ N; 073°43′05.93″ W (NAD 83).

(b) *Definition.* The following definitions apply to this section:

(1) Designated Representative. A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP, Sector New York to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated area during the effective date and times.

(3) Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(4) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated representative via VHF channel 16 or (718) 354–4353 (Sector New York command center) to obtain permission to do so.

(d) *Effective Period.* This regulation will be effective and enforced from 9 p.m. until 10:15 p.m. on May 10, 2012.

Dated: November 21, 2011.

L.L. Fagan,

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

[FR Doc. 2011–31702 Filed 12–9–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2011–0796, FRL–9504–1]

Approval and Promulgation of Implementation Plans; New York State Ozone Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a proposed revision to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The proposed SIP revision consists of amendments to title 6 of the New York Codes, Rules and Regulations part 228, ''Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers,'' part 234, ''Graphic Arts,'' and part 241, ''Asphalt Pavement and Asphalt Based Surface Coating.'' The intended effect of this action is to approve control strategies, required by the Clean Air Act, which will result in emission reductions that will help attain and maintain the national ambient air quality standards for ozone.

DATES: Comments must be received on or before January 11, 2012.

ADDRESSES: Submit your comments, identified by Docket Number EPA–R02–OAR–2011–0796, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Werner.Raymond@epa.gov*
- *Fax:* (212) 637–3901
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

Instructions: Direct your comments to Docket No. EPA–R02–OAR–2011–0796. 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 or any form of— encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber (*wieber.kirk@epa.gov*), Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381.

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I. What is required by the Clean Air Act (Act) and how does it apply to New York?

A. What is the history and time frame for State Implementation Plan (SIP) submissions?

In 1997, EPA revised the health-based national ambient air quality standards (NAAQS or standard) for ozone, setting it at 0.08 parts per million averaged over an 8-hour period. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23858), EPA finalized its attainment/nonattainment designations for areas across the country

with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. The three 8-hour ozone moderate nonattainment areas located in New York State are: The New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area; the Poughkeepsie nonattainment area; and the Jefferson County nonattainment area. The New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester and Rockland. This is collectively referred to as the New York City Metropolitan Area or NYMA. The Poughkeepsie nonattainment area is composed of Dutchess, Orange and Putnam counties. On December 7, 2009 (74 FR 63993), EPA determined that the Poughkeepsie area attained the 8-hour ozone standard and on March 25, 2008 (73 FR 15672) EPA determined that Jefferson County attained the 8-hour ozone standard.

These designations triggered the Act's requirements under section 182(b) for moderate nonattainment areas, including a requirement to submit a demonstration of attainment. To assist states in meeting the Act's requirements for ozone, EPA released an 8-hour ozone implementation rule in two phases. EPA's Phase 1 8-hour ozone implementation rule, published on April 30, 2004 (69 FR 23951) and referred to as the Phase 1 Rule, specifies that states must submit these attainment demonstrations to EPA by no later than three years from the effective date of designation—that is, submit them by June 15, 2007.[1]

B. What are the moderate area requirements?

On November 29, 2005, EPA published Phase 2 of the 8-hour ozone implementation rule (70 FR 71612), referred to as the Phase 2 Rule, which addressed the control and state plan obligations that apply to areas designated nonattainment for the 8-hour NAAQS. Among other things, the Phase 1 and Phase 2 Rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment. For such areas, reasonably available control technology (RACT) plans were due by September 2006 (40 CFR 51.912(a)(2)).

Both rules require that modeling and attainment demonstrations, reasonable further progress plans, reasonably available control measure (RACM) analysis, projection year emission inventories, motor vehicle emissions budgets and contingency measures were all due by June 15, 2007 (40 CFR 51.908(a)).

The Ozone Transport Commission (OTC) developed recommended control measures into model rules for a number of source categories and estimated emission reduction benefits from implementing these model rules. These model rules were designed for use by states in Ozone Transport Region to develop their own regulations to achieve additional emission reductions to close emission shortfalls.

II. What was included in New York's submittals?

On August 19, 2010 and December 15, 2010, the New York State Department of Environmental Conservation (NYSDEC), submitted to EPA proposed revisions to the SIP, which included state adopted revisions to three regulations contained in Title 6 of the New York Code of Rules and Regulations (6 NYCRR) part 228, ''Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers,'' part 234, ''Graphic Arts,'' and Part 241, ''Asphalt Pavement and Asphalt Based Surface Coating'' with effective dates of September 30, 2010, July 8, 2010 and January 1, 2011, respectively. These revisions are applicable statewide and will therefore provide volatile organic compound (VOC) emission reductions statewide and will address, in part, attainment of the 1997 8-hour ozone standard in the NYMA and towards meeting the RACT and RACM requirements.

III. What is EPA's evaluation of Part 228, ''Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers?''

A. Background

The OTC states developed a Model Rule entitled ''OTC Model Rule for Adhesives and Sealants,'' dated 2006, which was based on the 1998 California Air Resources Board RACT determination. This RACT determination applied to both the manufacture and use of adhesives, sealants, adhesive primers or sealant primers, in both industrial/manufacturing facilities and in the field. California air districts used this determination to develop regulations for this category. The EPA addressed this source category with a Control Techniques Guideline (CTG) document for Miscellaneous Industrial Adhesives dated September 2008. This CTG was developed in response to the Section 183(e) requirement for EPA to study and regulate consumer and commercial products included in EPA's March 23, 1995 Report to Congress, ''Study of Volatile Organic Compound Emissions from Consumer and Commercial Products—Comprehensive Emissions Inventory,'' (EPA–4531R–94–006(b). See 60 FR 15264 (March 23, 1995). The section 183(e) miscellaneous industrial adhesives category was limited to adhesives and adhesive primers used in industrial/manufacturing operations and did not include products applied in the field. Accordingly, the OTC Model Rule and state efforts in developing individual regulations preceded EPA's CTG for this source category and were broader in applicability.

B. What are the requirements of Part 228, ''Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers?''

The revisions to part 228 are based on the 2006 OTC model rule for commercial and industrial adhesives and sealants, which, in turn, is based on the RACT and best available retrofit control technology determination developed in 1998 by the California Air Resources Board. In addition, the revised rule incorporates EPA's recommendations contained in the CTG document released in 2008 entitled, ''Control Technique Guidelines for Miscellaneous Industrial Adhesives'' (EPA 453/R–08–005), including adhesive application methods, and work practices for adhesive-related handling activities and cleaning materials. The revisions along with the retained provisions to Part 228 include the following:

- Regulation of the application of commercial and industrial adhesives, sealants, adhesive primers and sealant primers by providing options for appliers either to use a product with a VOC content equal to or less than a specified limit or to use add-on controls;
- Work practices for mixing and handling operations for adhesives, thinners and adhesive-related waste materials;
- Establishment of a VOC limit for surface preparation solvents;
- Establishment of an alternative add-on control system requirement of at least 85 percent overall control

[1] On December 22, 2006, the United States Court of Appeals for the District of Columbia Circuit (the Court) vacated the Phase 1 Rule. *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006). Subsequently, in *South Coast Air Quality Management Dist.* v. *EPA,* 489 F.3d 1295 (DC Cir. 2007), in response to several petitions for rehearing, the Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. The court upheld the portions of the Phase 1 Rule relating to EPA's classification system under subpart 2. The portions of the rule that were vacated do not affect this proposed action.

efficiency (capture and destruction efficiency), by weight;

- VOC containing materials to be stored or disposed of in closed containers;
- Prohibition of the sale of any commercial or industrial adhesive, sealant, adhesive primer or sealant primer that exceeds the VOC content limits listed in the rule;
- Manufacturers to label containers with the maximum VOC content as supplied, as well as the maximum VOC content on an as-applied basis when used in accordance with the manufacturer's recommendations regarding thinning, reducing, or mixing with any other VOC containing material;
- Prohibition of the specification of any commercial or industrial adhesive, sealant or primer that violates the provisions of the rule; and
- An allowance for process-specific RACT determinations that shall be submitted to EPA for review and approval as SIP revisions.

C. What is EPA's evaluation?

Part 228 contains the required elements for a federally enforceable rule: emission limitations, compliance procedures and test methods, compliance dates and record keeping provisions.

In contrast to the CTG, part 228 is applicable to all stationary sources including those applications that occur outside of the factory setting- that is, applied in the field. In addition, it includes provisions that apply to the selling, supplying, offering for sale or manufacture for sale in New York of adhesives, sealants, adhesive primers and sealant primers, along with container labeling requirements and product registrations. The VOC content restrictions for these products apply to both their manufacture and application. Stationary sources also have the option of using add-on control equipment provided it achieves 85 percent control. Part 228 also regulates the VOC content/vapor pressure of surface-preparation and clean-up solvents for which the CTG did not make recommendations other than including work practices.

EPA recommends that states evaluate RACT, as required by section 182(b) when implementing a revised 8-hour ozone standard and that they review the VOC content limits for wood adhesives. This category of adhesives is included in the CTG recommended VOC emission limits. Overall, part 228: (1) Regulates the same adhesives and adhesive primers as the CTG with the addition of regulating sealants and sealant primers, (2) applies to additional stationary sources, and (3) provides for similar exemptions as the CTG recommends.

EPA has evaluated New York's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA has determined that part 228 is as effective in regulating this source category as the CTG and proposes to approve it as part of the SIP and as meeting the requirement to adopt a RACT rule for the Miscellaneous Industrial Adhesives CTG category.

IV. What is EPA's evaluation of Part 234, ''Graphic Arts?''

A. Background

In September 2006, EPA issued two CTG documents, one for Offset Lithographic Printing and Letterpress Printing and a second for Flexible Package Printing. These CTG's were developed in response to the section 183(e) requirement for EPA to study and regulate consumer and commercial products included in EPA's March 23, 1995 Report to Congress, ''Study of Volatile Organic Compound Emissions from Consumer and Commercial Products—Comprehensive Emissions Inventory.'' The first CTG addresses both the offset lithographic printing industry and the letterpress printing industry. Although offset lithographic printing and letterpress printing are two distinct product categories on the section 183(e) list, they have many similarities in the types of inks and cleaning materials used, the sources of VOC emissions, and the controls available to address those emissions. EPA therefore addresses both categories in this CTG. This CTG provides control recommendations for reducing VOC emissions stemming from the use of fountain solutions, cleaning materials and inks in offset lithographic printing and cleaning materials and inks in letterpress printing.

The second CTG provides control recommendations for reducing VOC emissions from inks, coatings, adhesives and cleaning materials used in flexible package printing operations.

B. What are the requirements of Part 234, ''Graphic Arts?''

The revisions to part 234 expand the applicability to part 234 to include letterpress printing and establish RACT requirements on facilities that engage in flexographic, offset lithographic and rotogravure printing. They also impose requirements for graphic arts coatings and adhesives and for cleaning solutions used in letterpress and offset lithographic printing. The revised part 234 includes the following:

- Several new definitions, including new definitions for various types of printing equipment and processes, control equipment, and cleaning materials.
- Emission control requirements for graphic arts printing processes, which outline minimum control efficiencies for reducing the amount of VOCs emitted by graphic arts printing processes. Operators may choose to use compliant materials with low VOC content or install and operate emission control equipment.
- Testing and monitoring requirements for graphic arts facilities that choose to comply with Part 234 by installing and operating emission control equipment. Also required are continuous emission control equipment monitors that must be installed and operated on all printing process emission control equipment at graphic arts facilities.
- A prohibition of the sale or specification of any coatings, inks or adhesives that is specifically prohibited by any provision of part 234. Use or specification of such material is allowed only when part 234 compliant emission control equipment has been installed, or the material has been granted a variance by the NYSDEC. Part 234 also requires that coating, ink and adhesive vendors provide product specifications to the buyer upon request.
- Handling, storage and disposal of VOC requirements. Owners and operators of graphic arts printing processes are prohibited from storing inks, coatings, adhesives, cleaning materials, and cloths or papers that contain any amount of VOCs in open containers.
- Recordkeeping requirements. Owners and operators of graphic arts printing processes must retain purchase and use records of inks, coatings, adhesives, VOCs, solvents, fountain solutions, cleaning materials and any other information required to determine compliance with the regulation at the facility for a period of five years. Part 234 also allows NYSDEC to obtain a sample of any material containing VOC in order to determine compliance with part 234. Facilities that meet any of the exemption criteria in part 234 must retain records that demonstrate their qualification for the exemption.
- A requirement that the opacity from any emission source subject to Part 234 be no more than ten percent.

C. What is EPA's evaluation?

Part 234 contains the required elements for a federally enforceable rule: emission limitations, compliance procedures and test methods,

compliance dates and record keeping provisions.

In contrast to the CTGs, part 234 is generally applicable to all graphic arts facilities located in a severe ozone nonattainment area, which includes the NYMA, or to facilities that emit total actual annual VOC graphic arts emissions of three tons or more on a 12-month rolling basis, which is consistent with or more stringent than the CTG's.

Offset Lithographic Printing and Letterpress Printing

In addition to the general revisions to part 234, the revised section 234.3 addresses the CTG for Offset Lithographic Printing and Letterpress Printing. Subsections (b), (c) and (d) were added and require more stringent emission controls. Subsection 234.3(b) requires control equipment achieve overall removal efficiencies, *i.e.,* 90 percent if installed prior to July 8, 2010 and 95 percent if installed on or after July 8, 2010. Subsection 234.3(d) includes the VOC limits for heatset web, sheet-fed and cold-set offset lithographic printing processes. Subsection 234.3(c) limits provisions for cleaning materials to a composite vapor pressure less than 10 mm Hg (millimeters mercury) or VOC content of less than 70 percent by weight, with some exceptions. In addition, section 234.6 requires best management practices for handling, storage and disposal of VOCs, such as keeping VOC and VOC containing materials in closed containers, keeping VOC containing shop towels in closed containers, and recordkeeping requirements. These revisions are consistent with the CTG recommendations issued on October 5, 2006.

EPA evaluated these provisions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

Flexible Package Printing

In addition to the general provisions of part 234, the revised subsection 234.3(a) addresses the CTG for Flexible Package Printing. Subsection 234.3(a)(1)(ii) was added and requires more stringent emission controls for publication rotogravure and other printing processes. Subsection 234.3(a)(1)(i) contains new maximum allowable VOC content limits for inks, coatings and adhesives (minus water). Section 234.6 requires best management practices (see above description). These revisions are consistent with the CTG recommendations issued on October 5, 2006.

EPA evaluated these provisions for consistency with the Act, EPA regulations, and EPA policy and proposes to approve them.

V. What is EPA's evaluation of Part 241, ''Asphalt Pavement and Asphalt Based Surface Coating?''

A. Background

Asphalt paving is used to pave, seal and repair surfaces such as roads, parking lots, drives, walkways and airport runways. Asphalt paving is grouped into three general categories: hot mix, cutback, and emulsified. Hot mix asphalt paving is sometimes ''cutback'' (thinned) with volatile organic solvents to ensure the mix can be properly applied. Since August 21, 1983, the use of cutback asphalt during the summer months has been prohibited pursuant to the provisions of 6 NYCRR part 211, ''General Prohibitions.''

Previously, the maximum amount of VOCs that was allowed to be contained in asphalt was limited by the provisions of section 211.4(b). The VOC content of asphalt based surface coatings is subject to the limit established in part 205, ''Architectural and Industrial Maintenance (AIM) Coatings,'' for the general category of flat coatings.

EPA provided guidance on the reduction of VOC from asphalt, and included cost information in their ''Control of VOCs from Use of Cutback Asphalt'' EPA–450/2–77–037.

B. What are the requirements of Part 241, ''Asphalt Pavement and Asphalt Based Surface Coating?''

NYSDEC revised 6 NYCRR parts 205 and 211 and promulgated a new part 241 that will provide VOC emission reductions from asphalt pavement and asphalt based surface coatings as part of the effort to reduce ozone pollution in the State and reach attainment of the 8-hour ozone NAAQS. Part 241 is applicable statewide to any entity that applies, supplies, sells, offers for sale or manufactures any asphalt pavement and any asphalt based surface coatings.

Part 241 contains all of the regulatory provisions applicable to asphalt pavements and asphalt based surface coatings. The revisions to VOC emission limits from asphalt pavement and asphalt based surface coatings are expected to have a minimal impact on consumers since formulations already exist that meet the New York revised limits.

C. What is EPA's evaluation?

Part 241 contains the regulatory provisions applicable to asphalt pavements and asphalt based surface coatings. These provisions were previously regulated under parts 205 and 211. New York revised these two rules by removing the asphalt provisions and moving them into new rule part 241.

New York removed the seasonal limit that allowed the use of cutback asphalt from October 16th to May 1st. Part 241 only allows the use of cutback asphalt in two circumstances: when the asphalt is used in the production of long-life stockpile material for pavement patching and repair and when the asphalt is used as a penetrating prime coat for the purpose of preparing a surface to receive asphalt pavement.

New York included a VOC content limit in Part 241 for asphalt surface coatings. No asphalt based surface coating may be applied, sold, offered for sale, or manufactured if it contains more than 100 grams of VOC per liter. This is consistent with the limit that was previously included in part 205.

Part 241 also includes limits for emulsified asphalt. No emulsified asphalt, as classified under ASTM International standard specifications D 977 or D 2397 may be applied, sold, offered for sale, or manufactured that contains oil distillate, as determined by ASTM International standard test method D 6997, in amounts that exceed the following limits (milliliters of oil distillate per 200 gram sample):

(a) Three milliliters for ASTM grades RS–1, SS–1, SS–1h, CRS–1, CSS–1, and CSS–1h;

(b) Five milliliters for ASTM grades RS–2, CRS–2, and HFRS–2;

(c) Sixteen milliliters for ASTM grades MS–2, HFMS–2 and HFMS–2h; and

(d) Twenty milliliters for ASTM grades CMS–2 and CMS–2h.

Similar limits were previously included in part 211 but they were expressed as VOC content limits in percent by weight. The revised limits included in part 241 are approximately 17–25 percent more stringent than what was previously included in part 211.

EPA notes that while the revised limits in part 241 are more stringent than the previous limits included in part 211, the States of New Jersey, Delaware and Connecticut have adopted emission limits more stringent than part 241, specifically during the ozone season months. EPA recommends that when New York evaluates RACT, as is required by section 182(b) when implementing a revised 8-hour ozone standard, that New York consider more stringent asphalt paving limits in line with those adopted by the neighboring states.

EPA evaluated the provisions of part 241 for consistency with the Act, EPA

regulations, and EPA policy and proposes to approve them.

VI. What is EPA's conclusion?

EPA has evaluated New York's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA proposes that the revisions made to title 6 of the New York Code of Rules and Regulations (6 NYCRR) part 228, ''Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers,'' part 234, ''Graphic Arts,'' and new part 241, ''Asphalt Pavement and Asphalt Based Surface Coating,'' with effective dates of September 30, 2010, July 8, 2010 and January 1, 2011, respectively, meet the SIP requirements of the Act and fulfill the recommended controls identified in the applicable CTGs. EPA is proposing to approve these revisions and is also proposing to approve the revisions made to 6 NYCRR Part 205, ''Architectural and Industrial Maintenance (AIM) Coatings'' and Part 211, ''General Prohibitions,'' both effective January 1, 2011, to avoid redundancy and conflict of the asphalt paving and coating provisions included in new part 241.

VII. Statutory and Executive Order Reviews

Under the Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this 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) because application of those requirements would be inconsistent with the Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 22, 2011.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2011–31823 Filed 12–9–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0872; FRL–9504–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; General Conformity Requirements for Federal Agencies Applicable to Federal Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The SIP revision consists of a regulation revision adopted by Virginia for the purpose of incorporating Federal general conformity requirements revisions promulgated in July of 2006 and April of 2010. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 11, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0872, by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0872, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0872. 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 electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are also available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, or by email at *rehn.brian@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule approving Virginia's general conformity SIP revision and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: November 29, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–31662 Filed 12–9–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2011–0174]

RIN 2127–AK88

Federal Motor Vehicle Safety Standards; Theft Protection and Rollaway Prevention

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In this NPRM, we (NHTSA) address safety issues arising from increasing variations of keyless ignition controls, and the operation of those controls. At issue are drivers' inability to stop a moving vehicle in a panic situation, and drivers who unintentionally leave the vehicle without the vehicle transmission's being ''locked in park,'' or with the engine still running, increasing the chances of vehicle rollaway or carbon monoxide poisoning in an enclosed area.

Therefore in this NPRM, among other matters, we propose to standardize the operation of controls that are used to stop the vehicle engine or other propulsion system and that do not involve the use of a physical key. We are also proposing to require that an audible warning be given to any driver who: Attempts to shut down the propulsion system without first moving the gear selection control to the ''park'' position (for vehicles with a ''park'' position); exits a vehicle without having first moved the gear selection control to ''park'' (for vehicles with a ''park'' position), or exits a vehicle without first turning off the propulsion system.

DATES: Comments must be received on or before March 12, 2012.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

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

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at (202) 366–9324.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Please see the Privacy Act heading under Rulemaking Analyses and Notices.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, Ms. Gayle Dalrymple, Office of Crash Avoidance Standards (telephone: 202–366–5559) (fax: (202) 493–2990). Ms. Dalrymple's mailing address is National Highway Traffic Safety Administration, NVS–112, 1200 New Jersey Avenue SE., Washington, DC 20590.

For legal issues, Ms. Dorothy Nakama, Office of the Chief Counsel (telephone: (202) 366–2992) (*fax:* (202) 366–3820). Ms. Nakama's mailing address is National Highway Traffic Safety Administration, NCC–112, 1200 New Jersey Avenue SE., Washington, DC 20590.

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I. Executive Summary

In this notice, the National Highway Traffic Safety Administration (NHTSA) addresses safety issues arising from increased availability of ignition systems that do not use physical keys to start and stop passenger motor vehicles' engines or other propulsion systems. At issue are drivers' inability to stop a moving vehicle in a panic situation, and drivers who unintentionally leave the vehicle without the vehicle transmission's being locked in ''park,'' or with the engine still running, increasing the chances of vehicle rollaway or carbon monoxide poisoning in an enclosed area.

Therefore in this NPRM, among other matters, we propose to standardize the length of time it is necessary to push a control to stop the vehicle engine or other propulsion system. We are also proposing to require that an audible warning be given to any driver who: (1) Attempts to shut down the propulsion system without first moving the gear selection control to the ''park'' position (for vehicles with a ''park'' position); (2) exits a vehicle without having first moved the gear selection control to ''park'' (for vehicles with a ''park'' position), or (3) exits a vehicle without first turning off the propulsion system.

This rulemaking action is undertaken in response to our review of complaints from consumers to our Office of Defects Investigation (ODI) reporting incidents such as those described above and investigations of crashes and complaints regarding unintended acceleration.[1] While we recognize that this is not the traditional data base upon which our agency typically bases a rulemaking, we believe that, in this instance, we are addressing an emerging safety issue with non-standardized new technology in way that imposes minimal cost on vehicle manufacturers, especially given that the proposed two-year lead time of the new requirements, and that many vehicles already have some form of the features we are proposing today.

Today's proposal would, if finalized:

- Clarify that definitions for ''key'' and ''starting system'' currently in Federal Motor Vehicle Safety Standard (FMVSS) No. 114 apply to all propulsion systems.
- Propose a new definition for ''key code carrying device.''
- Propose to revise the definition of ''starting system.''
- Propose a new definition for ''stop control.''
- Delete the door opening alert exclusion currently in FMVSS No. 114 for a running vehicle (only for vehicles equipped with keyless ignition).
- Add requirements for the operation of a pushed stop control: The driver must hold the control for a minimum of 500 milliseconds to shut down the propulsion system, whether the vehicle is moving or stationary, and the propulsion system must shut down within 1 second of the initial push of the stop control.
- Add a requirement for an internal alert to the driver when s/he requests propulsion system shut down without first placing the gear selection control in ''park.''
- Add a requirement for an external alert that the driver and bystanders can hear when the vehicle is not in ''park'' and the driver exits the vehicle.
- Add a requirement for an external alert that sounds when the driver leaves a keyless ignition vehicle with the propulsion system active.
- Add new test procedures for the new requirements.

We believe that the benefits of the new requirements proposed today, while not yet quantifiable on a national level, will reduce the risk that drivers will misuse these new keyless ignition systems and therefore also reduce:

- Crashes, injuries and deaths resulting from a driver's inability to shut down a moving vehicle;
- Rollaway incidents due to drivers failing to place the gear shift control in ''park'' before shutting down the propulsion system, and leaving the vehicle; and
- Incidents of carbon monoxide poisoning due to drivers inadvertently leaving a vehicle running or with its propulsion system active in an enclosed space, such as a garage adjoining a home.

We believe that taking precautionary action now, before these non-standardized systems become more widely available, will be beneficial to highway safety. Production of vehicles with these systems has grown from about 5,000 vehicles in model year 2002 to over 1,2 million in model year 2008. We believe we will accrue benefits by establishing a consistent experience for the users across all vehicles and a consistent way to turn off the propulsion system whether the vehicle is moving or not. This not only simplifies training new drivers, but also training drivers new to keyless ignition vehicles, and reduces the stress and confusion relating to fundamental differences in how one operates a vehicle. This is especially important in vehicles that provide less obvious cues as to the state of the engine and the starting system. If the measures we propose in this notice prevent just one serious injury over three years, the rule will be cost beneficial. We believe the countermeasures we have proposed can reasonably be expected to have their intended effect based on similar requirements already in place in FMVSS No. 114 and other standards and in common automotive practice. For example, the warning to drivers to take their keys with them when they leave their vehicles (currently in FMVSS No. 114) and the threshold warning device for platform lifts (currently in FMVSS No. 403) are effective alerts, and we see no reason the new alerts proposed here should be less effective. The common automotive practice of the rotating ignition switch, combined with a physical key, has standardized the engine shut down procedure before the advent of the new electronic convenience controls. We believe standardizing the operation of these new controls, combined with the new alerts, will have the same effect. We believe these new requirements are especially worthwhile considering what we believe to be minimal costs to implement them.

Today, in the vehicles with keyless ignition systems, the great majority use push-button type switches. Some require a momentary tap, some require longer hold times, and some use different hold times to affect different functions. The countermeasure for driver confusion over shutting down a moving vehicle is to require that the switch that turns off the propulsion system work consistently, whether the vehicle is moving or not. From our knowledge of the operation of current designs, we believe that our proposed 500 millisecond hold time is well within the functional range of the switches currently in use. The only

[1] We also note the recommendation of the National Aeronautic and Space Administration's (NASA) Engineering and Safety Center (NESC) that NHTSA consider regulation of ''controls for managing safety critical functions'' and that we noted that ''Keyless ignition systems can exacerbate UA incidents (particularly prolonged incidents involving a stuck accelerator pedal) if the driver cannot determine how to shut off the engine quickly.'' ''Technical Assessment of Toyota Electronic Throttle Control (ETC) Systems,'' National Highway Traffic Safety Administration, February 2011, page 65.

change necessary, in most cases, will be in the additional software coding. Thus, we believe there will be little incremental cost for changing the behavior of the keyless ignition control. There will be costs associated with testing the new software for correct operation.

We are proposing to require one new internal driver alert and two new external driver alerts. Some models already use some version of these alerts and other alerts are already required by FMVSS No. 114. In most cases, manufacturers need only reconfigure existing sound generating systems to engage under the right circumstances. For this reason, we believe the warning cues proposed here have little cost associated with their implementation.

Because the incremental cost for equipping every vehicle in the fleet would be very small, it follows that regardless of the number of vehicles needing a countermeasure, the cost to equip the entire fleet of keyless ignition vehicles would be similarly small.

If the proposed changes in this NPRM are made final, NHTSA proposes a lead time of two years from the next September 1 after a final rule is published in the **Federal Register**. We believe that this lead time gives vehicle manufacturers ample time to implement the new requirements in the normal course of vehicle model updating at minimal cost.

II. Background

Under 49 U.S.C. Section 30111(a), NHTSA (by delegation from the Secretary of Transportation) is directed to prescribe Federal motor vehicle safety standards (FMVSSs). Section 30111(a) also states that ''Each standard shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms.'' This subsection was the statutory basis for the original promulgation of FMVSS No. 114, *Theft protection and rollaway prevention* (49 CFR Section 571.114) and is also the basis for this proposal.

Federal Motor Vehicle Safety Standard No. 114, specifies vehicle performance requirements intended to reduce the incidence of crashes, injuries and fatalities resulting from theft and accidental rollaway of motor vehicles. The purpose of this standard is to decrease the likelihood that a vehicle is in a crash as a result of theft, or accidentally set in motion. FMVSS No. 114 applies to all passenger cars, and to trucks and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or less. However, it does not apply to walk-in vans.[2]

To minimize crashes involving stolen vehicles, FMVSS No. 114 specifies at S5.1.1 that each vehicle must have a starting system which, whenever the key is removed from the starting system prevents: (a) The normal activation of the vehicle's engine or motor and; (b) either steering, or forward self-mobility, of the vehicle, or both. To deter theft, Section 5.1.3 requires an audible alert to the driver if the driver's door is opened and the key left in the starting system. This serves as a reminder to the driver to always take the key. It is further specified at S5.1.4 that if a vehicle is equipped with a transmission with a ''park'' position, the means for deactivating the vehicle's engine or motor must not activate any device installed to prevent steering or forward self-mobility, unless the transmission is locked in the ''park'' position.

To minimize rollaway in vehicles equipped with transmissions with a ''park'' position, the standard specifies in S5.2.1 that the starting system must prevent key removal unless the transmission or gear selection control is locked in ''park'' or becomes locked in ''park'' as a direct result of key removal. The standard further specifies at S5.2.2 that the vehicle must be designed such that the transmission or gear selection control cannot move from the ''park'' position, unless the key is in the starting system.[3]

FMVSS No. 114 includes a specific definition of ''key'': ''means a physical device or an electronic code which, when inserted into the starting system (by physical or electronic means), enables the vehicle operator to activate the engine or motor.'' For purposes of FMVSS No. 114, ''key'' means both the traditional physical key and codes that are electronically transmitted by a fob, plastic card, or a similar device. The electronic code also includes numeric codes entered onto a keypad inside the vehicle by the driver. The standard also includes a definition of ''starting system'': ''means the vehicle system used in conjunction with the key to activate the engine or motor.''

While the new electronic keyless ignitions systems are currently subject to FMVSS No. 114, NHTSA is aware of emerging safety issues that we believe should be addressed by new requirements specific to these systems.

Keyless ignition systems, as they are commonly called, usually consist of a device carried by the driver, which contains an electronic code that grants access to the vehicle (allows the doors to unlock) and the ignition system. The electronic code is transmitted to the vehicle's starting system without physical contact with the vehicle, other than its presence in the vehicle, and the driver is granted access to start the vehicle's propulsion system, usually by pushing a button or turning a rotary switch. Keyless ignition systems first became available in luxury models but are now migrating to more popular vehicles (for example, the 2011 Kia Sedona minivan has keyless entry and ignition standard on the base model, with a manufacturer's suggested retail price of $24,595). Implementation of keyless ignition differs across models. Circular push buttons are most common, but there are also rocker switches and rotary switches (similar to the familiar ignition switch that is turned with a key). Among the push button keyless ignition systems, there are differences in how these systems turn on and shut off the propulsion system, both while the vehicle is stationary (normal usage) and while moving (emergency situations). There are also differences in alerts given to the driver by different models if the driver does something unsafe while using the system, such as not putting the transmission in ''park'' before shutting down the engine, or leaving the vehicle while the propulsion system is still active.

III. Safety Need for Proposed Changes to FMVSS No. 114

In this section, we describe alleged incidents, and those that we have investigated, resulting in crashes, injuries and fatalities, involving vehicles with electronic keyless ignition systems. We also describe how we believe such incidents may have occurred.

The Office of Defects Investigation (ODI) is the office within NHTSA responsible for conducting defect investigations and administering safety recalls in support of NHTSA's mission to improve safety on our nation's roadways. One important means by which ODI discovers vehicle safety-related defects is self-reporting by vehicle owners. By relating the information over a toll-free hotline number (1–(888) 327–4236, TTY for the hearing impaired: 1–(800) 423–9153) or filling out an on-line or paper questionnaire, the Vehicle Owner's

[2] In addition, FMVSS No. 114 specifies requirements for a brake transmission shift interlock (BTSI) at S5.3. S5.3 applies to all motor vehicles (except trailers and motorcycles) with a GVWR of 4,536 kilograms (10,000 pounds) or less.

[3] Exceptions (not relevant to this rulemaking) to these requirements are specified at S5.2.3 *Key removal override option* and S5.2.4 *Gear selection control override option.*

Questionnaire (VOQ), vehicle owners can provide complaint information that is entered into NHTSA's ODI vehicle owner's complaint database. This information is used with other complaints and information to determine if a safety-related defect trend exists.

Traditionally, the data NHTSA uses for rulemakings are from data bases of police- or NHTSA-investigated crashes: the Fatality Analysis Reporting System (FARS), the National Automotive Sampling System Crashworthiness Data System (NASS–CDS) and the National Automotive Sampling System General Estimates System (NASS–GES). Today's discussion is based on driver complaints to ODI through the VOQ because in this case the crashes or incidents of interest either cannot be identified from data elements available in those data bases (crashes involving a vehicle speeding out of control, such as with a stuck accelerator pedal) or they will not be present in those data bases in the first place because they do not involve a motor vehicle in transport (rollaways and carbon monoxide poisoning). The relatively new ''Not-In-Traffic Surveillance'' (NiTS) data base was searched for these incidents, but no keyless ignition vehicles were found. Keyless ignition is an item of equipment that is still not widely used on vehicles, constituting less than 10 percent of vehicles sold, so it is not surprising that none of these vehicles are in the relatively new NiTS.

We recognize that there are many caveats to using VOQs as a data source, among them are:

- The crashes are not randomly selected.
- VOQs are self-reported and for most there is no follow up investigation as to what actually happened in the incident.
- There is no analysis of the root cause of the crash so we cannot confirm if the type of ignition switch contributed to crash causation.
- We have no information on other possible contributing factors in these crashes.
- There may be many more incidents that were not reported to NHTSA because the driver did not know how or where to make the complaint.[4]

However, an accumulation of VOQs from drivers stating a similar problem with a particular vehicle system points to emerging safety issues with new systems, which is what we are trying to document and correct with this precautionary proposal in a manner that has very little cost. We request comment on the use of vehicle owners complaints as a basis of this proposal.

A. Inability To Stop a Moving Vehicle in a Panic Situation

On August 28, 2009, there was a passenger car crash near San Diego, California that resulted in the deaths of four people. The vehicle at issue had a keyless electronic starting system, including a start/stop control (a push button) on the front dashboard. This control would stop the engine immediately when the vehicle was stationary, but the driver needed to depress the ''stop'' control for as long as three seconds to stop the engine when the vehicle was moving. NHTSA's Office of Defects Investigation inspected this vehicle and crash site on September 3, 2009 and a report was filed on September 30, 2009.[5] The investigator noted the following:

- The vehicle was a loaned Lexus ES–350 traveling at a very high rate of speed that did not stop at the end of Highway 125.
- The driver was a 19 year veteran of the California Highway Patrol.
- The cause of the crash was ''very excessive speed.''
- The accelerator pedal had apparently been entrapped by the all-weather floor mat that was not the correct mat for the vehicle.
- Among the ''other significant factors'' was:

> Push Button Ignition Start with no Emergency Instantaneous Shut off Device—In the event that this vehicle was producing unwanted power, there was no ignition key that could be mechanically actuated to instantaneously disconnect electrical power to the engine. In place of the key is a software push button that delays engine shutdown for three seconds once depressed. This instruction is not indicated on the dashboard.

In July of 2007, another fatal crash occurred in California involving a 2007 Toyota Camry equipped with keyless ignition experiencing an unwanted acceleration which hit a Honda Accord, killing its driver. This crash was investigated by Dynamic Science, Inc., under contract to NHTSA's Special Crash Investigation Division. The report on this crash notes,

> The driver reported that he attempted to turn off the vehicle by pushing the power button several times. The vehicle was equipped with a Smart Key system. In order to turn off the power while moving at speed requires the driver to press and hold the power button down for three seconds. The driver was unaware of this feature.[6] [7]

NHTSA's Office of Defects Investigation has received complaints, through the submission of Vehicle Owner's Questionnaires (VOQ)[8] submitted to the agency, of similar situations in which the driver attempted to shut down the propulsion system in a runaway vehicle with keyless ignition. Two examples are:

> While driving the car on the Falmouth connector with the toll booth in sight, I lifted my foot from the accelerator to decelerate and suddenly the accelerator just took off. I immediately applied the brake, but the car continued to try to accelerate, I then applied both feet to the brake as I tried desperately to stop the car while the front wheels were spinning and burning rubber. I tried to shut down the ignition with the pushbutton on the gear shifter and also desperately tried to move the gear shifter from drive but could not. Neither the ignition button nor the gear shifter would respond.

and

> The critical safety concern is noted as follows: * * *, I was traveling with the cruise control active at 55 miles per hour. Upon approaching a slower vehicle and checking traffic, I proceeded to accelerate the vehicle in an attempt to quickly pass the vehicle driving before me. Upon successful passage of the vehicle, I let off the accelerator and pressed the brakes several times, but the vehicle continued to accelerate under full power. Under the conditions, I tried to quickly disrupt this safety critical issue. To the best of my recollection I tried to slow the vehicle by pushing the power button, manipulating the cruise control lever, and putting the vehicle in neutral. All attempts were unsuccessful.

We can conclude from these VOQs and others like them that:

- Drivers will attempt to stop a vehicle in a wide open throttle event by using the engine stop control.
- Drivers expect the engine stop control to function the same way every time it is used, regardless of the vehicle state, stationary or moving.

[4] NASA ESC also observed this quality regarding the VOQ data, ''The available incident reporting databases are valuable for identifying potential vehicle symptoms related to UA events. However, voluntary reporting systems may not allow for accurate quantitative estimates of incident rates or statistical trends. ''Technical Assessment of Toyota Electronic Throttle Control (ETC) Systems,'' National Highway Traffic Safety Administration, February 2011, page 61.

[5] Memorandum from Bill Collins (Investigator and Interviewer, Vehicle Research and Test Center) to Kathleen DeMeter (Director, Office of Defects Investigation), September 30, 2009, available at *http://www.odi.nhtsa.dot.gov/acms/docservlet/Artemis/Public/Pursuits/2009/DP/INME-DP09001-37211P.pdf.*

[6] ''ODI Unintended Acceleration Investigation/Vehicle to Vehicle'', Dynamic Science, Inc. Case Number: DS07035, 2007 Toyota Camry, California, July 2007 available at *http://www-nass.nhtsa.dot.gov/BIN/logon.exe/airmislogon* by entering case number DS07035.

[7] Reviewers of UA complaints during NHTSA's investigation of Toyota UA incidents also noted the necessity of learning this new procedure for shutting down the propulsion system with a keyless ignition system. ''Technical Assessment of Toyota Electronic Throttle Control (ETC) Systems,'' National Highway Traffic Safety Administration, February 2011, page 51, section 2.7.7.

[8] To see the questionnaire form, go to *https://www-odi.nhtsa.dot.gov/ivoq/online.cfm.*

• It is reasonable to link the driver's inability to shut down the moving vehicle to the difference between the expectation of how the control would work in this situation and the reality of how it actually does function.[9]

B. Rollaway—Leaving a Vehicle Not in ''Park''

When shutting down a stationary vehicle (with a transmission with a ''park'' position) to leave it parked, the driver should first move the gear selection control to ''park'' and then request propulsion system shut down. Performing these actions in this order will ensure that the vehicle is in ''park'' before the driver leaves the vehicle. In a vehicle fitted with a traditional key and starting system, this involves moving to ''park,'' turning the ignition switch to ''off'' and removing the key. Due to a requirement in FMVSS No. 114, the driver will not be able to remove the key if the gear selection control is not in ''park'' unless it becomes locked in ''park'' as a direct result of key removal. To prevent rollaway in the keyless ignition vehicle, the gear selection control should be moved to ''park'' and *then* propulsion system shut down should be requested via whatever type of switch is used in the vehicle, most typically a push button. What we find drivers are reporting is that they occasionally (often while distracted) push the switch to shut down the engine without first moving the gear selection control into ''park.'' [10] If they then leave the vehicle in this condition and it is on any kind of incline it can rollaway, possibly causing injury or fatality to the driver or bystanders or damage to surrounding property. In ODI's VOQ data base, we found six complaints of rollaway and another three complaints in which the drivers realized that the vehicle could have rolled in this condition, but it did not. Below are two examples of rollaway incidents (quoted exactly from the VOQ statement):

I bought a used 2006 Audi A6 two months before the accident. I had been using the ''keyless'' option when starting and stopping the vehicle. I stopped at a library, pushed the button twice to turn off the ignition and the vehicle's electrical system. I got out of the vehicle and noticed that it was rolling forward. I attempted to stop it; I opened the driver's door and as I was getting in the door struck a trash can in the parking lot, knocking me down. The vehicle's rear wheel caught my left heel and drug me across a curb before stopping on my left foot. Several men in the parking lot lifted the vehicle off my foot. I was transported to the hospital and kept for injuries to my left leg. Evidently I failed to put the vehicle's transmission in ''p'' and had left it in ''d''. Cars that use a physical key to start and stop the vehicle will not allow a driver to remove the key unless the vehicle's transmission has been shifted to ''park.'' A vehicle that does not utilize a physical key, does not have that built-in safety feature. Five weeks later I am in physical therapy and am grateful I did not sustain more serious injuries, or that an innocent bystander was not killed by a driverless car rolling through a parking lot at a library that is frequented by children. Now I am adamant about always setting the emergency brake. My concern is real: as more and more vehicles are manufactured with ''keyless'' ignition systems that contain no fail-safe feature to prevent ''inadvertent rolling'' as explained in the Audi's owner's manual, I believe more injuries and deaths will be realized. In speaking with the regional representative at Audi, he explained that Audi publishes a ''book'' explaining the vehicle and what happened was totally my fault. My Audi has a sensor in the passenger seat that prevents an expensive airbag from deploying unnecessarily; how about a sensor in the driver's seat that prevents a vehicle from rolling when there is no driver?

and

The contact owns a 2007 Toyota Avalon. The contact stated that when the vehicle is shut off, there is no way to determine if the vehicle is in park due to the keyless entry. She is able to exit the vehicle with the gear shift indicator in the drive position. This failure has caused the vehicle to roll away after she exits. The dealer stated that the failure was dangerous and was unable to perform the repair because the vehicle was designed in that manner. The manufacturer also stated that there was nothing they could do about the design.

C. Leaving the Vehicle With the Vehicle Propulsion System Unintentionally Left Active

There were four VOQs regarding carbon monoxide incidents with keyless ignition vehicles in the past 10 years. Reviewing complaints involving vehicles without a physical key for the propulsion system, we note that drivers occasionally do not turn off the propulsion systems on their vehicles after parking them. One possibility for this behavior is that the driver may not immediately know that the propulsion system has not been turned off. In the following self-reported cases (quoted directly from the VOQs), the drivers only found that they did not turn off the propulsion system because their in-house carbon monoxide detectors were activated after an extended period of the vehicle running in an attached garage:

I arrived home after dinner, drove my 2007 Lexus LS460 (equipped with keyless ignition) into my attached garage, closed the garage door and, leaving the key fob inside the vehicle, I entered my home and eventually went to sleep. I was awoken at approx. 2:15 a.m. by a carbon monoxide alarm located in the foyer inside my home adjacent to the entrance to the garage. I entered the garage to discover that the car's engine was still running, the garage filled with noxious fumes, and the entire vehicle extremely hot to touch, inside and out. I opened the garage door and was eventually able to shut down the engine and clear out the fumes. As I see it, the failure here was two-fold: (1) When I opened my door to exit the car, no alarm or other sound alerted me that the engine was still running, as is the case with ignitions requiring keys.[11] This is particularly problematic because the car's engine runs in virtual silence; and (2) even after the car was unwittingly left idling while in park, the engine did not cut off after some predetermined period of time.

The following incident was reported by the owner of another motor vehicle manufacturer's product which happens to have a hybrid propulsion system:

Our garage is attached to our house with our bedroom above the garage. With 3 kids, both my wife and I have been distracted leaving the car in the garage to unload groceries or help the children. When on electric power we have neglected to turn off the ignition since the car is silent. Only when the carbon-monoxide detector sounded in our garage did we realize the engine had started while we were in the house. We think this could be deadly to other families without carbon monoxide alarms who may also forget to turn off the engine when parked in an attached garage while on electric power.

Because the above two owners had carbon monoxide detectors in their homes, they were alerted of the problem

[9] This difference in function was also noted by NASA NESC, ''The keyless (push-button) ignition design can likewise have an unintended consequence. Here, the concern was that the driver (or passenger) might inadvertently turn off it the vehicle when it is in motion. To prevent such an error, the safeguard was added that the button must be held for three seconds to turn off the vehicle when the vehicle is in motion. However, this procedure is certainly not well practiced by drivers. Indeed, many owners are not even aware of this 'hold the button' requirement. In any case, the most common behavior in an emergency situation is to revert to the well-learned, oft-practiced, always-successful procedure: push the button briefly to turn off the vehicle. However, this procedure fails in the off-nominal situation, no matter how many times the driver executes it in rapid succession.'' NASA Engineering and Safety Center Technical Assessment Report, ''Technical Support to the National Highway Traffic Safety Administration (NHTSA) on the Reported Toyota Motor Corporation (TMC) Unintended Acceleration (UA) Investigation,'' page 44.

[10] The vehicle complies with S5.2.1 of FMVSS No.114 because the key is the electronic code and that code can remain in the vehicle even if the physical device the driver carries is taken outside the vehicle.

[11] This statement by the vehicle owner is not correct for all vehicles. As previously discussed, FMVSS No. 114 excludes the situation of the running vehicle from the requirement to sound the alert to the driver when the door has opened and the key is in the ignition. However, some manufacturers do sound the alert when the engine is running, so this driver's experience may have been with those vehicles.

in time to be able to shut down their vehicle propulsion systems. Others, not as fortunate, may have died because of carbon monoxide poisoning from their vehicles. For example, a September 1, 2010 article in the South Florida Sun-Sentinel.com, reported that Palm Beach County detectives were investigating whether a keyless ignition system on a vehicle that was left running in a garage attached to a house could have led to the death of a 29 year-old woman from carbon monoxide poisoning. (A copy of this article taken from www.sun-sentinel.com is placed in the docket cited in the heading of this notice.)

IV. Society of Automotive Engineers Effort in This Area

In response to the above areas of safety concern and concern regarding the myriad different ways manufacturers are implementing keyless ignition features, the Society of Automotive Engineers (SAE) created the Keyless Ignition Subcommittee as a subcommittee of the Controls and Displays Committee, which has worked since early 2009 to develop an SAE Recommended Practice (RP) to standardize the operation of keyless ignition systems.[12] The committee consisted of experts in the study of how humans interact with machines (human factors experts) and designers of keyless ignition systems from auto manufacturers and suppliers. A NHTSA staff person attended the subcommittee meetings, but did not participate in decision making. The resulting RP is based on the subcommittee members' experience with their company's vehicles and systems, knowledge of consumers' comments about the operation of the systems, knowledge of human factors engineering and, in some cases, knowledge of proprietary studies done during the development of their products (actual data was not shared with the group). The RP applies to all passenger cars, multipurpose passenger vehicles (MPVs), and trucks of 10,000 pounds GVWR and under, with automatic and manual transmissions (some provisions apply only to vehicles with automatic transmissions with a ''park'' position). The RP sets control actuation requirements for starting and stopping stationary and moving vehicles, and requirements in the form of visual or audible alerts to the driver to address leaving the vehicle without putting it in ''park'' and inadvertently leaving the engine running. NHTSA has used portions of the SAE RP as a foundation for the requirements proposed and explained in the next section.

In order to better address specific safety issues and to be more enforceable, our proposal today differs from the SAE RP on several points:

- The SAE RP has a range of 500msec–2sec for control actuation to stop a moving vehicle, while we propose a 500 millisecond control actuation for *all* stops regardless of whether the vehicle is moving or stationary.
- The SAE RP has requirements for control actuation to start the propulsion system, while we tentatively conclude that there is, at this time, no safety benefit upon which this agency can regulate propulsion system starting.
- The ''Not in Park'' alert required by the SAE RP sounds upon door opening, but has no measureable attributes. The internal audible alert we are proposing today sounds at 85dBA (500–3000 Hz) the instant the driver requests engine shut down (in a stationary vehicle) without the transmission in ''park'' and continues until the gear selection control is moved to ''park''.
- The SAE RP requires an unspecified audible or visual external alert if the vehicle is not in ''park'' and the key code carrying device is not in the vehicle, while we are proposing an external audible alert that sounds at 85dBA, 1 meter from the vehicle, for 1 minute when the vehicle is stationary, the key code carrying device leaves the vehicle, and the vehicle is not in ''park''.
- The SAE RP requires an unspecified audible alert if the propulsion system is active and the driver's door is opened, while our proposal is for an external audible alert at 85dBA, 1 meter from the vehicle, for 1 second when the vehicle is stationary, the key code carrying device leaves the vehicle, and the propulsion system is active (either an internal combustion engine is running, or in the case of a hybrid vehicle the propulsion system is in a state that the internal combustion engine could engage when the electric power became depleted over time).

We seek comment on whether our deviations from the SAE RP are appropriate for an FMVSS.

NHTSA requested that human factors experts at the John A. Volpe National Transportation Systems Center review the SAE RP to help us make our proposal more specific in addressing the safety issues we have noted in our VOQs. Their report has been placed in the docket for this notice.[13]

V. NHTSA Proposal

In this section, we will describe how we propose to amend FMVSS No. 114 so that the safety issues described in Section III. Safety Need for Proposed Changes to FMVSS No. 114 may be mitigated.

Based in part on NHTSA's ODI VOQ data, we are proposing regulatory text for addressing the following three types of safety related problems: (1) The driver's inability to shut down a moving vehicle in an emergency because the driver may be unfamiliar with the fact that the shut-down process is different in a moving vehicle than in a stopped vehicle. This situation may lead to a crash. (2) The possibility that the driver will walk away from a vehicle which is not locked in ''park'' because the driver is able to shut off the vehicle propulsion system without first putting the transmission in ''park.'' This results in a greater likelihood that the vehicle will roll away on its own. (3) The possibility that the driver will walk away from a vehicle whose propulsion system has been unintentionally left active (even though the driver may have placed the transmission in ''park.''). If the vehicle is in an enclosed garage connected to living quarters, this situation may result in carbon monoxide poisoning of persons in the dwelling; if outdoors, this increases the possibility of vehicle theft and a subsequent crash.

As the earlier incidents related from the VOQs have shown, in many ignition systems that don't use physical keys, the driver may not know whether s/he has turned off the vehicle propulsion system.

In this NPRM, NHTSA proposes additional requirements for vehicles using keyless ignition systems because, unlike systems which use the traditional physical key, the start/stop process on vehicles that use electronic codes as keys are not standardized across manufacturers. In particular, if a push-button type control is used, the amount of time the start/stop control must be pressed differs not only among manufacturers, but also on the same vehicle, depending on whether the vehicle is started from a stopped position, stopped while the vehicle is in motion, or whether the vehicle propulsion system is being turned off while the vehicle is stopped. Standardization of controls teaches drivers how the controls will operate and ensures that drivers' expectations about those operations are met.

The problem presented by the lack of standardization is exacerbated by the fact that electronic keys lack many of the visual and tactile cues about the

[12] SAE J2948–201101 ''Keyless Ignition Control Design,'' January 2011.

[13] ''Review of SAE RP J2948 JAN2011: Keyless Ignition Control Design,'' John A. Volpe National Transportation Systems Center, March 2011.

status of the vehicle's propulsion system that are available to drivers when using traditional physical keys. In a system using the physical key, the driver knows from the angle of the key in the ignition whether the vehicle is in ''lock,'' ''accessory,'' ''start,'' or ''run.'' Also, the key will not release from the ignition switch unless the transmission is in ''park.'' The keyless ignition system provides no such physical cues to the driver.

The requirement for a visible indication of transmission position comes from FMVSS No. 102, *Transmission shift position sequence, starter interlock, and transmission braking effect.* S3.1.4.1 requires that if the transmission shift position sequence includes a ''park'' position, identification of shift positions, including the positions in relation to each other and the position selected, shall be displayed in view of the driver whenever: (a) The ignition is in a position where transmission can be shifted; or (b) the transmission is not in ''park.'' Despite this visual cue that the transmission is not in ''park'', some drivers of vehicles equipped with keyless ignition systems, especially when distracted or unfamiliar with the operation of the vehicle they are driving, leave their vehicles without ensuring the transmission is in the ''park'' position. They do so because they do not have the tactile cue of being unable to remove the key unless the transmission or gear selection control is locked in ''park.'' [14] Such actions result in a risk that the vehicle will roll away of its own accord.

We note that the current title of Standard No. 114, ''Theft protection and rollaway prevention,'' may be made outdated and not inclusive if the proposals described in this notice were made final. However, a title that is fully descriptive of all the purposes served by the standard may be unwieldy. We seek comment on the need to update the title and ask commenters to suggest a new title if they believe a change would be necessary or beneficial.

A. New Definitions

As mentioned in the Background section of this NPRM, FMVSS No. 114 already contains definitions for ''key'' and ''starting system'' which are inclusive of systems that use electronic codes without a physical key to allow the driver to start the vehicle. However, we are proposing the addition of one definition specific to keyless ignition systems:

Key code carrying device means a physical device which is capable of electronically transmitting a key code to the vehicle starting system without physical connection (other than its presence in the vehicle) between the device and the vehicle.

This key code carrying device is typically called a ''key fob'' by consumers. It carries and transmits the electronic code to the vehicle that gives the driver permission to start the vehicle. The electronic code carried in the device is the ''key.'' The device is not the ''key.'' This new definition for key code carrying device is based on that used in the SAE Recommended Practice discussed in Section IV above.[15] We propose adding ''without physical connection (other than its presence in the vehicle) between the device and the vehicle,'' to SAE's RP language to differentiate these devices from physical keys which also carry a chip containing an electronic code as part of a theft deterrent system. These physical keys must be inserted into the ignition switch of the vehicle and the key is used to turn the switch. Our proposed definition is intended to specifically exclude any key which must be physically inserted into any part of the vehicle each time the driver desires to start the propulsion system. If a key must be inserted into the vehicle we consider it to be a physical key, regardless of whether or not it also contains electronic components which communicate with the vehicle intended to identify this particular key as belonging to this particular vehicle (*i.e.,* for theft prevention purposes). Further, our proposed definition of key code carrying device (KCCD) is not intended to exclude a device which otherwise would be a KCCD simply because it occasionally must have physical contact with the vehicle to recharge the battery in the KCCD or because the vehicle manufacturer provides a place where the driver may insert the KCCD if s/he chooses for the convenience of providing a place to keep the device while driving. We note that the primary attraction of these keyless systems appears to be that the driver need not handle a key to access and start the vehicle. We seek comment on whether our proposed definition is specific enough to (a) Exclude devices that we would consider physical keys—they *must* be inserted to start the vehicle, and (b) include devices which *may* be inserted to charge a battery or for driver convenience, but do not need to be inserted for normal vehicle operation. We request comment on how the definition of KCCD could be improved to clarify these points.

At this time, we are not proposing to change our definition of ''key,'' which provides that for keyless ignition systems, the electronic code, not the physical device carried by the driver, is the key. We note that NHTSA's definition of the code as the key is long-standing. It was first articulated in a letter to Mr. Stephen Selander of General Motors in May of 1992.[16] Further, in August of 2005 we published a Notice of Proposed Rulemaking which, among other things, proposed the current definition of ''key.'' There were no comments which disagreed with our definition of ''key'' with regard to keyless ignition systems at that time and we finalized that rulemaking in April of 2006.[17] However, we acknowledge that consumers may think of the key code carrying device as the key and that some manufacturers do refer to this device as a key in their consumer literature, so there may be some confusion on the part of consumers as to what is actually the key. Therefore, we seek comment on whether we should revise our definition of ''key'' and if so, what that definition should be and how we should differentiate between the device the driver carries and the code that actually allows the vehicle to start. Changing the definition of ''key'' may change the interpretation of what it means for the key to be removed from (S5.1.1) or inserted into the starting system (S5.1.3).

In addition, we are proposing to amend the definition of ''starting system.'' At present, ''starting system'' is defined as: ''means the vehicle system used in conjunction with the key to activate the engine or motor.'' In this NPRM, we propose to amend the end of the ''starting system'' definition to state: ''* * * activate the engine, motor, or other system which provides propulsion to the motor vehicle.'' We are proposing this clarification so that it is explicit that FMVSS No. 114 applies to any propulsion ''starting system'' available in motor vehicles today, or at some point in the future.

We are proposing to add a second definition, ''stop control means the device used by the driver to deactivate the engine, motor, or other system which provides propulsion to the motor

[14] In keyless ignition vehicles, the ''key'' is the electronic code transmitted from a device carried by the driver to the vehicle's starting system. When the vehicle is not in ''park,'' this key code remains in the vehicle, thus the vehicle conforms to the requirement at 49 CFR 571.114 S5.2.1.

[15] SAE J2948–201101.

[16] Letter from Paul Jackson Rice, Chief Counsel to Stephen E. Selander, General Motors Corp, May 22, 1992.

[17] 71 FR 17752, April 7, 2006.

vehicle.'' In most vehicles available today, this control is a push button switch, but this definition is not limited to push button switches.

B. Standardizing Shutting Down a Moving Vehicle's Propulsion System

As we have seen in the quoted VOQs, drivers recognize the need and desirability of shutting down the engine in a moving vehicle when they experience an event in which the acceleration of the vehicle does not seem to be under their control. The VOQs also point out that drivers are stymied in their efforts to shut down the engine in a moving vehicle by the fact that when the vehicle is moving the shut down procedure they are used to in every day operation does not work. To remedy this safety issue, NHTSA proposes to standardize the length of time the driver must press on a ''stop'' control in order to stop a vehicle, whether moving or stationary. At S5.4.2.1(a), we propose that for vehicles equipped with propulsion system stop controls that are activated by the driver pressing on the control, the vehicle's propulsion system must stop only after the control has been depressed for more than 500 milliseconds. The 500 milliseconds time is based on SAE Recommended Practice J2948 *Keyless Ignition Control Design* (January 2011). Five hundred milliseconds is the lowest time specified by the Recommended Practice for engine shut down in a moving vehicle (the RP has a range of 500 milliseconds to 2 seconds, NHTSA believes that standardization is not achieved by allowing a window of operation).

We are proposing to regulate only the operation of controls that are pushed because we believe that this covers the great majority of stop controls manufactured today (a circular push button) or contemplated for the future (pressing or touching a portion of a display screen). However, we note that other controls, such as rotary knobs and rocker switches [18] have been used in keyless ignition systems in the past. We seek comment on what other controls are used or contemplated and whether there is a safety need to regulate the actuation of all types of stop controls (not just those that are pushed) and how that might be accomplished. NHTSA seeks comment on whether the language of S5.4 needs to be more specific as to the point at which the 500 msec time begins and what that more specific language would be. When offering suggestions, commenters should keep in mind that there are several different types of switch designs currently available and that could become available that would be subject to this standard.

NHTSA understands manufacturers implemented the practice of designing keyless ignition systems to shut down differently while the vehicle is moving than while stationary to help prevent inadvertent propulsion system shut down, *i.e.* a situation in which the driver reaches for a different control, accidentally bumps the engine off control and as a result experiences an unintended, unexpected engine shut down, which can create a hazardous situation. However, different times for different modes of operation (for example, a light tap to start or stop a parked vehicle and several seconds to turn the propulsion system off while the vehicle is in motion) result in the driver experiencing an unexpected result when using his accustomed tap motion to request engine shut off (in a stationary vehicle). The drivers' accustomed tap motion does not have the expected effect in a moving vehicle in a panic situation. As previously discussed, this safety issue was identified in the VOQs by and NASA NESC in its review of UA incidents. NHTSA believes that requiring the driver to use the same action to request engine shut down in all cases should result in the safety benefit of drivers' ability to shut down a moving vehicle without the necessity of knowing or remembering a separate motion. We have chosen to propose the 500 millisecond control actuation time believing it will be long enough to guard against inadvertent shut down, while also short enough for drivers to tolerate for everyday normal stationary shut down. We ask for comment on whether this time is too long or too short and whether the danger of inadvertent shut down is that much greater than that of an inability to shut the propulsion system off in the event of a stuck throttle, engine fire, or other emergency situation. Please provide data on this risk comparison. We also believe that the instances of inadvertent shut down can be mitigated by other means, such as better control or switch location, which will not inadvertently get in the way of the driver's wrist, arm, bracelet, or other foreseeable obstruction and ask for comment on this facet of vehicle design.

In our proposal, the time between when the control actuation starts the shut down process (500 milliseconds) and the time the engine must be stopped (1 second) allows for the signals to be sent and acted upon by the vehicle to bring the engine to a stop. We seek comment on this length of time and the problem of engine inertia working to keep the engine running when the vehicle is moving. We propose that the test procedures for compliance with this standard will be conducted on a level surface.

We have proposed a requirement that once the propulsion system of a moving vehicle is shut down, any restart of the system must be initiated by the driver by actuation of the engine start control. This is to prevent automatic restart by any vehicle system, such as idle-stop technology, when the driver has shut down the engine in an emergency situation.

In developing this NPRM, we considered whether to make all control actuations the same, 500 millisecond hold for starting and stopping the engine under any condition, to emphasize to the driver that this control functions the same under all conditions. However, we understand that drivers are so anxious to get started as soon as possible that they would not tolerate a wait time as long as 500 milliseconds to start the engine. We have seen examples of vehicles in which the manufacturers have designed their systems such that if the driver ''taps'' the start control (as little as 60 milliseconds) the vehicle will start. After careful consideration, we have tentatively decided that requiring all stops to be the same accomplishes the goal of standardizing the propulsion stop function without inconveniencing drivers in the start mode and that there is little additional safety benefit to be gained by regulating the starting of the propulsion system. However we note that more time spent in the starting up process would provide more time for systems like a rearview camera system to boot up and begin functioning before rearward movement begins. We ask for comment on this tentative decision.

In S5.4.1.2(b), we are not proposing to allow auto-shift to ''neutral'' in lieu of engine shut down because we believe, based on the VOQ data, that when drivers actuate the engine ''off'' control or switch, they expect the engine to shut off. An engine which continues to run could confuse the driver and cause unwanted actions by the driver. We are aware that some manufacturers currently do shift the transmission to ''neutral'' when the driver requests engine shut down while the vehicle is moving. These manufacturers believe that if the engine is shut down while the vehicle is moving, the driver's ability to control the vehicle will be hampered by the resulting loss of power steering and power braking. In the same vein, we are

[18] We noted that a rocker switch must be pressed and therefore would be subject to the regulatory text proposed in this notice.

not requiring auto-shift to ''neutral'' because, in addition to the issue of driver expectation, we know requiring this feature would require all vehicles to be fitted with electronic transmissions and this would be extremely costly. We note that drivers have dealt with this loss of control when shutting down conventionally keyed vehicles for many years. If we were to determine that loss of power control when shutting down the propulsion system of a moving vehicle is a safety concern, we believe we would need to address that safety issue for all vehicles, not just those fitted with keyless ignitions.

We ask for comment on whether the safety problem associated with loss of power assist to braking and steering is greater than the safety risk of the driver believing that s/he has requested the engine to shut down and has instead experienced an unexpected action by the vehicle. If we were persuaded by comments to the NPRM on this issue that allowing auto-shift to ''neutral'' is a countermeasure that meets the need for safety, the regulatory language proposed today would be altered so that S5.4.1.1(b) would read ''The propulsion system must shut off, or remove motive power from the drive wheels, within 1 second after the control has been depressed for more than 500 milliseconds.'' The phrase ''or remove motive power from the drive wheels,'' is not part of the current proposal. We also note that we have seen examples where the manufacturer has chosen not to allow the vehicle's propulsion system to shut down at all while the vehicle is moving. If today's proposal is made final, these systems would not be allowed. We note that as early as 1997 we voiced our concern about the fact that such systems would not meet driver's expectations.[19]

We have also considered allowing a vehicle to enter a ''limp home'' mode instead of shutting down the propulsion system when shut down is requested in a moving vehicle. Such an operating mode would allow the driver to finish his or her trip at some reduced maximum allowable throttle output, rather than requiring the driver to pull over to the side of the road (encumbered with the loss of power assist to braking and steering) as would be the case with full engine shut down. While this mode has the advantage of allowing the driver to continue his or her trip, it has all the disadvantages of the auto-shift to neutral listed above. It is also uncertain whether whatever vehicle malfunction was causing the excessive throttle condition to which the driver was initially responding (by requesting shut down) would also affect the ''limp home'' mode. For these reasons, we have tentatively decided not to allow this mode of operation, but we ask for comment on whether any manufacturer is currently using such a ''limp home'' mode when propulsion shut down is requested in a moving vehicle and what are the possible advantages and disadvantages of such an operating mode.

Finally, we note that SAE J2948 specifies stop conditions at S4.3.2.1., '' Stop Conditions Met.'' Among other matters, S4.3.2.1 states that the vehicle shall also exit the run mode after multiple actuations (defined at S3.7.3 as two or three actuations in a row) of the keyless ignition control system. We do not believe that NHTSA needs to include this requirement in our proposal since we believe that standardizing propulsion control shut down to a 500 msec hold obviates the likelihood that the driver will attempt to shut down the propulsion system using multiple short presses. We believe this has happened in current vehicles because the ''everyday'' shut down procedure is a momentary press of the control and the driver uses that momentary press in the moving condition also. When it does not work, s/he tries it again. S/he is not intentionally pressing multiple times because s/he knows the shut down procedure is different while the vehicle is moving, s/he's just repeating what s/he thought should work.[20] If today's proposal were made final, the driver will experience no need for multiple control actuations; the propulsion system will have deactivated within the time period that the driver expects from normal use.

C. Audible Warning When Key Is in the Starting System and Driver Opens the Door

At present, S5.1.3 of FMVSS No. 114 specifies that an audible warning must be activated when the key is in the ignition system and the door closest to the driver's designated seating position is opened. There are three exceptions to this requirement: (a) After the key has been inserted into the starting system, and before the driver takes further action; (b) if the key is in the starting system in a manner or position that allows the engine or motor to be started or to continue operating; or (c) for mechanical keys and starting systems, after the key has been withdrawn to a position from which it may not be turned.

In this NPRM, we propose to limit the exclusion at S5.1.3(b) to vehicles with mechanical keys and starting systems. The original logic of S5.1.3(b) (*i.e.,* applying to motor vehicles with all types of keys and starting systems) was that if the engine were running, then the driver must have intentionally left the key behind. However, with keyless ignition systems, it is not obvious to the driver that s/he has left the ''key'' (the electronic code) behind and also it may not be obvious that the engine or other propulsion system is running.

Therefore, if this NPRM were made final, on vehicles with electronic keyless ignition systems, when the ''key'' is left in the starting system in a manner or position that allows the engine, motor or other propulsion system to be started or to continue operating, the audible warning currently excluded by S5.1.3(b) must be activated when .the driver's door is opened. S5.1.3 does not specify the volume or duration of this audible warning. Many manufacturers currently choose to sound this alarm regardless of whether they use a physical or electronic key in the vehicle.

D. Audible Warning To Prevent Rollaway

In this NPRM at S5.4.2 *Warnings to driver exiting a vehicle with the gear selection control not in ''park'' for vehicles equipped with a ''park'' position,* we propose two new audible alerts of no less than 85 dBa between 500–3000 Hz. The first, S5.4.2.2, must sound if propulsion shut down is requested, the gear selection control is not in ''park,'' and the vehicle is moving at less than 15 km/h (9.3 miles per hour). We propose that the alert must continue until the gear selection control is placed in ''park.'' The gear selection control must be able to be moved to the ''park'' position without having to restart the propulsion system.

We are proposing a loud audible warning as opposed to allowing the manufacturer a choice between an audible or visual warning (as allowed by the SAE RP) for two reasons. First, FMVSS No. 114 currently requires an audible warning as discussed above, so drivers are accustomed to this type of warning. Secondly, we believe that a visual alert, such as a written or pictographic message to the driver in the message center of the dashboard (currently used in some vehicles), is too easily ignored by the driver. The alert must be loud to guarantee a driver's response to this very dangerous situation. The sound level proposed, 85

[19] Letter to a redacted party from John Womack, Acting Chief Counsel, January 30, 1997.

[20] See footnote 8.

dBA between 500–3000 Hz, comes from the threshold- warning alert required in FMVSS No. 403, *Platform lift systems for motor vehicles.* We seek comment on whether the test method proposed today in S6.3.1 is the best method to measure the sound level and whether the sound level is too loud or not loud enough (for this requirement and all other sound levels proposed in this NPRM).

The test procedure proposed at S6.3.1 uses the height of a seated 50th percentile male dummy to establish the height at which sound levels are measured. The proposal is that the sound be measured 740 mm above the driver's seat. This height was derived from the fact that the seated height of the 50th percentile male dummy (to the top of the head) is 909mm and the shoulder height is 565mm above the seat. The midpoint of the difference between those two distances is 740mm.[21]

An alternative to this loud warning sound could be an audible voice command telling the driver exactly what is wrong (for example, ''Danger. Not in 'park'.'') and how to remedy the situation (''Move gear selection control to 'park'''). This solution may be more helpful to the driver, but we do not know if most vehicles currently have the capability for voice commands or if such capability could be added at very low cost. We know that such artificial human voice alerts have been used in some vehicles in the past to alert drivers and passengers to potentially harmful conditions, e.g. ''door ajar'' or ''turn off headlights.'' We have the following questions regarding this alternative form of alert:

- Is a voice command preferable to an unspecified loud audible warning?
- How loud should such a voice alert be?
- Should a voice alert be required to be in English?
- Should it be required to be able to be programmed to the driver's choice of language?
- Should NHTSA specify the exact words to be used and if so what should those words be?
- Are most vehicle manufacturers capable of providing such a voice alert and at what cost?

We propose to use the phrase ''the vehicle is moving at less than 15 km/h'' in lieu of ''the vehicle is stationary.'' We believe that most currently available wheel speed sensors are not capable of determining speeds of 0. The 15 km/h figure is also that referenced in the final rule establishing the electronic stability control system.[22]

The second alert, at S5.4.2.3, must sound outside the vehicle if the driver does not respond to the internal alarm and continues to exit the vehicle without placing the transmission in ''park.'' We propose to determine that the driver has left the vehicle by requiring the vehicle to sense the absence of the KCCD. The proposed regulatory text is:

> When tested in accordance with S6.3.2, an audible alert of no less than 85dBA between 500–3000 Hz, measured outside the vehicle, must sound when the door located closest to the driver's designated seating position is opened while the gear selection control is not in ''park'', the vehicle is moving at less than 15 km/h (9.3 mph), and the key code carrying device is not present in the vehicle. This alert must sound for 1 minute or until the gear selection control is moved to ''park,'' whichever occurs first. This alert is not required to sound if the transmission becomes locked in ''park'' as a direct result of key removal upon door opening, or upon removal of the key code carrying device from the vehicle.

We seek comment on the ways in which vehicles manufactured today sense the absence of the key code carrying device. If the system does not already incorporate such a sensor, what would be the cost to add it? We realize that sensing the presence or absence of the KCCD is not an ideal substitute for sensing the presence or absence of the driver, for a number of reasons, primarily that the driver may not take the KCCD with him or her, in which case the warning will not sound and the vehicle will be left in an unsafe condition—vulnerable to rollaway and theft. (Sensing the absence of the KCCD is the approach used in SAE J2948.) The driver may be especially likely to leave the KCCD in the vehicle when the vehicle is in his or her own garage or driveway. As explained in the next section, we also seek comment on whether a one-second audible warning to the driver leaving a vehicle with the propulsion system operating sufficiently reduces this risk.

One way of sensing the driver's presence is to do it directly, such as is done for the right front passenger for the purpose of determining whether or not to deploy an air bag in a crash. However, we do not believe that most, if any, manufacturers currently have such sensors in the driver's position. We estimate that adding some sort of sensor to indicate the driver has left the vehicle would cost between $4 per vehicle for a seat belt sensor, and $12 per vehicle for a weight sensor in the driver's seat. We request comment on how such sensors might be used to indicate the presence or absence of the driver, the accuracy of our cost estimate, and whether this cost is commensurate with the safety risk we are attempting to reduce.

The sound level required, again 85 dBA between 500–3000 Hz, is measured at 1580mm [23] above the ground, one meter from the vehicle (S6.3.3). We also propose that the alarm discontinue after one minute (or until the gear selection control has been moved to ''park''), as after that time, we believe the alarm has been ignored by the driver and will be ignored by any bystanders. We seek comment on the duration of the alarm, on whether the alarm should be continuous, and on the test method proposed at S6.3.2. We also seek comment on whether such an alarm requirement can be readily confused with the antitheft alarm system that is already standard on many passenger motor vehicles.

E. Audible Warning To Reduce Chances of Drivers' Leaving a Vehicle With the Propulsion System Active

In S5.5 *Warning to driver exiting a vehicle with the propulsion system operating,* we propose to require an audible alert to sound outside the vehicle if the propulsion system is running, or is capable of starting without reintroduction of the electronic key code into the starting system, the door closest to the driver's designated seating position is opened, and the KCCD is not in the vehicle.

This is a proposed countermeasure for those cases in which a driver is unaware that s/he has inadvertently left the vehicle running. We are proposing an alert time of one second because a person walking at an average pace of three miles per hour will cover three feet in less than one second. After that time and distance, we assume that the driver has left the vehicle running intentionally, either because someone else is in the vehicle, to facilitate vehicle repair, or for some other reason. The alert would sound for one second (rather than one minute, as the alert for leaving the vehicle not in ''park'' would sound), because leaving the vehicle with the propulsion system on is more commonly intentional on the part of the driver, and less immediately risky to bystanders. If it sounds for longer than a second, the alert would also tend to

[21] 909—[(909—565)/2] = 737mm, rounded up is 740mm.

[22] See 66 FR 17236, at 17264, April 6, 2007.

[23] As with the previous discussion this height is based on the height of the 50th percentile male dummy. The height to the top of the standing dummy's head is 1750mm. Subtracting the same 172mm as above leaves 1578mm which we round up to 1580mm.

annoy bystanders and serve no purpose. However, we seek comment on whether one second is long enough for an alert that the driver has left the vehicle with the propulsion system active.

We recognize that there is a competition between our desire to alert the driver to the fact that s/he has inadvertently left the vehicle with the propulsion system active and the potential to create a nuisance alert when the driver has left the vehicle running intentionally. Most of these potential nuisance situations will be alleviated if the driver takes the KCCD with him or her. We also recognize that there are occasions when a driver may leave the vehicle running while a passenger remains in the vehicle. The required alert then becomes a nuisance to the passenger, but this is very brief—one second. We seek comment on whether this warning would be necessary if the manufacturer could determine that seating positions other than the driver's are occupied. We know that most vehicles are capable of determining if the right front passenger position is occupied for purposes of complying with FMVSS No. 208, *Occupant protection.* Would manufacturers value the ability to reduce passenger annoyance equal to the cost of adding software to prevent this alarm if the seat were occupied, if given the option?

As with the above section on the ''not in park'' alerts we seek comment on whether simulated voice alerts containing a warning (such as ''Propulsion system active'') and how to remedy the situation (*e.g.* ''Turn off propulsion system'') would be an effective alternative to the proposed alert and if manufacturers are capable of installing this type of alert and at what cost.

We also recognize that this requirement will not have the intended result of preventing vehicle theft or death due to carbon monoxide poisoning if the driver does not take the KCCD from the vehicle. A driver may be especially prone to leave the KCCD in the vehicle when the vehicle is locked in the garage at home. This is another reason that we are seeking comment on the availability and cost of sensors that would indicate the presence or absence of the driver as discussed in the last section.

As will be explained later, we considered requiring the engine to shut down after a specified period of time, however, there are many situations in which a driver intends to leave some electrical system or the engine in the vehicle running without his or her presence. An example is leaving a passenger with heat or air conditioning on while the driver runs an errand, or keeping the engine running to prevent the inability to restart the engine in a very cold climate. After reviewing many possible scenarios and careful consideration, we decided we could not propose a time period for shut down that would cover all possible reasons consumers would want to leave the propulsion system running in their absence from the vehicle.

F. Owner's Manual Required Language

In order to ensure that drivers who are so inclined have access to information on how the propulsion system in their vehicles operates, normally, and in the event of an emergency, in this NPRM at S5.6, we are proposing to require that manufacturers place in the vehicle's owner's manual, instructions regarding the operation of the control(s) that stops and starts the propulsion system. This proposed language would provide a warning that power assist to steering and braking will be lost in the event the propulsion system is shut down while the vehicle is in motion. We are also proposing that there must be an explanation of how to handle the vehicle safely in the event power assist to steering and braking is lost.

NHTSA has reviewed the available owner's manuals for many manufacturers. As a practical matter, we are not aware of any manufacturer whose manual does not already address this critical safety situation. The proposed language at S5.6 will ensure that this language will continue to be maintained. Nothing in this proposed language should dissuade a manufacturer from adding additional information, if it believes the information would help a driver safely handle the vehicle in the event of an emergency.

We note that NHTSA's proposed language in the owner's manual, if made final, would be a ''collection of information'' as defined by the Office of Management and Budget at 5 CFR 1320 *Controlling Paperwork Burdens on the Public.* In this NPRM, we seek public comment on this proposed collection of information. A full description of this proposed collection of information is provided in Section IX Rulemaking Analyses and Notices.

Since we believe that very few drivers actually read the owner's manual, we request comment on whether this proposed requirement (and hence the collection of information) is actually necessary and if manufacturers will continue to provide the instructions for these controls regardless of any requirement by NHTSA to do so.

VI. Other Issues Considered by NHTSA

In the following sections, we will discuss additional measures, other than those mentioned above that we have taken under consideration to address the safety issues raised in this NPRM. We have considered whether each of these measures would meet the need for safety in both keyless ignition systems and systems using the traditional physical key. We are not proposing regulatory text for the following measures and explain why we are not doing so. However, we seek comment on each of them and may adopt provisions relating to one or more of them in the final rule, if it can be demonstrated that they can be incorporated by manufacturers at little cost. Further, nothing in this rulemaking should be construed as prohibitions against manufacturers from voluntarily incorporating these systems in the passenger motor vehicles they manufacture.

A. Propulsion System Kill Switch in Plain View of the Driver

NHTSA considered whether to require a kill switch in plain view of the driver that would stop the propulsion system in the event of an emergency. Preferably, this switch would be an eye-catching color, such as red, and would be readily accessible on the instrument panel or other obvious location. Such a switch would, ideally, be used for all stops, not just emergency stops, so that drivers would learn the function and correct use of the switch. For example NHTSA requires such a switch for motorcycles.[24] Boats, personal water craft, and construction equipment and power tools also have such switches.

NHTSA has not proposed regulatory text that would require this kill switch in passenger motor vehicles. Requiring the separate switch would mean adding new equipment to the passenger motor vehicle at issue, thus adding expense to the vehicle and possibly requiring a significant amount of lead time to implement. We cannot at this time determine whether such a switch would be easier for drivers to understand and use in an emergency than a stop control that meets the requirements we are proposing today. We seek comment and data on whether a stand alone stop control would be safer than the combined start/stop control in use now,

[24] FMVSS No. 123 *Motorcycle controls and displays,* at S5.1. states: ''Each motorcycle shall be equipped with a supplemental engine stop control, located and operable as specified in Table 1.'' Table 1 specifies that this control must be located on the right handlebar.

if the stop control function complied with our proposal.

B. Stepping on Brake Before Starting the Propulsion System

In thinking about the risks associated with today's keyless ignition systems, NHTSA considered whether we should propose requiring that the driver must first step on the service brake before the propulsion system can be started. This feature is currently available in some vehicles. It addresses the situation in which an unattended child left in a vehicle could play with power windows or other electrical system features to which s/he could have access by actuating a control that works with a simple touch, even in the absence of the KCCD. NHTSA has not proposed regulatory text for this requirement because we cannot estimate this risk at this time.

We also note that on September 1, 2010, the requirement in FMVSS No. 114 for a brake transmission shift interlock (BTSI) took effect. The requirement was mandated by Congress and implemented into FMVSS No. 114 by rulemaking.[25] The new S5.3 *Brake transmission shift interlock* states as follows:

> Each motor vehicle manufactured on or after September 1, 2010 with a GVWR of 4,536 kilograms (10,000 pounds) or less with an automatic transmission that includes a ''park'' position shall be equipped with a system that requires the service brake to be depressed before the transmission can be shifted out of ''park.'' This system shall function in any starting system key position in which the transmission can be shifted out of ''park.'' This section does not apply to trailers or motorcycles.

This S5.3 requirement is intended to prevent children from being able to shift the transmission out of ''park'' even if the physical key is in the ignition. We believe it also will minimize sudden acceleration by brake/accelerator misapplication because the driver must have his foot on the brake before the vehicle can be shifted out of ''park.'' It would then take a conscious decision to remove the foot from the brake, and then onto the accelerator, before the vehicle can be set in motion.

A new requirement that the driver must step on the service brake before the propulsion system can be started would extend the length of time the driver's foot must be on the brake (*i.e.,* because the foot must be on the brake before the propulsion system can be started and then when the driver takes the vehicle out of ''park.'') S5.1.4 specifies that the vehicle must be in ''park'' before the key can be removed, so the stopped vehicle should always begin in the ''park'' position. The vehicle can only move when the vehicle is taken out of ''park.'' This is when the driver must step on the brake, before s/he makes a conscious decision to move, forward or in reverse.

C. Specified Actuation Time for the Propulsion System Start Control

As mentioned above, we considered whether to propose specifying, for electronic key systems, the amount of time that the driver must press on the ''start'' control in order to start the vehicle. We were considering a 500 millisecond time period (the same as the time period we are proposing to shut down the propulsion system). This would indicate to the driver that pushing the control for the same period of time (500 milliseconds) would actuate both stopping and starting, *i.e.,* that the control works the same way at all times. However, NHTSA understands that some manufacturers have received complaints from their customers regarding a perceived lengthy start time (such as 500 milliseconds). To satisfy such drivers, some vehicle manufacturers have designed their vehicles to start at a mere tap on the ''start'' control, which could be as little as 60 milliseconds.

After carefully considering this issue and the safety issue that would be addressed by such a requirement, NHTSA has decided not to propose regulatory text to specify the length of time the ''start'' control must be depressed to start the vehicle. We are not aware of any safety issues resulting from a ''start'' control that has to be pushed for either a too short (*e.g.,* less than 60 millisecond) or a too long (*e.g.,* more than two second) period of time.

We have also considered the fact that when the vehicle is started, the transmission position should presumably still be in ''park.'' Therefore, even if a sudden start of the vehicle propulsion system should startle the driver, the vehicle should not move. Due to the brake transmission shift interlock requirement specified at S5.3, the driver would then need to depress the service brake in order to shift the transmission out of the ''park'' position to commence driving. The driver decides when to commence driving.

D. Automatic Shut-Off of Propulsion System for a Stationary Vehicle

When examining possible countermeasures for the situation in which a driver walks away from a vehicle with its propulsion system active, thereby increasing the risk of theft or carbon monoxide poisoning, NHTSA considered a requirement for an automatic shut-off feature applied to vehicles fitted with electronic key code systems. We are aware that some manufacturers already provide this feature on their passenger motor vehicles. Such manufacturers have determined on their own the appropriate range of time (15 minutes to half an hour or longer) after which the vehicle propulsion system is automatically shut off. We are also aware that some systems that allow the vehicle to be started from a remote location rather than from inside the vehicle (''remote start'') have this feature as well—if the driver does not enter the vehicle after a certain amount of time after having remotely started the vehicle, the propulsion system will shut off.

NHTSA is not proposing regulatory text to require these automatic shut off systems. We have been unable to conclude that there is a specified period of time after which the propulsion system should be shut down to effectively address various scenarios mentioned in VOQs submitted to the agency. There are scenarios, such as leaving pets in the vehicle with the air conditioning or heating system on while the driver shops or is at a restaurant, where an automatic shut off of the propulsion system would have adverse results. It is our understanding that some drivers may stay in their vehicles for hours, for example, to sleep, with the air conditioning or heating system on. For the pet owner or the person staying in the vehicle for an extended period, it would be inconvenient if the propulsion system had to be restarted every 15 minutes or so.

As earlier noted, a consumer submitted a VOQ reporting a carbon monoxide build up situation where the driver parked the vehicle in the garage without turning off the engine, and locked the garage, but left the key fob, or key code carrying device, in the vehicle. Some propulsion systems that automatically shut off do so after they sense that the KCCD has been removed from the interior of the vehicle. In the situation reported in the VOQ, the automatic system would not have shut off the propulsion system because it continued to sense the presence of the KCCD in the vehicle interior.

We believe that the new alert that we are proposing would refocus the driver's attention on the vehicle when s/he is leaving if s/he has inadvertently left the propulsion system active. For these reasons, we tentatively conclude that we do not need to regulate vehicle propulsion automatic shut off systems at

[25] 75 FR 15621, March 30, 2010.

this time, however, we request comment on this issue.

E. Preventing Shut-Off of Propulsion System for a Stationary Vehicle not in ''Park''

We have reviewed vehicles with keyless ignition systems in situations where the driver has forgotten to place the gear selection control in ''park'' before shutting down the propulsion system and leaving the vehicle. As a countermeasure to rollaway incidents in such situations, we have considered whether preventing the propulsion system from shutting down unless the gear selection control is in ''park'' would meet the need for safety. Some manufacturers already provide this feature on their passenger motor vehicles. We considered requiring this feature, but have tentatively decided that the internal and external alerts that we are proposing are more appropriate because they alert the driver to the situation rather than masking it (*i.e.,* not only may the driver not realize the gear selection control is not in ''park'', s/he may not realize that the propulsion system has not shut down). This proposed remedy is simpler and more direct and reinforces the message that a driver must put the gear selection control in ''park'' before requesting propulsion system shut down, just as the inability to remove a traditional key from the ignition if the gear selection control was not in ''park'' does. We also believe that a strategy of not shutting down a vehicle that is not in ''park'' may contribute to an increased risk of carbon monoxide poisoning if a driver walks away from a vehicle in this condition. We seek comment on why manufacturers who choose to implement this strategy have done so and what are the perceived benefits. What would be the cost to implement such a strategy? If we were to require such a strategy, should it be instead of, or in addition to, the proposed internal and external alarms?

VII. Additional Questions

NHTSA requests comment on the following questions:

1. Is there any safety benefit to keyless ignition (separate from keyless entry) systems over the traditional physical key that is used to turn a rotary switch? Are there cost or weight savings? If there are no safety benefits to these new systems over the traditional key, do their convenience advantages outweigh the new safety risks we are seeing in VOQ submissions?

2. What would be the effects—safety or otherwise—of requiring vehicles to have an ignition system that uses a physical key inserted by the driver, in other words, doing away with current ignition systems that are activated by electronic key codes and touching some sort of switch?

3. Will vehicles with propulsion stop systems that meet the new FMVSS No. 114 requirements proposed in this notice somehow interfere with the functioning of anti-theft systems (immobilizers) that are part of vehicle antitheft systems available today? [26]

VIII. Benefits, Costs and Proposed Lead Time

Benefits

We believe that the benefits of the new requirements proposed today, while not yet quantifiable, would be a reduction in the risk that drivers will misuse these new keyless ignition systems and therefore a reduction in:

- Crashes, injuries and deaths resulting from a driver's inability to shut down a moving vehicle,
- Rollaway incidents and their accompanying crashes, injuries, and deaths, and
- Incidents of carbon monoxide poisoning due to drivers inadvertently leaving a vehicle running or with its propulsion system active in an enclosed space, such as a garage underneath or adjoining a home.

Although the current information indicates a clear safety problem, it is difficult to quantify the benefits. However, we believe the potential risks justify the costs of this rule. Given that we believe the total costs of this proposal would be relatively small, certainly less than $500,000 a year, for the entire industry, preventing even one serious injury over three years would make the proposed rule cost-beneficial.

We believe that taking precautionary steps now, before these non-standardized systems become more widely available, would be beneficial to vehicle safety. The availability of these systems increases every model year. For example, for the 11 manufacturers for which we have data, production of models with any type of keyless ignition (as standard or optional equipment) increased from 5,000 vehicles in model year 2002 to over 1.2 million vehicles in model year 2008. For models equipped with push button controls as standard or optional equipment, production increased from 5,000 vehicles in model year 2002 to over 1.1 million vehicles in model year 2008. We believe a benefit would accrue from establishing consistent experience for the users across all vehicles. This simplifies the operation of these systems for drivers, reducing the stress and confusion relating to fundamental differences in how one operates a vehicle. This is especially important in vehicles that provide less obvious cues as to the state of the engine and the starting system. We believe the countermeasures we have proposed can reasonably be expected to have their intended effect based on similar requirements already in place in FMVSS No. 114 and other standards and in common automotive practice. For example, the warning to drivers to take their key with them when they leave the vehicle (currently in FMVSS No. 114) and the threshold warning device for platform lifts (currently in FMVSS No. 403) are effective alerts. We see no reason why the new alerts proposed here should be less effective. The common automotive practice of the rotating ignition switch combined with a physical key has standardized engine shut down procedure before the advent of the new electronic convenience controls. We believe standardizing the operation of these new controls, combined with the new alerts, will have the same effect. We believe these new requirements are especially worthwhile considering what we believe to be minimal costs to implement them. We seek comments on this understanding of the benefit of the proposed changes to FMVSS No. 114.

Costs

The countermeasure for driver confusion over how to shut down a moving vehicle is to require that the switch that turns off the propulsion system work consistently, whether the vehicle is moving or not. In the vehicles that are in production today and are fitted with keyless ignition systems, the great majority have push-button type switches. Some require a momentary tap, some require longer hold times, and some use different times to affect different functions. From our knowledge of the operation of current designs, we believe that our proposed 500 millisecond hold time is well within the functional range of the switches currently in use. The only change necessary, in most cases, would be in the lines of software coding for the system operated by button. Thus, we believe there would be little incremental cost for changing the behavior of the keyless ignition control. There would be costs associated with testing the new

[26] We are aware that Canadian Motor Vehicle Safety Standard No. 114 requires the use of immobilizers and that many manufacturers equip some or all of the U.S. market vehicles with immobilizers that meet the requirements of CMVSS 114 to sell the same vehicles in both the U.S. and Canada. We do not want to add requirements to FMVSS No. 114 that would prevent this practice unnecessarily.

software for correct operation. Those costs would be minimized by the lead time we are proposing below. This lead time would allow changes to be made between and not during model years.

We are proposing to require one new internal driver alert and two new external driver alerts. Some models already use some version of these alerts and other alerts are already required by FMVSS No. 114. In most cases, manufacturers need only reconfigure existing sound generating systems to engage under the right circumstances. For this reason, we believe the warning cues proposed here have very little cost associated with their implementation.

Because the incremental cost for equipping every vehicle in the fleet would be very small, it follows that regardless of the number of vehicles needing a countermeasure, the cost to equip the entire fleet would be similarly small.

We seek comment on our tentative conclusions regarding the costs to manufacturers to implement the changes proposed today.

Proposed Lead Time

If the proposed changes in this NPRM are made final, NHTSA proposes a lead time of two years from the next September 1 after a final rule is published in the **Federal Register**. This means, for example, if a final rule were published on September 2, 2012, the final rule would take effect on September 1, 2015. We believe that this lead time gives vehicle manufacturers ample time to implement the new requirements at minimal cost, especially given that we believe the required changes would be minimal. Manufacturers are already making changes to accommodate the SAE RP. The changes we are proposing today would be minimal changes from that RP. Comments are requested on this proposed lead time.

We are not proposing a phased-in lead time because we believe that the changes we propose today are relatively minor and can be implemented in a two-year period. We tentatively conclude that a phased-in lead time would be an unnecessary complication that would increase cost to the manufacturers and to the agency due to the need to keep track of which vehicle lines are subject to compliance in a given model year. The percentage of vehicles now using keyless ignition and the number of model lines is so small that we believe the proposed changes can be made in the proposed two year lead time without phase in.[27] We seek comment on our tentative conclusion that a phased-in lead time is not necessary.

IX. Rulemaking Analyses and Notices

Executive Orders 12866 and DOT Regulatory Policies and Procedures

The agency has considered the impacts of this rulemaking action under Executive Orders 12866 and 13563 and the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979). This proposal has been deemed ''non-significant'' by the Office of Management and Budget. This NPRM includes the following proposed changes to FMVSS No. 114: Establishing a standardized time for pushing a control to stop the vehicle propulsion system and several new warnings to the driver; requesting propulsion system shut down without first moving the gear selection control to the ''park'' position (for vehicles with a ''park'' position), exiting a vehicle with the gear selection control not in ''park'' (for vehicles with a ''park'' position), and exiting a vehicle with the propulsion system operating.

None of these proposed changes would require the addition of new systems or equipment on existing vehicles. The first proposed change, standardizing the time to push a control to stop the vehicle propulsion system, could be accomplished by reconfiguring lines of software coding for the system operated by the control. The costs involved in reconfiguring the software are minimal. For the proposed driver alerts (one new internal driver alert and two new external alerts), in most cases, manufacturers need only reconfigure existing sound generating systems to engage under the right circumstances. For these reasons, we have tentatively concluded that the warning cues proposed in this NPRM have little cost associated with their implementation.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. According to 13 CFR 121.201, the Small Business Administration's size standards regulations used to define small business concerns, manufacturers of passenger vehicles would fall under North American Industry Classification System (NAICS) No. 336111, *Automobile Manufacturing,* which has a size standard of 1,000 employees or fewer. Using the size standard of 1,000 employees or fewer, NHTSA estimates that there are a limited number of small business manufacturers of passenger vehicles subject to the proposed requirements. These small U.S. businesses, which include Tesla, manufacture specialty passenger cars which serve niche markets.

I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that as earlier stated, if made final, none of these proposed changes would require the addition of new systems or equipment on existing vehicles, and would result in minimal costs to all businesses, small and large. The first proposed change, standardizing the time to push a control to stop the vehicle propulsion system, would incur minimal costs resulting from reconfiguring lines of software coding for the system operated by the control. All the proposed driver alerts can rely on the existing systems that are already required by FMVSS No. 114 or used for other purposes. In most cases, manufacturers need only reconfigure existing sound generating systems to engage under the right circumstances.

[27] The most recent information we have for a full year of production and sales indicates that the 2008 model year production of vehicles with keyless ignition standard or optional was 1,212,355 vehicles while the 2008 calendar year sales of all vehicles was 13,194,741 vehicles. Therefore, we believe the current sales level of keyless ignition vehicles is less than ten percent of the total U.S. sales.

Executive Order 13132 (Federalism)

NHTSA has examined today's NPRM pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule would not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision:

> When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.

49 U.S.C. 30103(b)(1).

It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which ''[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.'' 49 U.S.C. 30103(e) Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (*e.g.,* the language and structure of the regulatory text) and objectives of today's rule and finds that this rule, like many NHTSA rules, prescribes only a minimum safety standard. As such, NHTSA does not intend that this rule preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today's rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard announced here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action. Nevertheless, we solicit the comments of the States and other interested parties on this assessment of issues relevant to E.O. 13132.

National Environmental Policy Act

NHTSA has analyzed this NPRM for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Before seeking OMB approval, Federal agencies must publish a document in the **Federal Register** providing a 60-day public comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. In this NPRM, we are proposing a revision to an existing OMB approved collection, OMB Clearance No. 2127–0541, Consolidated Justification of Owner's Manual Requirements for Motor Vehicles and Equipment, for which we are soliciting public comment.

Title: Consolidated Justification of Owner's Manual Requirements for Motor Vehicles and Equipment.

OMB Control Number and Expiration Date: OMB Control No. 2127–0541, approved through May 31, 2012.

Type of Request: Revision of a currently approved collection.

Abstract: In this NPRM, at S5.6 *Owner's manual required language,* we are proposing that manufacturers must place in the vehicle owner's manual, instructions regarding the operation of the control(s) that stops and starts the propulsion system. This language (which the manufacturers would provide) must contain a warning that power assist to steering and braking will be lost in the event the propulsion system is shut down while the vehicle is in motion. There must also be an explanation of how to handle the vehicle safely in the event power assist to steering and braking is lost.

If this proposed S5.6 language (in FMVSS No. 114) is made final, we will submit a request for OMB clearance of the proposed collection of information in time to obtain clearance prior to the effective date of the final rule.

Description of the likely respondents—Manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and multipurpose passenger vehicles with a GVWR of 4,536 kg or less. NHTSA estimates that there are a total of 21 such manufacturers.

Estimated total annual reporting and recordkeeping burden of the proposed collection of information—The total estimated annual burden (counting all respondents) is estimated at 21 hours. This breaks down to an estimated one hour per manufacturer to write the information to be provided in the owner's manual. 21 times one hour each results in 21 estimated burden hours for report preparation. Because the information to be provided is of a very general nature, NHTSA does not believe that manufacturers must provide separate explanations for each vehicle line or model they produce regarding how to handle a vehicle in the event of an emergency.

There are no proposed recordkeeping requirements associated with this collection of information.

Estimated total annual costs of the proposed collection of information—

NHTSA believes all manufacturers already have the engineering staff on hand needed to write the description, which they will accomplish in the regular performance of their duties. The additional few pages in an owner's manual (or, especially, information on a CD ROM) will result in minimal additional costs. NHTSA notes that it is not aware of any manufacturer that is not already providing this information in the vehicle owner's manuals. Therefore, NHTSA believes the cost of complying would be $0.

Comments are invited on: (i) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions; (iii) How to enhance the quality, utility, and clarity of the information to be collected; and (iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Please provide comments on this proposed collection of information by the comment due date cited in the **DATES** section of this NPRM, and please reference the docket number cited in the heading of this notice in your comments. Any of the means of comment described in the **ADDRESSES** section of this NPRM may be used.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' For today's NPRM, NHTSA has relied on an SAE Recommended Practice, J2948 *Keyless Ignition Control Design* (January 2011) for guidance.

Executive Order 12988

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows.

The issue of preemption is discussed above in connection with E.O. 13132. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995 this is $141.23 million in 2009 dollars). This NPRM, if made final, would not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $141.23 million annually.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This rulemaking is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866. However, since this NPRM, if made final, would make more explicit how the stop control on electronic keyless coded vehicles are to be actuated, and would provide warnings to the driver, it should have a beneficial safety effect on children riding in such vehicles.

Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not subject to E.O. 13211.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

X. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket

number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Comments may also be submitted to the docket electronically by logging onto the Federal Docket Management System Web site at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://www.bts.gov/programs/statistical_policy_and_research/data_quality_guidelines/html/introduction.html.*

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the docket at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the agency consider late comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that the docket receives after that date. If the docket receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by the docket at the address given above under **ADDRESSES**. The hours of the docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material. You can arrange with the docket to be notified when others file comments in the docket. See *www.regulations.gov* for more information.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, and Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.114 is amended by:

a. revising S1.;

b. revising S2.;

c. revising in S4, the definition of ''Key'';

d. adding, in S4, in alphabetical order, the definitions of ''Key code carrying device'', ''Starting system'' and ''Stop control'';

e. revising in S5, the first sentence;

f. revising in S5.1.3, paragraph (b);

g. adding S5.4;

h. adding S5.4.1;

i. adding S5.4.1.1, and paragraphs (a) through (c);

j. adding S5.4.2;

k. adding S5.4.2.1;

l. adding S5.4.2.2;

m. adding S5.4.2.3;

n. adding S5.5;

o. adding S5.6;

p. revising S6.;

q. revising S6.2;

r. adding S6.3

s. adding S6.3.1 paragraphs (a) through (i);

t. adding S6.3.2 paragraphs (a) through (i); and

u. adding S6.3.3 paragraphs (a) through (g).

The revisions and additions read as follows:

§ 571.114 Standard No. 114; Theft protection and rollaway prevention.

S1. *Scope.* This standard specifies vehicle performance requirements intended to reduce the incidence of crashes and injuries resulting from theft, accidental rollaway of motor vehicles, inability to deactivate the vehicle propulsion system and inadvertently leaving the system activated.

S2. *Purpose.* The purpose of this standard is to decrease the likelihood that a vehicle is stolen, is accidentally set in motion, cannot be stopped during a panic situation, or is shut down without the gear in the ''park'' position or without deactivating the vehicle propulsion system.

* * * * *

S4. *Definitions.*

* * * * *

Key means a physical device or an electronic code which, when inserted into the starting system (by physical or electronic means), enables the vehicle operator to activate the engine, motor or other system that provides propulsion to the motor vehicle.

Key code carrying device means a physical device which is capable of electronically transmitting the key code to the vehicle starting system without physical connection (other than its presence in the vehicle) between the device and the vehicle.

* * * * *

Starting system means the vehicle system used in conjunction with the key to activate the engine, motor or other system which provides propulsion to the motor vehicle.

Stop control means the device used by the driver to deactivate the engine, motor or other system which provides propulsion to the motor vehicle.

* * * * *

S5. *Requirements.* Each vehicle subject to this standard must meet the

requirements of S5.1 through S5.5.
* * *

* * * * *

S5.1.3 * * *

(b) For mechanical keys and starting systems, if the key is in the starting system in a manner or position that allows the engine or motor to be started or to continue operating; or

* * * * *

S5.4 *Requirements for vehicles using electronic codes to access the starting system without physical connection between the key and the vehicle.*

S5.4.1 *Propulsion system deactivation*

S5.4.1.1. For a vehicle equipped with a propulsion system stop control that is activated by the driver pressing on the control—

(a) The vehicle's propulsion system must not stop until the control has been depressed for more than 500 milliseconds.

(b) The propulsion system must shut off within 1 second after the control is first pressed.

(c) Restarting the propulsion system after it has been stopped, but the vehicle is still moving at more than 15 km/h (9.3 mph), is permitted only by means of actuating the control used by the driver to start the propulsion system.

S5.4.2 *Warnings to driver exiting a vehicle with the gear selection control not in ''park,'' for vehicles equipped with a ''park'' position.*

S5.4.2.1. Motor vehicles whose transmissions have a ''park'' position and whose starting system is accessed by electronic key codes without any physical connection between the key and the vehicle shall meet the requirements of S5.4.2.2 and S5.4.2.3.

S5.4.2.2 When tested in accordance with S6.3.1, an audible alert of no less than 85dBA between 500–3000 Hz must sound when the driver actuates the stop control while the gear selection control is not in ''park'' and the vehicle is moving at less than 15 km/h (9.3 mph). This alert must continue until the gear selection control is placed in ''park''. The gear selection control must be movable to the ''park'' position without the restarting of the propulsion system.

S5.4.2.3. When tested in accordance with S6.3.2, an audible alert of no less than 85dBA between 500–3000 Hz, measured outside the vehicle, must sound when the door located closest to the driver's designated seating position is opened while the gear selection control is not in ''park'', the vehicle is moving at less than 15 km/h (9.3 mph), and the key code carrying device is not present in the vehicle. This alert must sound for 1 minute or until the gear selection control is moved to ''park,'' whichever occurs first. This alert is not required to sound if the transmission becomes locked in ''park'' as a direct result of key removal upon door opening, or upon removal of the key code carrying device from the vehicle.

S5.5 *Warning to driver exiting a vehicle while propulsion system is operating.* When tested in accordance with section S6.3.3, an audible alert of no less than 85dBA between 500–3000 Hz, measured outside the vehicle, must sound if, the propulsion system is actuated, or capable of actuating without reintroduction of the electronic key code into the starting system, the door located closest to the driver's designated seating position is opened, and the key code carrying device is not present in the vehicle. This alert must sound for no less than 1 second.

S5.6 *Owner's manual required language.* In the vehicle's owner's manual, the manufacturer must place instructions regarding the operation of the control(s) that starts and stops the propulsion system. This language must contain a warning that power assist to steering and braking will be lost in the event the propulsion system is shut down while the vehicle is in motion. There must be an explanation of how to handle the vehicle safely in the event power assist to steering and braking is lost.

S6. *Compliance test procedure.*

* * * * *

S6.2 *Test procedure for vehicles with transmissions with a ''park'' position.*

* * * * *

S6.3 *Test procedures for vehicles using electronic key codes with their starting systems.*

S6.3.1(a) Enter the vehicle with the key code carrying device.

(b) Actuate the propulsion system start control.

(c) Place the gear selection control in any position except ''park''

(d) Activate the propulsion system stop control.

(e) Verify that an alert sounds.

(f) Measure the sound level of this alert at 740 mm above the driver's seat.

(g) Verify that the sound level is no less than 85dBA between 500–3000Hz.

(h) Move the gear selection control to the ''park'' position.

(i) Verify that the alert stops.

S6.3.2 (a) Enter the vehicle with the key code carrying device and sit in the driver's seat.

(b) Actuate the propulsion system start control.

(c) Place the gear selection control in any position except ''park''.

(d) Actuate the propulsion system stop control.

(e) Open the driver's door, exit the vehicle with the key code carrying device and close the driver's door.

(f) Verify that an alert can be heard exterior to the vehicle.

(g) Verify the sound level of the alert is no less than 85 dBA at 500–3000 Hz measured 1 meter perpendicular to the driver's door and 1580 mm above the ground.

(h) Without moving the gear selection control to the ''park'' position, verify that the alert continues to sound for 1 minute.

(i) Verify that the alert sounds until the gear selection control is moved to the ''park'' position.

S6.3.3 (a) Enter the vehicle with the key code carrying device and sit in the driver's seat.

(b) Actuate the propulsion system start control.

(c) Do not actuate the propulsion system stop control.

(d) Open the driver's door, exit the vehicle with the key code carrying device and close the driver's door.

(e) Verify that an alert can be heard exterior to the vehicle.

(f) Verify the sound level of the alert is no less than 85 dBA at 500–3000 Hz measured 1 meter perpendicular to the driver's door and 1580mm above the ground.

(g) Verify that the alert continues to sound for no less than 1 sec.

Issued on: December 1, 2011.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2011–31441 Filed 12–9–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–BB34

Fisheries of the Northeastern United States; Northeast Multispecies; Amendment 17

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

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: The New England Fishery Management Council has submitted Amendment 17 to the Northeast

Multispecies Fishery Management Plan for review by the Secretary of Commerce. NMFS is requesting comments from the public on Amendment 17, which was adopted by the Council, including an Environmental Assessment prepared by NMFS, to explicitly define and facilitate the effective operation of state-operated permit banks.

DATES: Comments must be received on or before February 10, 2012.

ADDRESSES: Copies of Amendment 17 are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org.* You may submit comments on this document, identified by NOAA–NMFS–2011–0186, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter 0648–BB34 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on NE Multispecies Amendment 17.''
- Fax (978) 281–9135, *Attn:* William Whitmore.

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

FOR FURTHER INFORMATION CONTACT: William Whitmore, Fishery Policy Analyst, (978) 281–9182; *fax:* (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

In 2009 and 2010, NOAA provided nearly $6 million in funding through Federal grants to the states of Maine, New Hampshire, Massachusetts, and Rhode Island for the express purpose of establishing several ''permit banks'' of Northeast (NE) multispecies fishing vessel permits. The permit banks were developed jointly by the states and NMFS to help promote the effective implementation of catch share programs in New England and to mitigate some of the potential adverse socio-economic impacts to fishing communities and small-scale fishing businesses. This administrative action would amend the NE Multispecies Fishery Management Plan (FMP) to explicitly define and facilitate the effective operation of state-operated permit banks.

The intent of the permit bank program is for states to use the funding to obtain fishing vessel permits and then to provide the fishing opportunities associated with those permits, in the form of an annual catch entitlement (ACE) and/or days-at-sea, to qualified fishermen. State-operated permit banks are not recognized under the current provisions of the NE Multispecies FMP, and the only entities allocated and authorized to transfer a sector's ACE to approved sectors are other approved sectors. Currently, the only mechanism available for a state-operated permit bank to operate (*i.e.*, transfer ACE to fishermen in sectors) is for the permit bank to either join an existing sector as a member or to form a sector with other permit holders. Both of these mechanisms unnecessarily complicate the operation of the state-operated permit banks by imposing redundant administrative requirements.

Amendment 17 would define a state-operated permit bank as a permit depository established through an agreement between NOAA and one or more states, in which Federal grant funds are used by the state(s) to establish a bank of Federal fishing vessel permits so that the fishing access privileges associated with those permits may be allocated by the state(s) to qualifying commercial fishermen and sectors according to criteria to which NOAA and the state(s) have agreed. State-operated permit banks are subject to U.S. Department of Commerce regulations regarding program income, such that any revenue generated by the permit banks may only be used to defray the program costs of operating the permit bank, or must be returned to the Federal Government to reduce the amount of the initial grant award.

Under this amendment, state-operated permit banks would be allocated ACE and specifically authorized to provide that ACE to approved groundfish sectors, and/or to provide days-at-sea (DAS) to vessels for the purpose of enhancing the fishing opportunities available to sector members. State-operated permit banks must comply with the terms and conditions of any applicable Federal grant agreement (*i.e.*, a Federal grant award provided to a state for the purpose of establishing, enhancing, or operating a permit bank), as well as meet the requirements specified in a memorandum of agreement (MOA) established with NMFS for administering the permit bank.

Amendment 17 defines state-operated permit banks as separate entities from the groundfish sectors, and establishes certain minimum criteria for these newly defined entities in order to qualify for the streamlined administrative procedures described in this amendment. This amendment is primarily administrative in nature and does not specifically establish or authorize the formation of any state-operated permit banks. Absent this amendment, such permit banks would remain free to form—subject to support and funding from NOAA—and operate to transfer ACE and/or DAS to sectors, according to the terms and conditions placed upon them by any NOAA grant award and/or MOA signed with NMFS, so long as they fully comply with the administrative and procedural requirements for groundfish sectors currently established in the NE Multispecies FMP.

Public comments are being solicited on Amendment 17, including its Environmental Assessment, through the end of the comment period stated in this notice of availability. A proposed rule that would implement Amendment 17 will be published in the **Federal Register** for public comment. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability of Amendment 17 to be considered in the approval/disapproval decision on the amendment. All comments received by February 10, 2012, whether specifically directed to Amendment 17 or the proposed rule for Amendment 17, will be considered in the approval/disapproval decision on Amendment 17. Comments received after that date will not be considered in the decision to approve or disapprove

Amendment 17. To be considered, comments must be received by close of business on the last day of the comment period.

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

Dated: December 7, 2011.

Steven Thur,

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

[FR Doc. 2011–31813 Filed 12–9–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 238
Monday, December 12, 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

National Agricultural Library

Notice of Intent To Seek Approval To Collect Information

AGENCY: National Agricultural Library, Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320, this notice announces the National Agricultural Library's intent to request renewal of an information collection to obtain an evaluation of user satisfaction with NAL Internet sites.

DATES: Comments on this notice must be received by February 10, 2012 to be assured of consideration.

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

- *Email:* *john.gladstone@ars.usda.gov.*
- *Fax:* (301) 504–5453 attention John Gladstone.
- *Mail/Hand Delivery/Courier:*ISD/ National Agricultural Library, 10301 Baltimore Ave, Room 105, Beltsville, Maryland 20705–2351.

FOR FURTHER INFORMATION CONTACT: John Gladstone at (301) 504–5462.

SUPPLEMENTARY INFORMATION:

Title: ''Evaluation of User Satisfaction with NAL Internet Sites.''

OMB Number: 0518–0040.

Expiration Date: N/A.

Type of Request: Approval for renewed data collection.

Abstract: This is a request, made by the National Agricultural Library (NAL) Office of the Director (OD), Office of the Associate Director of Information Services, that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act of 1995, a three year generic clearance for the NAL to conduct user satisfaction research around its Internet sites. This effort is made according to Executive Order 12862 which directs federal agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

The National Agricultural Library Internet sites are a vast collection of Web pages created and maintained by component organizations of the NAL. On average, 2 million people visit the NAL Internet sites per month. All seven of the NAL Information Centers and a dozen special interest collections have established a Web presence with a home page and links to sub-pages that provide information to their respective audiences.

Description of surveys

The online surveys will be no more than 15 Semantic Differential Scale or multiple choice questions, and no more than 4 open-ended response questions.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per survey.

Respondents: The agricultural community, USDA personnel and their cooperators, and including public and private users or providers of agricultural information.

Estimated Number of Respondents: 1200 per year.

Estimated Total Annual Burden on Respondents: 100 hours.

Comments

The purpose of the research is to ensure that intended audiences find the information provided on the Internet sites easy to access, clear, informative, and useful. Specifically, the research will examine whether the information is presented in an appropriate technological format and whether it meets the needs of users of these Internet sites. The research will also provide a means by which to classify visitors to the NAL Internet sites, to better understand how to serve them. It is estimated that participants will require no more than 5 minutes to complete each survey. Actual time required will vary based on participant reading speed level. Sample questions may include:

Functionality	Please rate the accuracy of information on this site. Please rate the quality of information on this site. Please rate the freshness of content on this site. Please rate the usefulness of the information provided on this site. Please rate the convenience of the information on this site. Please rate the ability to accomplish what you wanted to on this site.
Look and Feel	Please rate the ease of reading this site. Please rate the clarity of site organization. Please rate the clean layout of this site.
Navigation	Please rate the degree to which the number of steps it took to get where you want is acceptable. Please rate the ability to find information you want on this site.

Comments should be sent to the address in the preamble.

Dated November 18, 2011.

Caird E. Rexroad, Jr.,

Associate Administrator, Agricultural Research Service.

[FR Doc. 2011–31748 Filed 12–9–11; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review

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

DATES: *Effective Date:* December 12, 2011.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or 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) 482–5973 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2011, the Department of Commerce (''the Department'') published a notice of opportunity to request an administrative review of the antidumping duty order on certain pasta from Italy.[1] Pursuant to requests from interested parties, the Department published in the **Federal Register** the notice of initiation of this antidumping duty administrative review with respect to the following companies for the period July 1, 2010, through June 30, 2011:

Botticelli Mediterraneo S.a.r.1.2 (''Botticelli''), Fiamma Vesuviana S.r.L. (''Fiamma''), Industria Alimentare Filiberto Bianconi 1947 S.p.A. (''Filiberto''), Labor S.r.L. (''Labor''), PAM. S.p.A. and its affiliate, Liguori Pastificio dal 1820 SpA (''PAM''), P.A.P. SNC Di Pazienza G.B. & C. (''P.A.P.''), Premiato Pastificio Afeltra S.r.L. (''Afeltra''), Pasta Lensi S.r.l. (''Lensi''), Pastaficio Zaffiri (''Zaffiri''), Pastificio Attilio Mastromauro-Pasta Granoro S.R.L. (''Granoro''),[2] Pastificio Di Martino Gaetano & F.11i SpA (''Di Martino''), Pastificio Fratelli Cellino, S.r.l. (''Fratelli''), Pastificio Lucio Garofalo S.p.A. (''Garofalo''), Pastificio Riscossa F.11i Mastromauro S.p.A. (''Riscossa''), Rummo S.p.A. Molino e Pastificio (''Rummo''), Rustichella d'Abruzzo S.p.A. (''Rustichella'') and Industria Alimentare Colavita, S.p.A. (''Indalco'').[3]

On September 13, 2011, the Department announced its intention to select mandatory respondents based on U.S. Customs and Border Protection (''CBP'') data.[4] On October 3, 2011, the Department selected Garofalo and Rummo as mandatory respondents.[5] On October 11, 2011, Garofalo withdrew its request for a review. On November 7, 2011, Granoro withdrew its request for a deferred review of certain pasta from Italy for the POR of June 1, 2009 to June 30, 2010. On October 19, 2011, and November 17, 2011, respectively, the Department published in the **Federal Register** notices of partial rescission of the administrative reviews with respect to Garofalo and Granoro.[6] On November 18, 2011, Lensi withdrew its request for a review. On November 21, 2011, Indalco and Labor withdrew their requests for a review. On November 22, 2011, PAM, P.A.P., Riscossa, and Rustichella withdrew their requests for a review. On November 23, 2011, Afeltra and Di Martino withdrew their requests for a review.

Partial Rescission of the 2010–2011 Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. The instant review was initiated on August 26, 2011. See Initiation Notices. Lensi withdrew its request for a review on November 18, 2011, Indalco and Labor withdrew their requests for a review on November 21, 2011, PAM, P.A.P., Riscossa, and Rustichella withdrew their requests for a review on November 22, 2011, and Afeltra and Di Martino withdrew their requests for a review on November 23, 2011, which are within the 90-day deadline. No other party requested an administrative review of these particular companies. Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with our practice, we are rescinding this review of the antidumping duty order on certain pasta from Italy, in part, with respect to Afeltra, Di Martino, Labor, Lensi, Indalco, PAM, P.A.P., Riscossa, and Rustichella.[7] The instant review will continue with respect to Botticelli, Fiamma, Filiberto, Fratelli, Granoro,[8] Rummo, and Zaffiri.

Assessment

The Department will instruct CBP to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, Afeltra, Di Martino, Indalco, Labor, Lensi, PAM, P.A.P., Riscossa, and Rustichella, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period July 1, 2010, through June 30, 2011, in accordance with 19 CFR 351.212(c)(1)(i).

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(0(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

[1] See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 76 FR 38609 (July 1, 2011).

[2] The Department notes that, ''{o}n August 31, 2010, the Department deferred the 7/1/2009—6/30/2010 administrative review for Pastificio Attilio Mastromauro-Pasta Granoro S.R.L. for one year (75 FR 53274). We are now initiating this review one year later along with the 7/1/2010—6/30/2011 administrative review.'' See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 76 FR 53404, 53408 (August 26, 2011) (First Initiation Notice).

[3] See First Initiation Notice and Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 76 FR 61076 (October 3, 2011) (collectively, ''Initiation Notices'').

[4] See Memorandum from Christopher Hargett to Melissa Skinner titled ''Customs and Border Protection Data for Selection of Respondents for Individual Review,'' dated September 13, 2011.

[5] See Memorandum from Christopher Hargett to Melissa Skinner titled ''Selection of Respondents for Individual Review,'' dated October 3, 2011.

[6] See Certain Pasta from Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review, 76 FR 64897 (October 19, 2011); see also Certain Pasta from Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review, 76 FR 71311 (November 17, 2011) (''Granoro: Partial Rescission of Deferred Review'').

[7] See, *e.g.,* Certain Lined Paper Products From India: Notice of Partial Rescission of Antidumping Duty Administrative Review and Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review, 74 FR 21781 (May 11, 2009); see also Carbon Steel Butt-Weld Pipe Fittings from Thailand: Rescission of Antidumping Duty Administrative Review, 74 FR 7218 (February 13, 2009).

[8] The instant review of Granoro continues only for the period of review, July 1, 2010, through June 30, 2011. See Granoro: Partial Rescission of Deferred Review.

this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in the amount of antidumping and/or countervailing duties reimbursed.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/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.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: November 28, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–31161 Filed 12–9–11; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–932]

Certain Steel Threaded Rod From the People's Republic of China: Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review

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

DATES: *Effective Date:* December 12, 2011.

FOR FURTHER INFORMATION CONTACT: Tim Lord, Office 9, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–7425.

Background

On April 1, 2011, the Department of Commerce (''Department'') published a notice of opportunity to request an administrative review on the antidumping order on certain steel threaded rod from the People's Republic of China (''PRC'') for the period of review (''POR'') April 1, 2010, through March 31, 2011. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 18153 (April 1, 2011). Based upon requests for review from various parties, on May 27, 2011, the Department initiated an antidumping duty administrative review on certain steel threaded rod from the PRC, covering 192 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 30912, 30916–18 (May 27, 2011). The preliminary results are currently due December 31, 2011.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the current time limits. The Department requires additional time to analyze questionnaire (including supplemental questionnaire) responses and surrogate country and value data. This additional time also takes into account analysis of data related to the margin calculation for the individually-reviewed respondent, and the consideration of any issues that may be raised by parties during the course of this proceeding. Therefore, the Department is hereby extending the time limit for completion of the preliminary results by 90 days. The preliminary results will now be due no later than March 30, 2012. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: December 6, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–31841 Filed 12–9–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China: Extension of Time Limit for the Final Results of the Second Antidumping Duty Administrative Review

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

DATES: *Effective Date:* December 12, 2011.

FOR FURTHER INFORMATION CONTACT: Alexis Polovina, Javier Barrientos, or Ricardo Martinez, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3927, (202) 482–2243, or (202) 482–4532, respectively.

Background

On September 12, 2011, the Department of Commerce (''Department'') published in the **Federal Register** its *Preliminary Results* of the antidumping duty order on certain steel nails (''steel nails'') from the People's Republic of China (''PRC'').[1] The period of review (''POR'') is August 1, 2009, through July 31, 2010. The final results are currently due no later than January 10, 2012.

Extension of Time Limit for the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), requires that the Department issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published.

[1] *See Certain Steel Nails From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Antidumping Duty Administrative Review and Preliminary Intent To Rescind New Shipper Review,* 76 FR 56147 (September 12, 2011) (''*Preliminary Results*'').

Subsequent to the *Preliminary Results,* the Department issued questionnaires requesting more information from the tollers/sub-contractors and extended the deadlines for the case and rebuttal briefs. As a result, the Department finds that it is not practicable to complete the process of reviewing the post-preliminary questionnaires, case briefs, and surrogate values within the scheduled time limit. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is partially extending the time for the completion of the final results of this review by 30 days to February 9, 2012.

We are issuing and publishing this notice in accordance with sections 751(a) and 777(i)(1) of the Act.

Dated: December 7, 2011.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–31840 Filed 12–9–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–938]

Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review

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

SUMMARY: The Department of Commerce (''the Department'') has completed its administrative review of the countervailing duty (''CVD'') order on citric acid and certain citrate salts from the People's Republic of China (''PRC'') for the period September 19, 2008 through December 31, 2009. On June 8, 2011, we published the preliminary results of this review. *See Citric Acid and Certain Citrate Salts from the People's Republic of China:* Preliminary Results of Countervailing Duty Administrative Review, 76 FR 33219 (June 8, 2011) (''*Preliminary Results*''). We provided interested parties with an opportunity to comment on the preliminary results. Our analysis of the comments submitted as well as incorporation of our post-preliminary analyses led to a change in the net subsidy rates. The final net subsidy rates for RZBC Co., Ltd.; RZBC Import & Export Co., Ltd.; RZBC (Juxian) Co., Ltd.; and RZBC Group Co., Ltd. (collectively, ''RZBC''), and Yixing-Union Biochemical Co., Ltd. (''Yixing-Union'') and Yixing-Union Cogeneration Co., Ltd. (''Cogeneration'') (collectively, ''Yixing'') are listed below in the section entitled ''Final Results of Review.''

DATES: *Effective Date:* December 12, 2011.

FOR FURTHER INFORMATION CONTACT: David Layton or Austin Redington, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–0371 and (202) 482–1664, respectively.

SUPPLEMENTARY INFORMATION:

Background

Following the *Preliminary Results*, on June 17, 2011, the Department requested clarification from Archer Daniels Midland Company; Cargill, Incorporated; and Tate & Lyle Americas (collectively, ''Petitioners'') regarding Petitioners' request for business proprietary treatment for certain alternative financial statements they had submitted on May 13 and May 19, 2011, which Petitioners reported as originating with the respondents. Petitioners provided the requested clarification on June 24, 2011.

On July 12, 2011, the Department asked Petitioners to grant respondents direct access to the alternative financial statements. The Department further stated that if Petitioners did not agree to this disclosure, it would return the submissions to Petitioners. On July 25, 2011, Petitioners refiled the May 13, and May 19, 2011 submissions without the alternative financial statements.

The Department issued additional supplemental questionnaires to the Government of the People's Republic of China (''GOC''), RZBC and Yixing in July through October 2011, and received timely responses from all three parties. However, the Department returned two GOC responses to the July 21, 2011 supplemental questionnaire because they contained unsolicited new factual information.

From August 29 through September 2, 2011, we conducted a verification of RZBC's questionnaire responses, and from September 5 through September 9, 2011, we conducted a verification of Yixing's questionnaire responses. The Department released its verification reports for RZBC and Yixing to interested parties on October 17, 2011.[1]

The Department issued a preliminary creditworthiness determination for RZBC for years 2006 through 2009 on September 29, 2011.[2] On October 11, 2011, the Department issued a preliminary creditworthiness determination with respect to the Yixing for years 2004 and 2005.[3] The Department completed a post-preliminary analysis of seven subsidy programs reported by RZBC, and issued its preliminary findings on these programs on October 13, 2011.[4]

In the *Preliminary Results,* we invited interested parties to submit briefs. We received case briefs from Yixing, RZBC, the GOC, and Petitioners on October 24, 2011. We received rebuttal briefs from Yixing and Petitioners on November 3, 2011. The Department also provided parties with the opportunity to submit separate comments and rebuttals with respect to the October 24, 2011 supplemental questionnaire response submitted by the GOC. The GOC provided comments on this later questionnaire response on October 31, 2011.

Scope of the Order

The scope of the order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended

[1] *See* Memorandum from Taija Slaughter and Jeff Pederson to the File ''Verification Report of the Response of RZBC Co., Ltd., RZBC Import & Export Co., Ltd., & RZBC (Juxian) Co., Ltd. in the Countervailing Duty Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China,'' dated October 11, 2011; Memorandum from Taija Slaughter and Jeff Pederson to the File ''Verification Report of the Responses of Yixing Union Biochemical Co., Ltd. in the Countervailing Duty Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China,'' dated October 11, 2011.

[2] *See* Memorandum to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, from David Layton, International Trade Specialist, AD/CVD Operations, Office 1: Preliminary Creditworthiness Determination for RZBC Co., Ltd. (''RZBC Co.''); RZBC Import & Export Co., Ltd. (''RZBC IE''); and RZBC (Juxian) Co., Ltd. (''RZBC Juxian''); and RZBC Group Co., Ltd. (''RZBC Group'') (collectively, ''RZBC'') dated September 29, 2011.

[3] *See* Memorandum to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, from Austin Redington, International Trade Specialist AD/CVD Operations, Office 1: Preliminary Creditworthiness Determination for Yixing-Union Biochemical Co., Ltd. and Yixing-Union Cogeneration Co., Ltd., dated October 11, 2011.

[4] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, ''Post-Preliminary Analysis Memorandum for RZBC Co., Ltd. (''RZBC Co.''), RZBC Import & Export Co., Ltd. (''RZBC I&E''), RZBC (Juxian) Co., Ltd. (''RZBC Juxian''), RZBC Group Co., Ltd. (''RZBC Group'') (collectively, ''RZBC''), dated October 13, 2011.

form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of the order also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of the order does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of the order includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (''HTSUS''), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Period of Review

The period for which we are measuring subsidies, *i.e.,* the period of review (''POR''), is September 19, 2008 through December 31, 2009.[5] Because the POR spans two calendar years, we are calculating separate CVD rates for September 19, 2008 through December 31, 2008; and January 1, 2009 through December 31, 2009.

[5] For the purposes of the final results, we analyzed data for the period January 1, 2008, through December 31, 2008, to determine the subsidy rate for exports of subject merchandise made during the period in 2008 when liquidation of entries was suspended. In addition, we analyzed data for the period January 1, 2009 through December 31, 2009, to determine the subsidy rate for exports during that period. The 2009 subsidy rate will serve as the cash deposit rate for exports of subject merchandise subsequent to the publication of these final results.

Scope Rulings

On November 2, 2010, Aceto Corporation (''Aceto'') requested that the Department find its calcium citrate United States Pharmacopeia (''USP'') to be outside the scope of the CVD order and the antidumping duty orders on citric acid and certain citrate salts from the PRC and Canada. *See Citric Acid and Certain Citrate Salts from the People's Republic of China; Notice of Countervailing Duty Order,* 74 FR 25705 (May 29, 2009) (''*CVD Order*''). *See also Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China: Antidumping Duty Orders,* 74 FR 25703 (May 29, 2009) (''*AD Orders*''). On February 14, 2011, the Department issued a final scope ruling, finding that Aceto's product is within the scope of those orders. See Memorandum from Christopher Siepmann, International Trade Analyst, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Citric Acid and Certain Citrate Salts: Scope Ruling for Calcium Citrate USP'' (February 14, 2011).

On July 26, 2010, Global Commodity Group LLC (''GCG'') requested that the Department find a blend of citric acid it imports containing 35 percent citric acid from the PRC and 65 percent citric acid from other countries is outside the scope of the *CVD Order* and the *AD Orders.* On May 2, 2011, the Department issued a final scope ruling, finding that GCG's product is within the scope of those orders. *See* Memorandum from Christopher Siepmann, International Trade Analyst, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Citric Acid and Certain Citrate Salts: Final Determination on Scope Inquiry for Blended Citrate Acid from the People's Republic of China and Other Countries'' (May 2, 2011). Pursuant to this ruling, we have instructed U.S. Customs and Border Protection (''CBP'') that the quantity of citric acid from the PRC in the commingled merchandise is subject to the *CVD Order* and *AD Orders.* We have also instructed CBP that if the quantity of citric acid from the PRC in a commingled shipment cannot be accurately determined, then the entire commingled quantity is subject to the orders.

Analysis of Comments Received

All issues raised in the GOC's, Petitioners', RZBC's, and Yixing's case briefs are addressed in the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, entitled ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China,'' (December 5, 2011) (''Issues and Decision Memorandum''), which is hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and 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 (''CRU''), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results and the Post-Preliminary Analyses

(1) We recalculated the aggregate subsidy benefits separately for 2008 and 2009 for outstanding loans received by RZBC companies under the Shandong Province Policy Loan program and Export Seller's Credit for High- and New-Technology Products programs, based on the whole year data and interest payments specific to each of those calendar years.

(2) We included under the Shandong Province Policy Loan program RZBC's bankers' acceptances outstanding in 2008 and 2009.

(3) We recalculated the aggregate subsidy benefit of loans outstanding in 2009 received by Yixing under the National Policy Lending program, using 2009-specific interest payments.

(4) We recalculated the 2009 subsidy benefit from National Policy Lending program to include Yixing's bankers' acceptances outstanding in 2009.

(5) We recalculated the 2008 aggregate subsidy benefits from the GOC's provision of sulfuric acid for less than adequate remuneration (''LTAR'') for both RZBC and Yixing, and recalculated the 2009 aggregate subsidy benefits from the GOC's provision of sulfuric acid for LTAR for RZBC.

(6) Based on the finding that Yixing was uncreditworthy in certain earlier years we recalculated the allocated subsidy conferred by certain non-recurring grants for the Value-Added Tax and Duty Exemptions program,

using a discount rate applicable to uncreditworthy firms.

(7) Based on our uncreditworthy determination for certain RZBC companies, we are applying an uncreditworthy benchmark rate to certain long-term loans received by RZBC companies in relevant years in our recalculation of the aggregate subsidy benefits for the Shandong Policy Loan and Export Seller's Credit for High- and New-Technology Products programs.

(8) We are not calculating a subsidy rate for the GOC's provision of steam coal for LTAR for these final results because we have determined that we require more information on the de facto specificity of this program and, thus, will have to defer a decision on the program's countervailability to a future administrative review. *See* Issues and Decision Memorandum at Comment 6.

Final Results of Review

In accordance with 19 CFR 351.221(b)(5), we calculated individual *ad valorum* subsidy rates for RZBC and Yixing, the producers covered by this administrative review, as set forth below:

Producer exporter	Net subsidy rate—2008 (percent)	Net subsidy rate—2009 (percent)
RZBC Co., Ltd.; RZBC Import & Export Co., Ltd.; RZBC (Juxian) Co., Ltd.; and RZBC Group Co., Ltd	7.44	8.93
Yixing-Union Biochemical Co., Ltd. and Yixing-Union Cogeneration Co., Ltd	5.65	16.13

Assessment Rates

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of these final results of review.

Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of estimated CVDs in the amounts shown above. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 5, 2011.

Christian Marsh,

Acting Assistant Secretary for Import Administration.

Appendix—Issues and Decision Memorandum

General Issues

Comment 1 Application of CVD Law to the PRC and Double Remedy
Comment 2 Whether Application of the CVD Law to NMEs Violates the APA
Comment 3 Countervailability of Input Purchases Made Through Private Trading Companies

Case-Specific

Comment 4 Adjustment of the International Freight Benchmark Used To Measure the Benefit of Steam Coal Sold at LTAR
Comment 5 Whether Petitioners' Factual Information Submissions Were Properly Certified
Comment 6 Whether Steam Coal at LTAR Is Specific
Comment 7 Whether Sulfuric Acid at LTAR Is Specific
Comment 8 Application of AFA to Yixing for Sulfuric Acid LTAR
Comment 9 Use of Prices From Actual Transactions in the PRC (Tier 1 Benchmark) To Measure Benefit of Sulfuric Acid LTAR
Comment 10 Evidence of Policy Lending
Comment 11 Whether Certain Input Suppliers Are Government Authorities

Respondent Specific

Comment 12 Whether Cogeneration Is the Parent of Yixing-Union
Comment 13 Application of the Upstream Subsidy Provision for the Steam Coal LTAR
Comment 14 Adequacy of Yixing's Cooperation in Providing Information on Affiliate
Comment 15 Whether the State Ownership Determination for Yixing's Affiliates Is Correct
Comment 16 Whether the Department Deprived Yixing of the Opportunity To Review Subsidy Calculations
Comment 17 Correction of AFA Ruling Based on RZBC Submission of Requested Information
Comment 18 Whether Department's Finding That RZBC Was Uncreditworthy Is Supported by Record Evidence
Comment 19 Whether the Department Provided the GOC the Opportunity To Correct Deficiencies Found in the *Preliminary Results*

[FR Doc. 2011–31838 Filed 12–9–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Affirmation of Vertical Datum for Surveying and Mapping Activities for the Islands of St. Croix, St. John, and St. Thomas, United States Virgin Islands

AGENCY: National Geodetic Survey (NGS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration.

ACTION: Notice.

SUMMARY: This Notice announces a decision by the Federal Geographic Data Committee's Federal Geodetic Control Subcommittee in accordance with the Office of Management and Budget; Circular A–16 (*http://www.whitehouse.gov/omb/circulars/a016/a016.html*), to affirm the Virgin Islands Vertical Datum of 2009 (VIVD09) as the official civilian vertical datum for surveying and mapping activities for the islands of St. Croix, St. John, and St. Thomas of the United States Virgin Islands, and to the extent practicable, legally allowable and feasible, require that all Federal agencies, with the exception of those with specific military related applications, using or producing vertical height information undertake an orderly transition to VIVD09.

DATES: Individuals or organizations wishing to submit comments on the adoption of VIVD09 as the official civilian vertical datum for the Virgin Islands should do so by January 11, 2012.

ADDRESSES: Written comments should be sent to the attention of David Doyle, Chief Geodetic Surveyor, Office of the National Geodetic Survey, National Ocean Service (N/NGS2), 1315 East-

West Highway, #8815, Silver Spring, Maryland 20910, fax (301) 713–4324, or via email *Dave.Doyle@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to David Doyle, Chief Geodetic Surveyor, National Geodetic Survey (NNGS2), 1315 East-West Highway, #8815, Silver Spring, MD 20910; *Phone:* (301) 713–3178.

SUPPLEMENTARY INFORMATION: The National Ocean Service (NOS), National Geodetic Survey (NGS), has completed the definition and implementation of VIVD09. VIVD09 supersedes all previously published height systems determined by other Federal surveying and mapping agencies on St. Croix, St. John, and St. Thomas, with the exception of those specifically related to tidal datums and/or military applications. VIVD09 heights are the result of a mathematical least squares general adjustment of the vertical control portion of the National Spatial Reference System (NSRS) and are derived from approximately 105.85 km of Double-Run, 1 st-Order, Class II geodetic leveling observations (54.73 km on St. Croix, 29.10 km on St. John, and 22.02 km on St. Thomas) undertaken specifically for this project. The basis for all VIVD09 heights is Local Mean Sea Level, for the National Tidal Datum Epoch 1983–2001, as determined by the NOS Center for Operational Oceanographic Products and Services (CO–OPS), and published for the National Water Level Observation Network (NWLON) bench marks numbered 975 1401 M (PID DK7165) (3.111 meters), located at Lime Tree Bay, St. Croix, 975 1381 TIDAL A (PID DL3636) (1.077 meters), located at Lameshur Bay, St. John, and 975 1639 F (PID DL3908) (1.552 meters), located at Charlotte Amalie, St. Thomas.

VIVD09 height information for individual geodetic control monuments is available in digital form, from the NGS Web site: *http://www.ngs.noaa.gov/cgi-bin/datasheet.prl.*

Dated: November 21, 2011.

Juliana P. Blackwell,

Director, Office of National Geodetic Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–31592 Filed 12–9–11; 8:45 am]

BILLING CODE 3510–JE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA831

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Halibut and Sablefish Individual Fishing Quota Cost Recovery Programs

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

ACTION: Notification of standard prices and fee percentage.

SUMMARY: NMFS publishes individual fishing quota (IFQ) standard prices and fee percentage for the IFQ cost recovery program in the halibut and sablefish fisheries of the North Pacific. The fee percentage for 2011 is 1.6%. This action is intended to provide holders of halibut and sablefish IFQ permits with the 2011 standard prices and fee percentage to calculate the required payment for IFQ cost recovery fees due by January 31, 2012.

DATES: Effective December 12, 2011.

FOR FURTHER INFORMATION CONTACT: Troie Zuniga, Fee Coordinator, (907) 586–7231.

SUPPLEMENTARY INFORMATION:

Background

NMFS Alaska Region administers the halibut and sablefish individual fishing quota (IFQ) programs in the North Pacific. The IFQ programs are limited access systems authorized by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982. Fishing under the IFQ programs began in March 1995. Regulations implementing the IFQ program are set forth at 50 CFR part 679.

In 1996, the Magnuson-Stevens Act was amended to, among other things, require the Secretary of Commerce to ''collect a fee to recover the actual costs directly related to the management and enforcement of any * * * individual quota program.'' This requirement was further amended in 2006 to include collection of the actual costs of data collection, and to replace the reference to ''individual quota program'' with a more general reference to ''limited access privilege program'' at section 304(d)(2)(A). This section of the Magnuson-Stevens Act also specifies an upper limit on these fees, when the fees must be collected, and where the fees must be deposited.

On March 20, 2000, NMFS published regulations implementing the IFQ cost recovery program (65 FR 14919), which are set forth at § 679.45. Under the regulations, an IFQ permit holder incurs a cost recovery fee liability for every pound of IFQ halibut and IFQ sablefish that is landed on his or her IFQ permit(s). The IFQ permit holder is responsible for self-collecting the fee liability for all IFQ halibut and IFQ sablefish landings on his or her permit(s). The IFQ permit holder is also responsible for submitting a fee liability payment to NMFS on or before the due date of January 31 of the year following the year in which the IFQ landings were made. The dollar amount of the fee due is determined by multiplying the annual IFQ fee percentage (3 percent or less) by the ex-vessel value of all IFQ landings made on a permit and summing the totals of each permit (if more than one).

Standard Prices

The fee liability is based on the sum of all payments made to fishermen for the sale of the fish during the year. This includes any retro-payments (*e.g.,* bonuses, delayed partial payments, post-season payments) made to the IFQ permit holder for previously landed IFQ halibut or sablefish.

For purposes of calculating IFQ cost recovery fees, NMFS distinguishes between two types of ex-vessel value: Actual and standard. Actual ex-vessel value is the amount of all compensation, monetary or non-monetary, that an IFQ permit holder received as payment for his or her IFQ fish sold. Standard ex-vessel value is the default value on which to base fee liability calculations. IFQ permit holders have the option of using actual ex-vessel value if they can satisfactorily document it; otherwise, the standard ex-vessel value is used.

Regulations at § 679.45(c)(2)(i) require the Regional Administrator to publish IFQ standard prices during the last quarter of each calendar year. These standard prices are used, along with estimates of IFQ halibut and IFQ sablefish landings, to calculate standard values. The standard prices are described in U.S. dollars per IFQ equivalent pound for IFQ halibut and IFQ sablefish landings made during the year. IFQ equivalent pound(s) is the weight (in pounds) for an IFQ landing, calculated as the round weight for sablefish, and headed and gutted net weight for halibut. NMFS calculates the standard prices to closely reflect the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings by month and port or port-group. The standard prices for IFQ halibut and IFQ sablefish are listed in

the tables that follow the next section. Data from ports are combined as necessary to protect confidentiality.

Fee Percentage

Section 304(d)(2)(B) of the Magnuson-Stevens Act specifies a maximum fee of 3 percent of the ex-vessel value of fish harvested under an IFQ Program. NMFS annually sets a fee percentage for sablefish and halibut IFQ holders that is based on the actual annual costs associated with certain management and enforcement functions, as well as the standard ex-vessel value of the catch subject to the IFQ fee for the current year. The method used by NMFS to calculate the IFQ fee percentage is described at § 679.45(d)(2)(ii).

Regulations at § 679.45(d)(3)(i) require NMFS to publish the IFQ fee percentage for the halibut and sablefish IFQ fisheries in the **Federal Register** during or before the last quarter of each year. For the 2011 sablefish and halibut IFQ fishing season, an IFQ permit holder is to use a fee liability percentage of 1.6% to calculate his or her fee for landed IFQ in pounds. The IFQ permit holder is responsible for submitting the fee liability payment to NMFS on or before January 31, 2012.

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2011 IFQ SEASON

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish standard ex-vessel price
CORDOVA	February 28		
	March 31		
	April 30		
	May 31	$6.44	
	June 30		
	July 31		
	August 31	7.04	
	September 30		
	October 31		
	November 30		
DUTCH HARBOR	February 28		
	March 31		
	April 30	5.86	4.60
	May 31	6.32	4.43
	June 30	6.46	5.71
	July 31	6.28	5.46
	August 31	6.59	5.84
	September 30	6.73	5.52
	October 31	6.73	5.52
	November 30	6.73	5.52
HOMER	February 28		
	March 31	6.36	6.56
	April 30	6.42	
	May 31	6.27	5.24
	June 30	6.44	5.49
	July 31	6.70	
	August 31	6.85	5.10
	September 30	6.77	6.42
	October 31	6.77	6.42
	November 30	6.77	6.42

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2011 IFQ SEASON—Continued

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish standard ex-vessel price
KETCHIKAN	February 28		
	March 31		
	April 30		
	May 31		
	June 30		
	July 31	6.83	
	August 31	6.94	
	September 30		
	October 31		
	November 30		
KODIAK	February 28		
	March 31	5.99	5.28
	April 30	6.06	4.60
	May 31	6.32	4.93
	June 30	6.48	5.07
	July 31	6.66	5.26
	August 31	6.77	5.16
	September 30	6.77	5.69
	October 31	6.77	5.69
	November 30	6.77	5.69
PETERSBURG	February 28		
	March 31	6.67	
	April 30	6.46	
	May 31	6.60	
	June 30	6.80	
	July 31	6.97	
	August 31	7.05	
	September 30	7.14	
	October 31	7.14	
	November 30	7.14	
SEWARD	February 28		
	March 31		
	April 30		
	May 31		
	June 30		
	July 31		

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2011 IFQ SEASON—Continued

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish standard ex-vessel price
	August 31		
	September 30		
	October 31		
	November 30		
SITKA	February 28		
	March 31		
	April 30		
	May 31		
	June 30		
	July 31		
	August 31		
	September 30		
	October 31		
	November 30		
YAKUTAT	February 28		
	March 31		
	April 30		
	May 31		
	June 30		
	July 31		
	August 31		
	September 30		
	October 31		
	November 30		
BERING SEA [1]	February 28		
	March 31		
	April 30	5.92	5.62
	May 31	6.32	4.84
	June 30	6.40	5.26
	July 31	6.42	5.20
	August 31	6.59	4.87
	September 30	6.69	5.54
	October 31	6.69	5.54
	November 30	6.69	5.54
CENTRAL GULF [2]	February 28		
	March 31	6.32	5.03

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2011 IFQ SEASON—Continued

Landing location	Period ending	Halibut standard ex-vessel price	Sablefish standard ex-vessel price
	April 30	6.28	4.95
	May 31	6.34	4.90
	June 30	6.48	5.15
	July 31	6.68	5.22
	August 31	6.82	5.11
	September 30	6.87	5.93
	October 31	6.87	5.93
	November 30	6.87	5.93
SOUTHEAST [3]	February 28		
	March 31	6.55	4.59
	April 30	6.48	4.81
	May 31	6.61	5.23
	June 30	6.63	5.19
	July 31	6.75	5.51
	August 31	6.94	5.43
	September 30	6.99	5.71
	October 31	6.99	5.71
	November 30	6.99	5.71
ALL [4]	February 28		
	March 31	6.37	4.73
	April 30	6.33	4.91
	May 31	6.39	5.00
	June 30	6.49	5.18
	July 31	6.61	5.23
	August 31	6.75	5.11
	September 30	6.84	5.72
	October 31	6.84	5.72
	November 30	6.84	5.72

[1] Landing locations Within Port Group—Bering Sea: Adak, Akutan, Akutan Bay, Atka, Bristol Bay, Chefornak, Dillingham, Captains Bay, Dutch Harbor, Egegik, Ikatan Bay, Hooper Bay, King Cove, King Salmon, Kipnuk, Mekoryuk, Naknek, Nome, Quinhagak, Savoonga, St. George, St. Lawrence, St. Paul, Togiak, Toksook Bay, Tununak, Beaver Inlet, Ugadaga Bay, Unalaska.

[2] Landing Locations Within Port Group—Central Gulf of Alaska: Anchor Point, Anchorage, Alitak, Chignik, Cordova, Eagle River, False Pass, West Anchor Cove, Girdwood, Chinitna Bay, Halibut Cove, Homer, Kasilof, Kenai, Kenai River, Alitak, Kodiak, Port Bailey, Nikiski, Ninilchik, Old Harbor, Palmer, Sand Point, Seldovia, Resurrection Bay, Seward, Valdez, Whittier.

[3] Landing Locations Within Port Group—Southeast Alaska: Angoon, Baranof Warm Springs, Craig, Edna Bay, Elfin Cove, Excursion Inlet, Gustavus, Haines, Hollis, Hoonah, Hyder, Auke Bay, Douglas, Tee Harbor, Juneau, Kake, Ketchikan, Klawock, Metlakatla, Pelican, Petersburg, Portage Bay, Port Alexander, Port Graham, Port Protection, Point Baker, Sitka, Skagway, Tenakee Springs, Thorne Bay, Wrangell, Yakutat.

[4] Landing Locations Within Port Group—All: For Alaska: All landing locations included in 1, 2, and 3. For California: Eureka, Fort Bragg, Other California. For Oregon: Astoria, Aurora, Lincoln City, Newport, Warrenton, Other Oregon. For Washington: Anacortes, Bellevue, Bellingham, Nagai Island, Edmonds, Everett, Granite Falls, Ilwaco, La Conner, Port Angeles, Port Orchard, Port Townsend, Ranier, Fox Island, Mercer Island, Seattle, Standwood, Other Washington. For Canada: Port Hardy, Port Edward, Prince Rupert, Vancouver, Haines Junction, Other Canada.

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

Dated: December 5, 2011.

Steven Thur,

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

[FR Doc. 2011–31817 Filed 12–9–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA838

Hawaii Crustacean Fisheries; 2012 Northwestern Hawaiian Islands Lobster Harvest Guideline

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

ACTION: Notification of lobster harvest guideline.

SUMMARY: NMFS establishes the annual harvest guideline for the commercial lobster fishery in the Northwestern Hawaiian Islands (NWHI) for calendar year 2012 at zero lobsters.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS Pacific Islands Region, (808) 944–2108.

SUPPLEMENTARY INFORMATION: The NWHI commercial lobster fishery is managed under the Fishery Ecosystem Plan for the Hawaiian Archipelago. The regulations at 50 CFR 665.252(b) require NMFS to publish an annual harvest guideline for lobster Permit Area 1, comprised of Federal waters around the NWHI. Regulations governing the Papahanaumokuakea Marine National Monument in the NWHI prohibit the unpermitted removal of monument resources (50 CFR 404.7), and establish a zero annual harvest guideline for lobsters (50 CFR 404.10(a)). Accordingly, NMFS establishes the harvest guideline for the NWHI commercial lobster fishery for calendar year 2012 at zero lobsters. Thus, no harvest of NWHI lobster resources is allowed.

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

Dated: December 7, 2011.

Steven Thur,

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

[FR Doc. 2011–31809 Filed 12–9–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA862

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Oversight Committee, in January, 2012, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Thursday, January 19, 2012 at 9 a.m.

ADDRESSES: The meeting will be held at the Hotel Providence, 139 Mathewson Street, Providence, RI 02903; *telephone:* (401) 861–8000; *fax:* (401) 861–8002.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Scallop Committee will begin development of Framework 24 (fishery specifications for fishing years 2013 and 2014). This action will also include several additional measures identified by the Council in priority order; possible modification of George's Bank access area opening dates; consider measures to address sub-ACL of yellowtail flounder for the LAGC trawl fishery and leasing LAGC IFQ mid-year. The Committee will also review results from several scallop resource surveys conducted with Research Set-Aside funds in 2011 and have a presentation on potential plan for future Federal scallop survey conducted by NMFS. The Committee may discuss other business at this meeting.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: December 7, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–31784 Filed 12–9–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA843

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: Free Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops will be held in January, February, and March of 2012. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Protected Species Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted during 2012.

DATES: The Atlantic Shark Identification Workshops will be held January 12, February 23, and March 22, 2012.

The Protected Species Safe Handling, Release, and Identification Workshops will be held on January 11, January 25, February 8, February 22, March 14, and March 21, 2012.

See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Slidell, LA; Norfolk, VA; and Vero Beach, FL.

The Protected Species Safe Handling, Release, and Identification Workshops will be held in Kitty Hawk, NC; Manahawkin, NJ; Gulfport, MS; Portland, ME; Galveston, TX; and Daytona Beach, FL.

See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson by phone: (727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the Internet at: *http://www.nmfs.noaa.gov/sfa/hms/workshops/.*

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit which first receives Atlantic sharks (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for 3 years. Approximately 68 free Atlantic Shark Identification Workshops have been conducted since January 2007.

Currently, permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit which first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location which first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, trucks or other conveyances that are extensions of a dealer's place of business must possess a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate.

Workshop Dates, Times, and Locations

1. January 12, 2012, 12 p.m.–4 p.m., LaQuinta Inn & Suites, 794 E I–10 Service Road, Slidell, LA 70461.

2. February 23, 2012, 12 p.m.–4 p.m., LaQuinta Inn & Suites (at Norfolk Airport), 1387 North Military Highway, Norfolk, VA 23502.

3. March 22, 2012, 12 p.m.–4 p.m., Leisure Square—TUFF Room, 3705 16th Street, Vero Beach, FL 32960. (Note—This activity is not sponsored by the City of Vero Beach, FL.)

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at *esander@peoplepc.com* or at (386) 852–8588.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring specific items to the workshop:

- Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.
- Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate valid permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Protected Species Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited-access and swordfish limited-access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). These certificate(s) are valid for 3 years. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited-access permits. Additionally, new shark and swordfish limited-access permit applicants who intend to fish with longline or gillnet gear must attend a Protected Species Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued. Approximately 124 free Protected Species Safe Handling, Release, and Identification Workshops have been conducted since 2006.

In addition to certifying vessel owners, at least one operator on board vessels issued a limited-access swordfish or shark permit that uses longline or gillnet gear is required to attend a Protected Species Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited-access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates onboard at all times. These certificate(s) are valid for 3 years. As such, vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited-access permits that uses longline or gillnet gear.

Workshop Dates, Times, and Locations

1. January 11, 2012, 9 a.m.–5 p.m., Hilton Garden Inn, 5353 North Virginia Dare Trail, Kitty Hawk, NC 27949.

2. January 25, 2012, 9 a.m.–5 p.m., Holiday Inn, 151 Route 72 East, Manahawkin, NJ 08020.

3. February 8, 2012, 9 a.m.–5 p.m., Holiday Inn, 9515 Highway 49, Gulfport, MS 39503.

4. February 22, 2012, 9 a.m.–5 p.m., Holiday Inn, 88 Spring Street, Portland, ME 04101.

5. March 14, 2012, 9 a.m.–5 p.m., Hotel Galvez, 2024 Seawall Boulevard, Galveston, TX 77550.

6. March 21, 2012, 9 a.m.–5 p.m., Holiday Inn, 2620 West International Speedway Boulevard, Daytona Beach, FL 32114.

Registration

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at (386) 682–0158.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring specific items with them to the workshop:

- Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification.
- Representatives of a business-owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification.
- Vessel operators must bring proof of identification.

Workshop Objectives

The Protected Species Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. In an effort to improve reporting, the proper identification of protected species will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

Dated: December 7, 2011.

Steven Thur,

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

[FR Doc. 2011–31805 Filed 12–9–11; 8:45 am]

BILLING CODE 3510–22–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 11, 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 7, 2011.

Darrin King,

Director, Information Collection Clearance Division,Privacy, Information and Records Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title of Collection: Federal Family Education Loan (FFEL) Program, William D. Ford Federal Direct Loan (Direct Loan) Program, Federal Perkins Loan (Perkins) Program, and Teacher Education Assistance for College and Higher Education (TEACH) Grant Program: Discharge Application: Total and Permanent Disability.

OMB Control Number: 1845–0065.

Agency Form Number(s): N/A.

Frequency of Responses: On Occasion.

Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 30,000.

Total Estimated Annual Burden Hours: 15,000.

Abstract: The Discharge Application: Total and Permanent Disability serves as the means by which an individual who is totally and permanently disabled, as defined in § 437(a)(1) of the Higher Education Act of 1965, as amended, applies for discharge of his or her Direct Loan, Federal Family Education Loan, or Perkins loan program loans, or Teacher Education Assistance for College and Higher Education Grant service obligation. The form collects the information that is needed by the U.S. Department of Education to determine the individual's eligibility for discharge based on total and permanent disability.

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 4709. 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. 2011–31800 Filed 12–9–11; 8:45 am]

BILLING CODE 4000–01–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 11, 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 7, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Communications and Outreach

Type of Review: Extension.

Title of Collection: National Blue Ribbon Schools Program.

OMB Control Number: 1860–0506.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 413.

Total Estimated Annual Burden Hours: 16,520.

Abstract: The National Blue Ribbon Schools Program honors public and private elementary, middle and high schools where students achieve at high levels or where the achievement gap is narrowing among all student subgroups. Each year since 1982, the U.S. Department of Education (ED) has sought out schools where students attain and maintain high academic goals, including those that beat the odds. The Program, part of a larger ED effort to identify and disseminate knowledge about best school leadership and teaching practices, is authorized by Public Law 107–110 (January 8, 2002), Part D—Fund for the Improvement of Education, Subpart 1, Sec. 5411(b)(5).

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 4702. 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. 2011–31803 Filed 12–9–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–20–000]

Dominion Transmission, Inc.; Notice of Application

Take notice that on November 21, 2011, Dominion Transmission, Inc. (DTI), 120 Tredegar Street, Richmond, Virginia 23219 filed an application in Docket No. CP12–20–000 pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity to construct and operate its Sabinsville to Morrisville Project which consists of 3.56 miles of new 24-inch-diameter pipeline (TL–610) as well as various aboveground and buried piping, valves and appurtenances at its Sabinsville Station, all in Tioga County, Pennsylvania. DTI states that its proposal is intended to accommodate Tennessee Gas Pipeline Company's (Tennessee's) request to move its primary receipt point from North Sheldon, New York to Sabinsville, Pennsylvania. DTI states that it does not propose to provide any new delivery capacity but would continue to transport Tennessee's contracted 92,000 Dt/d of existing firm transportation service to Tennessee through the proposed facilities and existing downstream facilities to the new delivery point at Morrisville. The total project cost is estimated to be $16,759,375.00. A more detailed description of the project is available in the application which is on file with the Commission and open for public inspection.

This filing 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 ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659. Any questions regarding this application should be directed to Matthew R. Bley, Manager, Gas Transmission Certificates, Dominion Transmission, Inc., 701 East Cary Street, Richmond, Virginia 23219, (804) 771–4399 (phone), (804) 771–4804 (fax) or *matthew.r.bley@dom.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: December 27, 2011.

Dated: December 5, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31719 Filed 12–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–19–000]

Dominion Transmission, Inc.; Notice of Application

Take notice that on November 21, 2011, Dominion Transmission, Inc. (DTI), 120 Tredegar Street, Richmond, Virginia 23219 filed an application in Docket No. CP12–19–000 pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity to construct and operate its Tioga Area Expansion Project. DTI's proposal would consist of 15 miles of new 24-inch-diameter pipeline (TL–610 Ext. 1), including a new pig launcher/receiver site at the southern terminus of the new pipeline, in Tioga County, Pennsylvania (PA). Additionally, DTI's proposal would include other system modifications at existing stations on DTI's system such as connecting pipeline, a new meter and regulator station, new or modified control valves and station piping. These various modifications are proposed at the Little Greenlick, Crayne, Boom, Finnefrock, and Lindley Stations in Potter, Greene, Tioga, and Clinton Counties PA and Steuben County, New York, respectively.

DTI states that it will provide expanded firm natural gas transportation services of 270,000 Dth/day for Shell Energy North America and Penn Virginia Oil & Gas Company. The receipt points for the expanded service would be at points in Potter and Tioga Counties, PA and the delivery points through an existing interconnection between DTI and Transcontinental Gas Pipeline Company's facilities in Clinton County, PA and through a new interconnection with Texas Eastern Transmission, LP in Greene County, PA. The estimated cost of the Tioga Area Expansion Project is approximately $67 million. A more detailed description of the project is available in the application which is on file with the Commission and open for public inspection.

This filing 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 ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659. Any questions regarding this application should be directed to Matthew R. Bley, Manager, Gas Transmission Certificates, Dominion Transmission, Inc., 701 East Cary Street, Richmond, Virginia 23219, (804) 771–4399 (phone), (804) 771–4804 (fax) or *matthew.r.bley@dom.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and

to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: December 27, 2011.

Dated: December 5, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31718 Filed 12–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–40–000.

Applicants: Caney River Wind Project, LLC, Rocky Ridge Wind Project, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act for the Disposition of Jurisdictional Facilities, Request for Expedited Consideration and Confidential Treatment of Caney River Wind Project, LLC, et al.

Filed Date: 11/22/11.

Accession Number: 20111122–5201.

Comments Due: 5 p.m. ET 12/13/11.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–9–000.

Applicants: Fire Island Wind, LLC.

Description: Supplemental Information Clarifying Notice of Self-Certification of EWG Status of Fire Island Wind, LLC.

Filed Date: 11/7/11.

Accession Number: 20111107–5038.

Comments Due: 5 p.m. ET 11/28/11.

Docket Numbers: EG12–15–000.

Applicants: NRG Texas Power LLC.

Description: Notice of Self Certification of Exempt Wholesale Generator Status NRG Texas Power LLC.

Filed Date: 11/22/11.

Accession Number: 20111122–5143.

Comments Due: 5 p.m. ET 12/13/11.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3627–001.

Applicants: Southwest Power Pool, Inc.

Description: Compliance Filing In Order ER11–3627—Revisions to Attachment AE, Section 4.4 to be effective 7/24/2011.

Filed Date: 11/22/11.

Accession Number: 20111122–5133.

Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: ER12–463–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: IP03 Termination to be effective 1/22/2012.

Filed Date: 11/22/11.

Accession Number: 20111122–5126.

Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: ER12–464–000.

Applicants: Madison Gas and Electric Company.

Description: MGE Seller Category Update to be effective 11/23/2011.

Filed Date: 11/22/11.

Accession Number: 20111122–5131.

Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: ER12–465–000.

Applicants: Nevada Power Company.

Description: Amended & Restated Purchase Power Agreement to be effective 11/23/2011.

Filed Date: 11/22/11.

Accession Number: 20111122–5145.

Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: ER12–466–000.

Applicants: Duke Energy Carolinas, LLC.

Description: NCEMC Catwaba IA RS No. 273 to be effective 1/1/2012.

Filed Date: 11/22/11.

Accession Number: 20111122–5172.

Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: ER12–467–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Amendment to NCEMC PPA RS No. 326 to be effective 1/1/2012.

Filed Date: 11/22/11.

Accession Number: 20111122–5174.

Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: ER12–468–000.

Applicants: Black Hills Power, Inc.

Description: Revised BH Power, Inc., JOATT Attachment H to be effective 8/1/2011.

Filed Date: 11/22/11.

Accession Number: 20111122–5178.

Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: ER12–469–000.

Applicants: PJM Interconnection, L.L.C.

Description: Petition of PJM Interconnection, L.L.C. for Institution of Proceeding To Determine Proper Billing Adjustments and for Waiver of Tariff.

Filed Date: 11/22/11.

Accession Number: 20111122–5199.

Comments Due: 5 p.m. ET 12/13/11.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR12–2–000.

Applicants: North American Electric Reliability Corp.

Description: Petition of North American Electric Reliability Corporation for Approval of Amendments to Delegation Agreement with Western Electricity Coordinating Council under RR12–2.

Filed Date: 11/22/11.

Accession Number: 20111122–5180.

Comments Due: 5 p.m. ET 12/13/11

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 23, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–31789 Filed 12–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–16–000.

Applicants: Rocky Ridge Wind Project, LLC.

Description: Self-Certification of EG of Rocky Ridge Wind Project, LLC.

Filed Date: 12/2/11.

Accession Number: 20111202–5026.

Comments Due: 5 p.m. ET 12/23/11.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–521–011.

Applicants: New York Independent System Operator, Inc.

Description: Revised Compliance Implementation Plan and Status Report of the New York Independent System Operator, Inc..

Filed Date: 12/1/11.

Accession Number: 20111201–5192.

Comments Due: 5 p.m. ET 12/22/11.

Docket Numbers: ER10–2774–002.

Applicants: Arizona Solar One LLC.

Description: Arizona Solar One LLC submits a notification of change in status.

Filed Date: 11/9/11.

Accession Number: 20111201–0204.

Comments Due: 5 p.m. ET 12/23/11.

Docket Numbers: ER11–4256–001.

Applicants: Southern California Edison Company.

Description: Resubmit LGIA Amendment to Walnut Creek Energy Project with WCE to be effective 8/9/2011.

Filed Date: 12/2/11.

Accession Number: 20111202–5085.

Comments Due: 5 p.m. ET 12/23/11.

Docket Numbers: ER11–4375–001.

Applicants: City of Pasadena, California.

Description: City of Pasadena Offer of Settlement and Settlement Agreement to be effective 9/1/2011.

Filed Date: 12/1/11.

Accession Number: 20111201–5102.

Comments Due: 5 p.m. ET 12/22/11.

Docket Numbers: ER11–4437–001.

Applicants: Arizona Public Service Company.

Description: Compliance filing to the APS Large Generator Interconnection Procedures to be effective 11/1/2011.

Filed Date: 12/1/11.

Accession Number: 20111201–5181.

Comments Due: 5 p.m. ET 12/22/11.

Docket Numbers: ER11–4676–001.

Applicants: Puget Sound Energy, Inc.

Description: Residential Exchange Program Settlement Implementation Agreemt Schedule 620 to be effective 10/1/2011.

Filed Date: 12/1/11.

Accession Number: 20111201–5218.

Comments Due: 5 p.m. ET 12/22/11.

Docket Numbers: ER11–4733–001.

Applicants: California Independent System Operator Corporation.

Description: 2011–12–01 CAISO SCP–QF Compliance Filing to be effective 12/1/2011.

Filed Date: 12/1/11.

Accession Number: 20111201–5216.

Comments Due: 5 p.m. ET 12/22/11.

Docket Numbers: ER12–41–001.

Applicants: ITC Midwest LLC.

Description: Filing of an Amendment to be effective 12/7/2011.

Filed Date: 12/1/11.

Accession Number: 20111201–5177.

Comments Due: 5 p.m. ET 12/22/11.

Docket Numbers: ER12–508–000.

Applicants: PJM Interconnection, LLC.

Description: Original Service Agreement No. 3148; Queue No. X1–021 to be effective 11/3/2011.

Filed Date: 12/1/11.

Accession Number: 20111201–5155.

Comments Due: 5 p.m. ET 12/22/11.

Docket Numbers: ER12–509–000.

Applicants: Florida Power Corporation.

Description: Revised Rate Schedule 106 of Florida Power Corporation to be effective 12/31/2011.

Filed Date: 12/1/11.

Accession Number: 20111201–5196.

Comments Due: 5 p.m. ET 12/22/11.

Docket Numbers: ER12–510–000.

Applicants: Portland General Electric Company.

Description: Revised Volume 14 to be effective 1/1/2012.

Filed Date: 12/1/11.

Accession Number: 20111201–5199.

Comments Due: 5 p.m. ET 12/22/11.

Docket Numbers: ER12–511–000.

Applicants: Puget Sound Energy, Inc.

Description: NWPP Reserve Energy Service Volume 9 to be effective 10/1/2011.

Filed Date: 12/1/11.

Accession Number: 20111201–5211.

Comments Due: 5 p.m. ET 12/22/11.

Docket Numbers: ER12–512–000.

Applicants: NorthWestern Corporation.

Description: FERC Electric Tariff Volume No. 7, Version 2—Revised Reserve Energy Service to be effective 1/1/2012.

Filed Date: 12/1/11.

Accession Number: 20111201–5213.

Comments Due: 5 p.m. ET 12/22/11.

Docket Numbers: ER12–513–000.

Applicants: PJM Interconnection, LLC.

Description: Revisions to PJM Tariff Attachment DD re RPM Triennial Review & RPM performance to be effective 1/31/2012.

Filed Date: 12/1/11.

Accession Number: 20111201–5214.

Comments Due: 5 p.m. ET 12/22/11.

Docket Numbers: ER12–514–000.

Applicants: Sierra Pacific Power Company.

Description: Rate Schedule No. 42—Northwest Power Pool Agreement to be effective 1/1/2012.

Filed Date: 12/1/11.

Accession Number: 20111201–5215.

Comments Due: 5 p.m. ET 12/22/11.

Docket Numbers: ER12–515–000.

Applicants: Sperian Energy Corp.

Description: Market Base Rate Tariff Filing to be effective 12/1/2011.

Filed Date: 12/2/11.

Accession Number: 20111202–5001.

Comments Due: 5 p.m. ET 12/23/11.

Docket Numbers: ER12–515–001.

Applicants: Sperian Energy Corp.

Description: Compliance Filing to MBR Tariff to be effective 12/1/2011.

Filed Date: 12/2/11.

Accession Number: 20111202–5006.

Comments Due: 5 p.m. ET 12/23/11.

Docket Numbers: ER12–515–002.

Applicants: Sperian Energy Corp.

Description: Compliance MBR Tariff Filing to be effective 12/1/2011.

Filed Date: 12/2/11.

Accession Number: 20111202–5007.

Comments Due: 5 p.m. ET 12/23/11.

Docket Numbers: ER12–516–000.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: Member Rate Schedule Tariff Filing to be effective 1/1/2012.

Filed Date: 12/2/11.

Accession Number: 20111202–5002.

Comments Due: 5 p.m. ET 12/23/11.

Docket Numbers: ER12–517–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 12–02–11 Schedule 37 Revisions to be effective 1/1/2012 .

Filed Date: 12/2/11.

Accession Number: 20111202–5043.
Comments Due: 5 p.m. ET 12/23/11.

Docket Numbers: ER12–518–000.
Applicants: PJM Interconnection, LLC.
Description: Original Service Agreement No. 3149; Queue No. X1–043 to be effective 11/3/2011.
Filed Date: 12/2/11.
Accession Number: 20111202–5047.
Comments Due: 5 p.m. ET 12/23/11

Docket Numbers: ER12–519–000.
Applicants: PJM Interconnection, LLC.
Description: Original Service Agreement No. 3147; Queue No. W4–103 to be effective 11/3/2011.
Filed Date: 12/2/11.
Accession Number: 20111202–5049.
Comments Due: 5 p.m. ET 12/23/11.

Docket Numbers: ER12–520–000.
Applicants: PJM Interconnection, LLC.
Description: First Revised Service Agreement No. 2925; Queue No. W3–130 to be effective 11/2/2011.
Filed Date: 12/2/11.
Accession Number: 20111202–5055.
Comments Due: 5 p.m. ET 12/23/11.

Docket Numbers: ER12–521–000.
Applicants: PJM Interconnection, LLC.
Description: Second Revised Service Agreement No. 2789; Queue No. W3–129 to be effective 11/2/2011.
Filed Date: 12/2/11.
Accession Number: 20111202–5056.
Comments Due: 5 p.m. ET 12/23/11.

Docket Numbers: ER12–522–000.
Applicants: PacifiCorp.
Description: Ridgeline Meadow Creek E&P Agreement to be effective 2/1/2012.
Filed Date: 12/2/11.
Accession Number: 20111202–5087.
Comments Due: 5 p.m. ET 12/23/11.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 2, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–31792 Filed 12–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2238–003; ER10–2239–003; ER10–2237–002.
Applicants: Indigo Generation LLC, Larkspur Energy LLC, Wildflower Energy LP.
Description: Indigo Generation LLC, *et al* submits Notice of Non-Material Change in Status.
Filed Date: 12/2/11.
Accession Number: 20111202–5188.
Comments Due: 5 p.m. ET 12/23/11.

Docket Numbers: ER10–2906–005; ER10–2908–005; ER10–2911–005;ER10–2909–005; ER10–2910–005; ER10–2900–005; ER10–2899–005; ER10–2898–005; ER11–4393–002; ER11–4355–001
Applicants: Naniwa Energy LLC, Power Contract Financing II, LLC, South Eastern Electric Development Corp., South Eastern Generating Corp., Morgan Stanley Capital Group Inc., MS Solar Solutions Corp., Power Contract Financing II, Inc., Utility Contract Financing II, LLC,TPW Petersburg, LLC,TAQA Gen X LLC.
Description: Notice of Non-Material Change in Status of Morgan Stanley Capital Group Inc., *et al.*
Filed Date: 12/1/11.
Accession Number: 20111201–5239.
Comments Due: 5 p.m. ET 12/22/11.

Docket Numbers: ER11–2705–002.
Applicants: California Independent System Operator Corporation.
Description: 2011–12–02 CAISO RTTP Compliance to be effective 12/20/2010.
Filed Date: 12/2/11.
Accession Number: 20111202–5111.
Comments Due: 5 p.m. ET 12/23/11.

Docket Numbers: ER12–114–002.
Applicants: Southwestern Electric Power Company.
Description: 20111202 Hope PSA to be effective 12/17/2010.
Filed Date: 12/2/11.
Accession Number: 20111202–5192.
Comments Due: 5 p.m. ET 12/23/11.

Docket Numbers: ER12–202–002.
Applicants: Southwestern Electric Power Company.
Description: 20111202 Prescott Revised PSA to be effective 12/17/2010.
Filed Date: 12/2/11.
Accession Number: 20111202–5181.
Comments Due: 5 p.m. ET 12/23/11.

Docket Numbers: ER12–203–002.
Applicants: Southwestern Electric Power Company.
Description: 20111202 Minden Revised PSA to be effective 12/17/2010.
Filed Date: 12/2/11.
Accession Number: 20111202–5180.
Comments Due: 5 p.m. ET 12/23/11.

Docket Numbers: ER12–523–000.
Applicants: Vectren Retail, LLC.
Description: Notice of Cancellation of MBR Tariff and Request for Expedited Action to be effective 12/28/2011.
Filed Date: 12/2/11.
Accession Number: 20111202–5096.
Comments Due: 5 p.m. ET 12/19/11.

Docket Numbers: ER12–524–000.
Applicants: Longview Power, LLC.
Description: Reactive Service Rate Filing to be effective 1/1/2012.
Filed Date: 12/2/11.
Accession Number: 20111202–5097.
Comments Due: 5 p.m. ET 12/23/11.

Docket Numbers: ER12–525–000.
Applicants: PJM Interconnection, LLC.
Description: Revisions to the PJM Tariff & OA re the ELR Cost Allocation Proposal to be effective 2/1/2012.
Filed Date: 12/2/11.
Accession Number: 20111202–5099.
Comments Due: 5 p.m. ET 12/23/11.

Docket Numbers: ER12–526–000.
Applicants: Southwest Power Pool, Inc.
Description: Order No. 719 Ministerial Filing to be effective 7/26/2010.
Filed Date: 12/2/11.
Accession Number: 20111202–5139.
Comments Due: 5 p.m. ET 12/23/11.

Docket Numbers: ER12–528–000.
Applicants: Southwest Power Pool, Inc.
Description: Revisions to Attachment AE—Section 1.2.2 Application & Asset Registration to be effective 1/1/2012.
Filed Date: 12/2/11.
Accession Number: 20111202–5195.
Comments Due: 5 p.m. ET 12/23/11.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 5, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–31791 Filed 12–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–17–000.

Applicants: Blackwell Wind, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Blackwell Wind, LLC under EG12–17.

Filed Date: 12/5/11.

Accession Number: 20111205–5060.

Comments Due: 5 p.m. ET 12/27/11.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1549–001; ER10–2638–002; ER10–2670–001; ER10–2670–002; ER10–2669–001; ER10–2669–002; ER10–2671–001; ER10–2671–002; ER10–2673–001; ER10–2673–002; ER10–2253–001; ER10–2253–002; ER10–3319–002; ER10–3319–003; ER10–2674–001; ER10–2674–002; ER10–1543–001; ER10–1544–001; ER10–2627–001; ER10–2627–002; ER10–2629–001; ER10–2629–002; ER10–1546–002; ER10–1546–003; ER11–1933–001; ER10–1547–001; ER10–1547–002; ER10–2675–001; ER10–2675–002; ER10–2676–001; ER10–2676–002; ER10–2636–001; ER10–2636–002; ER10–1975–001; ER10–1975–003; ER10–1974–001; ER10–1974–003; ER10–1550–002; ER10–1550–003; ER11–2424–002; ER11–2424–005; ER10–2677–001; ER10–2677–002; ER10–1551–001; ER10–1551–002; ER10–2678–001; ER10–2638–001.

Applicants: ANP Blackstone Energy Company, LLC, ANP Bellingham Energy Company, LLC,ANP Funding I, LLC, Armstrong Energy Limited Partnership, L., Astoria Energy, LLC, Astoria Energy II LLC, Calumet Energy Team, LLC, Choctaw Gas Generation, LLC, Choctaw Generation Limited Partnership, FirstLight Hydro Generating Corporation, FirstLight Power Resources Management, L,GDF SUEZ Energy Marketing NA, Inc., Green Mountain Power Corporation, Hopewell Cogeneration Ltd Partnership, Hot Spring Power Company, LLC.

Description: Update to Notice of Change in Status and Northeast Triennial Supplemental Information of GDF SUEZ Entities.

Filed Date: 8/22/11.

Accession Number: 20110822–5233.

Comments Due: 5 p.m. ET 12/7/11.

Docket Numbers: ER12–67–001.

Applicants: Northeast Energy Associates, A Limited Partnership.

Description: Northeast Energy Associates, a Limited Partnership Revisions to MBR Tariff to be effective 7/26/2010.

Filed Date: 10/26/11.

Accession Number: 20111026–5164.

Comments Due: 5 p.m. ET 12/7/11.

Docket Numbers: ER12–68–001.

Applicants: North Jersey Energy Associates, A Limited Partnership.

Description: North Jersey Energy Associates, A Limited Partnership Revision to MBR Tariff to be effective 7/26/2010.

Filed Date: 10/26/11.

Accession Number: 20111026–5165.

Comments Due: 5 p.m. ET 12/7/11.

Docket Numbers: ER11–3881–002.

Applicants: New York Independent System Operator, Inc.

Description: NYISO compliance filing re: ATC definition and NAESB WEQ standards to be effective 12/5/2011.

Filed Date: 12/5/11.

Accession Number: 20111205–5111.

Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–529–000.

Applicants: PJM Interconnection, L.L.C.

Description: Ministerial Correction to the PJM Operating Agreement Section 15.1.6 to be effective 2/6/2012.

Filed Date: 12/5/11.

Accession Number: 20111205–5045.

Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–530–000.

Applicants: Duke Energy Carolinas, LLC.

Description: NCMPA RS 318 Amendment to be effective 1/1/2012.

Filed Date: 12/5/11.

Accession Number: 20111205–5061.

Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–531–000.

Applicants: PJM Interconnection, L.L.C.

Description: Original Service Agreement Nos. 3156 and 3157–PJM Queue X2–082 to be effective 11/4/2011.

Filed Date: 12/5/11.

Accession Number: 20111205–5064.

Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–532–000.

Applicants: PacifiCorp.

Description: Cancelation of Cedar Creek E&P Agreement to be effective 2/4/2012.

Filed Date: 12/5/11.

Accession Number: 20111205–5086.

Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–533–000.

Applicants: PJM Interconnection, L.L.C.

Description: Original Service Agreement No. 3153; Queue No. W1–029 to be effective 11/4/2011.

Filed Date: 12/5/11.

Accession Number: 20111205–5092.

Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–534–000.

Applicants: United Wisdom Energy LLC.

Description: United Wisdom Energy, LLC Notification of Cancellation.

Filed Date: 12/5/11.

Accession Number: 20111205–5102.

Comments Due: 5 p.m. ET 12/27/11.

Docket Numbers: ER12–535–000.

Applicants: PJM Interconnection, L.L.C.

Description: Original Service Agreements Nos. 3154 and 3155; Queue No. X2–076 to be effective 11/4/2011.

Filed Date: 12/5/11.

Accession Number: 20111205–5110.

Comments Due: 5 p.m. ET 12/27/11.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA11–3–000.

Applicants: BP Energy Company, BP West Coast Products LLC, Cedar Creek Wind Energy, LLC, Cedar Creek II, LLC, Flat Ridge Wind Energy, LLC, Fowler Ridge II Wind Farm LLC, Fowler Ridge III Wind Farm LLC, Fowler Ridge Wind Farm LLC, Goshen Phase II, LLC, Long Island Solar Farm LLC, Rolling Thunder I Power Partners, LLC, Watson Cogeneration Company, and Whiting Clean Energy, Inc.

Description: Supplemental Filing of BP Energy Company, et al.

Filed Date: 12/5/11.

Accession Number: 20111205–5087.

Comments Due: 5 p.m. ET 12/27/11.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF12–74–000.

Applicants: NRG Energy Center Harrisburg Hospital LLC.

Description: NRG Energy Harrisburg Hospital for A 6.3 MW CHP submits FERC Form 556 Notice of Certification of Qualifying Status for a Small Power Production or Cogeneration Facility.

Filed Date: 11/30/11.
Accession Number: 20111130–5351.
Comment Date: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 5, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–31790 Filed 12–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–13–000]

PacifiCorp v. Utah Associated Municipal Power Systems; Notice of Complaint

Take notice that on December 2, 2011, pursuant to sections 206 and 306 of the Federal Power Act (FPA), 16 U.S.C. 824e, 825e, and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedures, 18 CFR 385.206, PacifiCorp (Complainant) filed a complaint alleging that Utah Associated Municipal Power Systems (Respondent) has failed to comply with the terms and conditions of the Amended and Restated Transmission System and Operating Agreement (TSOA) between Complainant and Respondent and has failed to pay for operating reserves provided by Complainant in accordance with the TSOA.

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 22, 2011.

Dated: December 5, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31720 Filed 12–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC12–20–000]

Enbridge Offshore Pipelines (UTOS); Notice of Filing

Take notice that on November 30, 2011, Enbridge Offshore Pipelines (UTOS) submitted a request for a waiver of the reporting requirement to file the FERC Form 2 CPA Certification for 2011.

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 or 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: January 5, 2012.

Dated: December 5, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31717 Filed 12–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR12–7–000]

SourceGas Distribution LLC; Notice of Petition for Rate Approval and Revised Statement of Operating Conditions

Take notice that on December 1, 2011, SourceGas Distribution LLC (SourceGas) filed a Rate Election and revised Statement of Operating Conditions (SOC) pursuant to sections 284.123 and 284.224 of the Commission's regulations, (18 CFR 284.123 and 284.224). SourceGas proposes to utilize rates that are the same as those contained in SourceGas' transportation rate schedules for comparable intrastate service on file with the Public Service Commission of Wyoming. In addition, SourceGas proposes to make certain

housekeeping revisions to its SOC as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 13, 2011.

Dated: December 5, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31716 Filed 12–9–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR12–6–000]

Rocky Mountain Natural Gas LLC; Notice of Petition for Rate Approval and Revised Statement of Operating Conditions

Take notice that on November 30, 2011, Rocky Mountain Natural Gas LLC (RMNG) filed a Rate Election and revised Statement of Operating Conditions (SOC) pursuant to sections 284.123 and 284.224 of the Commission's regulations, (18 CFR 284.123 and 284.224). RMNG proposes to utilize rates that are the same as those contained in RMNG's transportation rate schedules for comparable intrastate service on file with the Colorado Public Utilities Commission. In addition, RMNG proposes to make certain housekeeping revisions to its SOC as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE. Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 13, 2011.

Dated: December 5, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31721 Filed 12–9–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–20003–0004; FRL–9329–3]

Access to Confidential Business Information by Primus Solutions, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Primus Solutions, Inc. (Primus) of Greenbelt, MD, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur on or about November 23, 2011.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Pamela Moseley, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; *telephone number:* (202) 564–8956; *fax number:* (202) 564–8955; *email address: Moseley.Pamela@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; *telephone number:* (202) 554–1404; *email address: TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action

to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

II. What action is the agency taking?

Under EPA Contract Number EP–W–11–024, Task Order Number 43, contractor Primus of 6303 Ivy Lane, Suite 130, Greenbelt, MD will assist the Office of Pollution Prevention and Toxics (OPPT) in managing the Non-Confidential Business Information Center (NCIC). They will also provide current and historical reports on all TSCA non-CBI submissions received in compliance with TSCA; organize, distribute and prepare records for permanent storage; and handle all docket-related records for OPPT, in accordance with the TSCA CBI Protection Manual.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA Contract Number EP–W–11–024, Task Order Number 43, Primus will require access to CBI submitted to EPA under all section(s) of TSCA to perform successfully the duties specified under the contract. Primus' personnel will be given access to information submitted to EPA under all section(s) of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide Primus access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until February 14, 2016. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

Primus' personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: December 1, 2011.

Matthew G. Leopard,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2011–31827 Filed 12–9–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9505–3]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or email at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 2397.01; NPDES Pesticide General Permit for Point Source Discharges from the Application of Pesticides (New); 40 CFR 122.28; was approved on 11/01/2011; OMB Number 2040–0284; expires on 11/30/2014; Approved without change.

EPA ICR Number 1626.11; National Refrigerant Recycling and Emissions Reduction Program (Renewal); 40 CFR part 82 subpart F; was approved on 11/04/2011; OMB Number 2060–0256; expires on 11/30/2014; Approved with change.

EPA ICR Number 2402.02; Willingness to Pay Survey for Section 316(b) Existing Facilities Cooling Water Intake Structures; was approved on 11/04/2011; OMB Number 2040–0283; expires on 07/31/2013; Approved without change.

EPA ICR Number 2103.04; Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002: Drinking Water Security and Safety (Renewal); was approved on 11/10/2011; OMB Number 2040–0253; expires on 11/30/2014; Approved without change.

EPA ICR Number 0370.23; Federal Requirements under the Underground Injection Control (UIC) Program for Carbon Dioxide Geologic Sequestration Wells (Final Rule); 40 CFR part 124, 40 CFR parts 144–148; was approved on 11/10/2011; OMB Number 2040–0042; expires on 11/30/2014; Approved without change.

EPA ICR Number 1959.04; National Listing of Fish Advisories (Renewal); was approved on 11/16/2011; OMB Number 2040–0226; expires on 11/30/2014; Approved without change. EPA ICR Number 1230.30; Prevention of Significant Deterioration and Nonattainment New Source Review (Final Rule for Review of New Sources and Modifications in Indian Country—Change); 40 CFR 49.151–49.175, 40 CFR 51.160–51.166, 40 CFR part 51 Appendix S, 40 CFR 52.21–52.24; was approved on 11/17/2011; OMB Number 2060–0003; expires on 04/30/2012; Approved without change.

Comment Filed

EPA ICR Number 2376.04; Regulation to Establish Mandatory Reporting of Greenhouse Gases (Proposed Rule); in 40 CFR part 98 subpart W; OMB filed comment on 11/09/2011.

EPA ICR Number 2192.04; Unregulated Contaminant Monitoring Regulation (UCMR 3) (Proposed Rule);

in 40 CFR 141.35 and 141.40; OMB filed comment on 11/10/2011.

EPA ICR Number 2060.05; Cooling Water Intake Structures Existing Facility (Proposed Rule); in 40 CFR 122.21(d)(2), 122.21(r)(2), 122.21(r)(3), 122.21(r)(5), 125.94–125.99; OMB filed comment on 11/10/2011.

Dated: December 1, 2011.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2011–31819 Filed 12–9–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9505–4]

Clean Water Act Section 303(d): Availability of 28 Total Maximum Daily Loads (TMDLs) in Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of the public comment period.

SUMMARY: This notice announces the extension of the public comment period for the notice of availability that published on November 14, 2011, 76 FR 70442 (FRL–9491–1). Specifically, comments will be accepted on the administrative record files and the calculations of 28 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: The public comments must be submitted in writing to the EPA on or before January 13, 2012.

ADDRESSES: Comments on the 28 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 28 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:

EPA Seeks Comment on 28 TMDLs

By this notice EPA is seeking comment on the following 28 TMDLs for waters located within Louisiana:

Subsegment	Waterbody name	Pollutant
040102	Comite River—Wilson-Clinton Hwy to entrance of White Bayou (East Baton Rouge Parish) (Scenic)	Fecal Coliform.
040103	Comite River—Entrance of White Bayou to Amite River	Fecal Coliform.
040201	Bayou Manchac—Headwaters to Amite River	Fecal Coliform.
040302	Amite River—LA Hwy 37 to Amite River Diversion Canal Fecal Coliform..	
040304	Grays Creek—Headwaters to Amite River Fecal Coliform..	
040305	Colyell Creek System (includes Colyell Bay)	Fecal Coliform.
040503	Natalbany River—Headwaters to Tickfaw River	Fecal Coliform.
040504	Yellow Water River—Origin to Ponchatoula Creek	Fecal Coliform.
040505	Ponchatoula Creek and Ponchatoula River	Fecal Coliform.
040603	Selsers Creek—Origin to South Slough	Fecal Coliform.
040703	Big Creek and Tributaries—Headwaters to confluence with Tangipahoia River	Fecal Coliform.
040909	W–14 Main Diversion Canal—from its origin in the north end of the City of Slidell to its junction with Salt Bayou.	Fecal Coliform.
040910	Salt Bayou—Headwaters to Lake Pontchartrain (Estuarine)	Fecal Coliform.
041302	Lake Pontchartrain Drainage Canals	Fecal Coliform.
041401	New Orleans East Leveed Waterbodies (Estuarine)	Fecal Coliform.
040501	Tickfaw River—From MS State Line to LA Hwy 42 (Scenic)	TDS.
040504	Yellow Water River—Origin to Ponchatoula Creek	TDS.
040301	Amite River—MS State Line to LA Hwy 37 (Scenic)	TSS.
040401	Blind River—From Amite River Diversion Canal to mouth at Lake Maurepas (Scenic)	TSS.
040903	Bayou Cane—Headwaters to U. S. Hwy 190 (Scenic)	TSS.
040303	Amite River—Amite River Diversion Canal to Lake Maurepas	Mercury.
040401	Blind River—From Amite River Diversion Canal to mouth at Lake Maurepas (Scenic)	Mercury.
040403	Blind River—Source to confluence with Amite River Diversion Canal (Scenic)	Mercury.
040501	Tickfaw River—From MS State Line to LA Hwy 42 (Scenic)	Mercury.
040701	Tangipahoa River—MS State Line to Interstate Hwy 1–12 (Scenic)	Mercury.
040801	Tchefuncte River and Tributaries— Headwaters to confluence with Bogue Falaya River (Scenic)	Mercury.
040905	Bayou Liberty—Headwaters to LA Hwy 433	Mercury.
040906	Bayou Liberty—LA Hwy 433 to confluence with Bayou Bonfouca (Estuarine) Mercury..	

The EPA requests that the public provide any water quality related data and information relevant to the calculations for the 28 TMDLs. EPA will review all data and information submitted during the public comment period and will revise the TMDLs where appropriate. 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: December 1, 2011.

William K. Honker,

Acting Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. 2011–31820 Filed 12–9–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9505–2]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by Sierra Club in the United States District Court for the District of Columbia: *Sierra Club* v. *Jackson,* No. 1:11–cv–00035–GK (D. D.C.). On June 3, 2011, Plaintiffs filed a complaint alleging that EPA failed to promulgate Federal Implementation Plans (''FIPs'') as mandated by section 110(c)(1)(A) of the CAA, for a number of areas designated as nonattainment for the 1997 8-hour ozone National Ambient Air Quality Standards (''NAAQS''). The complaint also alleged that EPA failed to perform a duty mandated by section 110(k)(2) of the CAA, to take final action by approving in full, disapproving in full, or approving in part and disapproving in part certain State Implementation Plan (SIP) submittals for the 1997 8-hour ozone NAAQS from the States of Maine, Missouri and Illinois. The proposed consent decree establishes deadlines for EPA to take action.

DATES: Written comments on the proposed consent decree must be received by *January 11, 2012.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2011–0936, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Jan Tierney, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone:* (202) 564–5598; fax number (202) 564–5603; *email address: tierney.jan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit seeking to compel the Agency to promulgate a FIP for the implementation of Reasonably Available Control Technology (RACT) requirements for volatile organic compounds (''VOCs'') and NOx for Maine. Specifically the consent decree provides for EPA to promulgate a FIP by May 31, 2012 for VOC RACT rules for the 1997 8-hour ozone standard for all of the State and NOx RACT rules for the 1997 8-hour ozone standard for all of the State except Northern Maine to the extent that EPA has not approved SIPs addressing such rules by that date.

In addition, the proposed consent decree would require the Agency to take final action by January 31, 2012 approving in full, disapproving in full, or approving in part and disapproving in part the SIP submittals from Missouri addressing the VOC RACT requirements for the Missouri portion of the Metro St. Louis area for the 1997 8-hour ozone National Ambient Air Quality Standards. Furthermore, it would require EPA to take final action by May 31, 2012 on the reasonable further progress and attainment demonstration SIPs submitted by the State of Illinois for the Illinois portion of the Metro St. Louis area. This obligation would be deemed met if EPA redesignates the Illinois portion of the Metro St. Louis area to attainment for the 1997 8-hour ozone standard no later than May 31, 2012.

The proposed consent decree also requires that, within 15 business days of signing a proposed or final notice or notices, EPA shall deliver a notice of such action to the Office of the Federal Register for publication. The proposed consent decree states that, after EPA fulfills its obligations under the decree, EPA may move to have this decree terminated.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2010–0936) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be

marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: December 5, 2011.

Patricia A. Embrey,

Acting Associate General Counsel.

[FR Doc. 2011–31822 Filed 12–9–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2011–0977; FRL–9505–5]

Request for Nominations of Experts to the Office of Research and Development's Board of Scientific Counselors (BOSC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Board of Scientific Counselors (BOSC) Staff Office is requesting public nominations for technical experts to fill current vacancies on the BOSC Executive Committee. Nominations should be submitted via the BOSC Web site at *http://www.epa.gov/osp/bosc/nomination.htm.*

DATES: Nominations should be submitted by January 20, 2012, per instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public needing additional information regarding this Notice and Request for Nominations may contact Ms. Susan Peterson, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; via phone/voice mail at: (202) 564–1077; via fax at: (202) 565–2911; or via email at: *peterson.susan@epa.gov.* General information concerning the Board of Scientific Counselors can be found at the BOSC Web site at: *http://www.epa.gov/osp/bosc.*

SUPPLEMENTARY INFORMATION:

Background

The BOSC is a chartered Federal Advisory Committee that was established by the U.S. EPA to provide independent scientific and technical peer review, advice, consultation, and recommendations about the Office of Research and Development. As a Federal Advisory Committee, the BOSC conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations.

The BOSC Executive Committee is comprised of approximately 20 members who are recognized experts in various scientific, engineering, and social science fields. EPA is soliciting candidates to fill eight vacancies. EPA will consider candidates from the environmental scientific/technical fields, human health care professionals, academia, industry, public and private research institutes or organizations, non-government organizations, and other relevant interest areas. Members are appointed by the EPA Administrator for a period of three years and serve as special government employees. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

Expertise Sought

EPA's BOSC Staff Office is seeking nominations of nationally and internationally recognized scientists, engineers, and social scientists having experience and expertise in one or more of the following areas: Atmospheric Sciences (atmospheric chemistry, atmospheric physics, aerosol chemistry, aerosol physics); Analytical Chemistry; Green Chemistry; Endocrinology (endocrine disruptors); Pulmonary and Cardiovascular Toxicology; Systems Science (systems biology, systems ecology, landscape ecology); Social Sciences (sociology, economics, socioeconomics, environmental economics, ecological economics, natural resource economics); and Behavioral Sciences (psychology, environmental psychology, ecopsychology, conservation psychology, social neuroscience, risk perception, risk communication, crisis communication).

Process and Deadline for Submitting Nominations

Any interested person or organization may nominate themselves or qualified individuals in the areas of expertise described above. Nominations should be submitted via the BOSC Web site (which is preferred over hard copy) at *http://www.epa.gov/osp/bosc/nomination.htm.* Nominations should be submitted in time to arrive no later than January 13, 2012. To receive full consideration, nominations should include all of the information requested. EPA's BOSC Staff Office requests: Contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita and/or resume; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, and recent service on other national advisory committees or national professional organizations. Persons having questions about the nomination procedures, or who are unable to submit nominations through the BOSC Web site, should contact Ms. Susan Peterson, as indicated above in this notice.

Selection Criteria

The BOSC is a balanced and diverse expert committee. The committee collectively possesses the necessary domains of expertise, depth and breadth of knowledge, and diverse and balanced scientific perspectives. Selection criteria to be used for membership include: (a) Scientific and/or technical expertise, knowledge, and experience; (b) availability to serve and willingness to commit time to the committee (approximately three to five meetings per year including both face-to-face meetings and teleconferences); (c)

absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; (e) skills working on committees and advisory panels; and (f) background and experiences that would contribute to the diversity of viewpoints on the committee, *e.g.,* geographic, economic, social, cultural, educational backgrounds, and professional affiliations.

The BOSC Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government Officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address, *http://www.epa.gov/osp/bosc/pdf/EPA_3110–48.pdf.*

Dated: November 29, 2011.

Fred Hauchman,

Director, Office of Science Policy.

[FR Doc. 2011–31816 Filed 12–9–11; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Friday, December 9, 2011 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

OPEN AGENDA ITEM: Item No. 1: Ex-Im Bank Advisory Committee for 2012 (Additional Members).

PUBLIC PARTICIPATION: The meeting will be open to public observation for Item No. 1 only.

FURTHER INFORMATION: For further information, contact: Office of the Secretary, 811 Vermont Avenue NW., Washington, DC 20571 (Number (202) 565–3336).

Lisa V. Terry,

Assistant General Counsel (Acting).

[FR Doc. 2011–31546 Filed 12–9–11; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Designated Reserve Ratio for 2012

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of Designated Reserve Ratio for 2012.

Pursuant to the Federal Deposit Insurance Act, the Board of Directors of the Federal Deposit Insurance Corporation designates that the Designated Reserve Ratio (DRR) for the Deposit Insurance Fund shall remain at 2 percent for 2012.[1] The Board is publishing this notice as required by section 7(b)(3)(A)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)(A)(i)).

FOR FURTHER INFORMATION CONTACT: Munsell St. Clair, Chief, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898–8967; Matthew Green, Chief, Fund Analysis and Pricing Section, Division of Insurance and Research, (202) 898–3670; or, Christopher Bellotto, Counsel, Legal Division, (202) 898–3801.

Dated at Washington, DC this 7th day of December, 2011.

By order of the Board of Directors.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–31785 Filed 12–9–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE & TIME: *Thursday, December 15, 2011 at 10 a.m.*

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

Items To Be Discussed

Correction and Approval of the Minutes for the Meeting of December 1, 2011.

Draft Advisory Opinion 2011–22: Virginia Poultry Growers Cooperative, Inc.

Election of Officers.

Future Meeting Dates.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer. Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary of the Commission.

[FR Doc. 2011–31950 Filed 12–8–11; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than. January 6, 2012.

[1] Section 327.4(g) of the FDIC's regulations sets forth the DRR. There is no need to amend this provision, because the DRR for 2012 is the same as the current DRR.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. 1st United Bancorp, Boca Raton, Florida; to merge with Anderen Financial, Inc., and thereby directly acquire its subsidiary, Anderen Bank, both in Palm Harbor, Florida.

Board of Governors of the Federal Reserve System.

Dated: December 7, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–31754 Filed 12–9–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 2011–31370) published on page 76413 of the issue for Wednesday, December 7, 2011.

Under the Federal Reserve Bank of Cleveland heading, the entry for Park National Corporation, Newark, Ohio, is revised to read as follows:

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *Park National Corporation,* Newark, Ohio; to engage through its subsidiary, SE Property Holdings, LLC, Newark, Ohio, in credit extending activities, pursuant to section 225.28(b)(1) of Regulation Y.

Comments on this application must be received by December 22, 2011.

Board of Governors of the Federal Reserve System, December 7, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–31755 Filed 12–9–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposal to extend through March 31, 2015, the current PRA clearances for information collection requirements contained in four product labeling rules enforced by the Commission. Those clearances expire on March 31, 2012.

DATES: Comments must be received by February 10, 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Robert M. Frisby, (202) 326–2098, or Lemuel Dowdy, (202) 326–2981, Attorneys, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Ave. NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Proposed Information Collection Activities

Under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501–3520, federal agencies must get OMB approval for each collection of information they conduct, sponsor, or require. ''Collection of information'' means agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the information collection requirements associated with the Commission's rules and regulations under the Fur Products Labeling Act (''Fur Rules''), 16 CFR Part 301 (OMB Control Number 3084–0099); [1] rules and regulations under the Wool Products Labeling Act of 1939 (''Wool Rules''), 16 CFR part 300 (OMB Control Number 3084–0100); [2] rules and regulations under the Textile Fiber Products Identification Act (''Textile Rules''), 16 CFR part 303 (OMB Control Number 3084–0101); [3] and the Care Labeling of Textile Wearing Apparel and Certain Piece Goods As Amended (''Care Labeling Rule''), 16 CFR part 423 (OMB Control Number 3084–0103).

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond.[4] All comments must be received on or before February 10, 2012.

Burden Estimates

Staff's burden estimates for the four rules in question are based on data from the Department of Commerce's Bureau of the Census, the International Trade Commission, the Department of Labor's Bureau of Labor Statistics (''BLS''), and data or other input from industry sources. The relevant information collection requirements in these rules and staff's corresponding burden estimates follow. The estimates address the number of hours needed and the labor costs incurred to comply with the requirements.

1. Fur Rules (OMB Control Number: 3084–0099)

The Fur Products Labeling Act (''Fur Act'') [5] prohibits the misbranding and false advertising of fur products. The Fur Rules establish disclosure requirements that assist consumers in making informed purchasing decisions, and recordkeeping requirements that assist the Commission in enforcing the Rules. The Rules also provide a

[1] The Commission issues the Fur Rules to implement the Fur Products Labeling Act, 15 U.S.C. 69 *et seq.*

[2] The Commission issues the Wool Rules to implement the Wool Products Labeling Act of 1939, 15 U.S.C. 68 *et seq.*

[3] The Commission issues the Textile Rules to implement the Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.*

[4] As part of its regulatory review program, the Commission is currently reviewing the Care Labeling Rule as well as the Fur and Textile Rules. *See Federal Trade Commission: Care Labeling of Textile Wearing Apparel and Certain Piece Goods as Amended: Advance Notice of Proposed Rulemaking; Request for Public Comment,* 76 FR 41148 (Jul. 13, 2011); *Federal Trade Commission: Rules and Regulations Under the Fur Products Labeling Act: Advance Notice of Proposed Rulemaking: Request for Comment,* 76 FR 13550 (Mar. 14, 2011); and *Federal Trade Commission: Rules and Regulations Under the Textile Fiber Products Identification Act: Advance Notice of Proposed Rulemaking; Request for Public Comment,* 76 FR 68690 (Nov. 7, 2011). The Commission also announced that this year it plans to initiate a review of the Wool Rules. *Federal Trade Commission: Notice Announcing Ten-year Regulatory Review Schedule and Request for Public Comment on the Federal Trade Commission's Regulatory Review Program,* 76 FR 41150 (Jul. 13, 2011).

[5] 15 U.S.C. 69 *et seq.*

procedure for exemption from certain disclosure provisions under the Fur Act.

The Commission expects that recent amendments to the Fur Act will increase the cost of complying with the Fur Rules. Congress eliminated the Commission's power to exempt from the labeling requirements items where either the cost of the fur trim to the manufacturer or the manufacturer's selling price for the finished product is less than $150.[6] As a result, more garments will be subject to the Fur Act and Rules, which will impose higher recordkeeping and labeling costs on manufacturers, importers, and retailers. Because the requirements started to apply to the previously exempted garments earlier this year, the Commission has only limited information on the extent to which compliance costs will increase. The Commission has some evidence that aggregate costs will rise substantially.[7]

Estimated annual hours burden: 168,105 hours (51,870 hours for recordkeeping + 116,228 hours for disclosure).

Recordkeeping: The Fur Rules require that retailers, manufacturers, processors, and importers of furs and fur products keep certain records in addition to those they may keep in the ordinary course of business. Staff estimates that 1,230 retailers incur an average recordkeeping burden of about 13 hours per year (15,990 hours total); 90 manufacturers incur an average recordkeeping burden of about 52 hours per year (4,680 hours total); and 1,200 importers of furs and fur products incur an average recordkeeping burden of 26 hours per year (31,200 hours total). The combined recordkeeping burden for the industry is approximately 51,870 hours annually.

Disclosure: Staff estimates that 1,320 respondents (90 manufacturers + 1,230 retail sellers of fur garments) each require an average of 26 hours per year to determine label content (34,320 hours total), and an average of seven hours per year to draft and order labels (9,240 hours total). Staff estimates that the total number of garments subject to the fur labeling requirements annually is approximately 1,336,000.[8] Staff estimates that for approximately 50 percent of these garments (668,000) labels are attached manually, requiring approximately four minutes per garment for a total of 44,533 hours annually. For the remaining 668,000, the process of attaching labels is semi-automated and requires an average of approximately five seconds per item, for a total of 928 hours. Thus, the total burden for attaching labels is 45,461 hours, and the total burden for labeling garments is 89,021 hours per year (34,320 hours to determine label content + 9,240 hours to draft and order labels + 45,461 hours to attach labels).

Staff estimates that the incremental burden associated with the Fur Rules' invoice disclosure requirement, beyond the time that would be devoted to preparing invoices in the absence of the Rules, is approximately one minute per invoice for garments and thirty seconds per invoice for pelts.[9] The invoice disclosure requirement applies to fur garments, which are generally sold individually, and fur pelts, which are generally sold in groups of at least 50, on average. Assuming invoices are prepared for sales of 1,336,000 garments, the invoice disclosure requirement entails an estimated burden of 22,267 hours (1,336,000 invoices × one minute). Based on information from the International Trade Commission and the Fur Commission USA, staff estimates total sales of 7,498,000 pelts annually. Assuming invoices are prepared for sales of 149,960 groups (derived from an estimated 7,498,000 million pelts ÷ 50) of imported and domestic pelts, the invoice disclosure requirement entails an estimated total burden of 1,250 hours (149,960 total invoices × thirty seconds). Thus, the total burden for invoice disclosures is 23,517 hours.

Staff estimates that the Fur Rules' advertising disclosure requirements impose an average burden of three hours per year for each of the approximately 1,230 domestic fur retailers, or a total of 3,690 hours.

Thus, staff estimates the total disclosure burden to be approximately 116,228 hours (89,021 hours for labeling + 23,517 hours for invoices + 3,690 hours for advertising).

Estimated annual cost burden: $2,806,665 (solely relating to labor costs). The chart below summarizes the total estimated costs.

Task	Hourly rate	Burden hours	Labor cost
Determine label content	$23.00	34,320	$789,360
Draft and order labels	18.00	9,240	166,320
Attach labels	[10] 9.00	45,461	409,149
Invoice disclosures	18.00	23,517	423,306
Prepare advertising disclosures	23.00	3,690	84,870
Recordkeeping	18.00	51,870	933,660
Total	.....	.....	2,806,665

Staff believes that there are no current start-up costs or other capital costs associated with the Fur Rules. Because the labeling of fur products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Rules' labeling requirements.[11] Industry sources indicate that much of the information required by the Fur Act and Rules would be included on the product label even absent the Rules. Similarly, invoicing, recordkeeping, and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-

[6] Truth in Fur Labeling Act, Public Law 111–313.

[7] For example, one comment filed in the regulatory review of the Fur Rules stated that the elimination of the exemption required the commenter to spend over $1 million to label footwear that had left the factory. Deckers Outdoor Corporation at *http://www.ftc.gov/os/comments/furlabeling/00016-59947.pdf.*

[8] The total number of imported fur garments, fur-trimmed garments, and fur accessories is estimated to be approximately 1,156,000 based on International Trade Commission data. Estimated domestic production totals 180,000.

[9] The invoice disclosure burden for PRA purposes excludes the time that respondents would spend for invoicing, apart from the Fur Rules, in the ordinary course of business. *See* 5 CFR 1320.3(b)(2).

[10] Per industry sources, most fur labeling is done in the United States. This rate is reflective of an average domestic hourly wage for such tasks, which is derived from recent BLS statistics. Conversely, attaching labels with regard to the other rules discussed herein is mostly performed by foreign labor, as detailed in note 13.

[11] Although items previously exempt from the labeling requirements must now be labeled regarding their fur content, the Textile and Wool Rules already required many such items to have fiber content labels. Hence, manufacturers likely have in place the equipment needed to comply with the labeling requirements.

labor costs as a result of the Act or the Rules.

2. Wool Rules (OMB Control Number: 3084–0100)

The Wool Products Labeling Act of 1939 (''Wool Act'') [12] prohibits the misbranding of wool products. The Wool Rules establish disclosure requirements that assist consumers in making informed purchasing decisions and recordkeeping requirements that assist the Commission in enforcing the Rules.

Estimated annual hours burden: 440,000 hours (80,000 recordkeeping hours + 360,000 disclosure hours).

Recordkeeping: Staff estimates that approximately 4,000 wool firms are subject to the Wool Rules' recordkeeping requirements. Based on an average annual burden of 20 hours per firm, the total recordkeeping burden is 80,000 hours.

Disclosure: Approximately 8,000 wool firms, producing or importing about 600,000,000 wool products annually, are subject to the Wool Rules' disclosure requirements. Staff estimates the burden of determining label content to be 15 hours per year per firm, or a total of 120,000 hours, and the burden of drafting and ordering labels to be 5 hours per respondent per year, or a total of 40,000 hours. Staff believes that the process of attaching labels is now fully automated and integrated into other production steps for about 40 percent of all affected products. For the remaining 360,000,000 items (60 percent of 600,000,000), the process is semi-automated and requires an average of approximately two seconds per item, for a total of 200,000 hours per year. Thus, the total estimated annual burden for all respondents is 360,000 hours (120,000 hours for determining label content + 40,000 hours to draft and order labels + 200,000 hours to attach labels). Staff believes that any additional burden associated with advertising disclosure requirements would be minimal (less than 10,000 hours) and can be subsumed within the burden estimates set forth above.

Estimated annual cost burden: $5,920,000, rounded to the nearest thousand (solely relating to labor costs). The chart below summarizes the total estimated costs.

Task	Hourly rate	Burden hours	Labor cost
Determine label content	$23.00	120,000	$2,760,000
Draft and order labels	18.00	40,000	720,000
Attach labels	[13] 5.00	200,000	1,000,000
Recordkeeping	18.00	80,000	1,440,000
Total	.....	.....	5,920,000

Staff believes that there are no current start-up costs or other capital costs associated with the Wool Rules. Because the labeling of wool products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Rules. Based on knowledge of the industry, staff believes that much of the information required by the Wool Act and Rules would be included on the product label even absent their requirements. Similarly, recordkeeping and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-labor costs as a result of the Rules.

3. Textile Rules (OMB Control Number: 3084–0101)

The Textile Fiber Products Identification Act (''Textile Act'') [14] prohibits the misbranding and false advertising of textile fiber products. The Textile Rules establish disclosure requirements that assist consumers in making informed purchasing decisions, and recordkeeping requirements that assist the Commission in enforcing the Rules. The Rules also contain a petition procedure for requesting the establishment of generic names for textile fibers.

Estimated annual hours burden: 7,528,142 hours (506,025 recordkeeping hours + 7,022,117 disclosure hours).

Recordkeeping: Staff estimates that approximately 20,241 textile firms are subject to the Textile Rules' recordkeeping requirements. Based on an average burden of 25 hours per firm, the total recordkeeping burden is 506,025 hours.

Disclosure: Approximately 22,218 textile firms, producing or importing about 19.4 billion textile fiber products annually, are subject to the Textile Rules' disclosure requirements.[15] Staff estimates the burden of determining label content to be 20 hours per year per firm, or a total of 444,360 hours and the burden of drafting and ordering labels to be 5 hours per respondent per year, or a total of 111,090 hours.[16] Staff believes that the process of attaching labels is now fully automated and integrated into other production steps for about 40 percent of all affected products. For the remaining 11.64 billion items (60 percent of 19.4 billion), the process is semi-automated and requires an average of approximately two seconds per item,

[12] 15 U.S.C. 68 *et seq.*

[13] For imported products, the labels generally are attached in the country where the products are manufactured. According to information compiled by an industry trade association using data from the International Trade Commission, the U.S. Customs Service, and the U.S. Census Bureau, approximately 95% of apparel and other textile products used in the United States is imported. With the remaining 5% attributable to U.S. production at an approximate domestic hourly wage of $9 to attach labels, staff has calculated a weighted average hourly wage of $5 per hour attributable to U.S. and foreign labor combined. The estimated percentage of imports supplied by particular countries is based on trade data for the year ending in September 2011 compiled by the Office of Textiles and Apparel, International Trade Administration, U.S. Department of Commerce. Wages in major textile exporting countries, factored into the above hourly wage estimate, were based on 2009 data from the U.S. Department of Labor, Bureau of International Labor Affairs. *See* Table 1.1 Production Workers: Indexes of hourly compensation costs in manufacturing, U.S. dollar basis, 1975–2009 (Index, U.S. = 100) available at: *ftp://ftp.bls.gov/pub/suppl/ichcc.ichccpwsuppt1_1.txt.*

[14] 15 U.S.C. 70 *et seq.*

[15] The apparent consumption of garments in the U.S. in 2009 was 18 billion. Staff estimates that 1 billion garments are exempt from the Textile Act (*i.e.,* any kind of headwear and garments made from something other than a textile fiber product, such as leather) or are subject to a special exemption for hosiery products sold in packages where the label information is contained on the package. Based on available data, staff estimates that an additional 3 billion household textile products (non-garments, such as sheets, towels, blankets) were consumed. However, approximately 0.6 billion of all of these combined products (garments and non-garments) are subject to the Wool Act, not the Textile Act, because they contain some amount of wool. Thus, the estimated net total products subject to the Textile Act is 19.4 billion.

[16] In 2007, Congress amended the Wool Act to explicitly define ''cashmere'' and certain terms used to describe superfine wool (e.g., ''Super 80s,'' ''Super 90s,'' etc.). See Public Law 109–428. The Commission anticipates revising the Wool Rules to incorporate these amendments. The Commission will seek comment on the increased burden, if any, imposed by these changes when it announces the revisions.

for a total of 6,466,667 per year. Thus, the total estimated annual burden for all firms is 7,022,117 hours (444,360 hours to determine label content + 111,090 hours to draft and order labels + 6,466,667 hours to attach labels).[17] Staff believes that any additional burden associated with advertising disclosure requirements or the filing of generic fiber name petitions would be minimal (less than 10,000 hours) and can be subsumed within the burden estimates set forth above.

Estimated annual cost burden: $53,662,000, rounded to the nearest thousand (solely relating to labor costs). The chart below summarizes the total estimated costs.

Task	Hourly rate	Burden hours	Labor cost
Determine label content	$23.00	444,360	$10,220,280
Draft and order labels	18.00	111,090	1,999,620
Attach labels	[18] 5.00	6,466,667	32,333,335
Recordkeeping	18.00	506,025	9,108,450
Total	.....	.....	53,661,685

Staff believes that there are no current start-up costs or other capital costs associated with the Textile Rules. Because the labeling of textile products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Rules' labeling requirements. Industry sources indicate that much of the information required by the Textile Act and Rules would be included on the product label even absent their requirements. Similarly, recordkeeping, invoicing, and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-labor costs as a result of the Rules.

4. The Care Labeling Rule (OMB Control Number: 3084–0103)

The Care Labeling Rule requires manufacturers and importers to attach a permanent care label to all covered textile clothing in order to assist consumers in making purchase decisions and in determining what method to use to clean their apparel. Also, manufacturers and importers of piece goods used to make textile clothing must provide the same care information on the end of each bolt or roll of fabric.

Estimated annual hours burden: 6,666,477 hours (solely relating to disclosure [19]).

Staff estimates that approximately 22,218 manufacturers or importers of textile apparel, producing about 17 billion textile garments annually, are subject to the Rule's disclosure requirements. The burden of developing proper care instructions may vary greatly among firms, primarily based on the number of different lines of textile garments introduced per year that require new or revised care instructions. Staff estimates the burden of determining care instructions to be 43 hours each year per firm, for a cumulative total of 955,374 hours. Staff further estimates that the burden of drafting and ordering labels is 2 hours each year per respondent, for a total of 44,436 hours. Staff believes that the process of attaching labels is fully automated and integrated into other production steps for about 40 percent of the approximately 17 billion garments that are required to have care instructions on permanent labels.[20] For the remaining 10.2 billion items (60 percent of 17 billion), the process is semi-automated and requires an average of approximately two seconds per item, for a total of 5,666,667 hours per year. Thus, the total estimated annual burden for all firms is 6,666,477 hours (955,374 hours to determine care instructions + 44,436 hours to draft and order labels + 5,666,667 hours to attach labels).

Estimated annual cost burden: $51,107,000, rounded to the nearest thousand (solely relating to labor costs). The chart below summarizes the total estimated costs.

Task	Hourly rate	Burden hours	Labor cost
Determine care instructions	$23.00	955,374	$21,973,602
Draft and order labels	18.00	44,436	799,848
Attach labels	[21] 5.00	5,666,667	28,333,335
Total	.....	.....	51,106,785

Staff believes that there are no current start-up costs or other capital costs associated with the Care Labeling Rule. Because the labeling of textile products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Rule's labeling requirements. Based on knowledge of the industry, staff believes that much of the information required by the Rule would be included on the product label even absent those requirements.

Request for Comments

You can file a comment online or on paper. Write ''*https://ftcpublic.commentworks.com/ftc/apparelrulespra*'' on your comment. Your comment—including your name and your state—will be placed on the

[17] The Commission revised the Textile Rules in 2006 in response to amendments to the Textile Act. *See* 70 FR 73369 (Dec. 12, 2005). These amendments concerned the placement of labels on packages of certain types of socks and, therefore, do not place any additional disclosure burden on covered entities.

[18] *See* note 13.

[19] The Care Labeling Rule imposes no specific recordkeeping requirements. Although the Rule requires manufacturers and importers to have reliable evidence to support the recommended care instructions, companies may provide as support current technical literature or rely on past experience.

[20] About 1 billion of the 18 billion garments produced annually are either not covered by the Care Labeling Rule (gloves, hats, caps, and leather, fur, plastic, or leather garments) or are subject to an exemption that allows care instructions to appear on packaging (hosiery).

[21] *See* note 13.

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, don't 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). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

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). 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, the Commission encourages you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/apparelrulespra,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Apparel Rules: FTC File No. P074201'' 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 February 10, 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. 2011–31692 Filed 12–9–11; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Correction

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Notice and request for comment; correction.

SUMMARY: The FTC published a notice and request for comment on December 6, 2011, regarding its intention to seek renewed Office of Management and Budget (''OMB'') clearance under the Paperwork Reduction Act for the information collection requirements in the Commission's Business Opportunity Rule. This document makes a technical correction to a hyperlink in that document and adds instructions for sending public comments to OMB.

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: This Notice contains a technical correction to the Commentworks hyperlink for public comments contained in the Notice published on December 6, 2011 (76 FR 76162). The hyperlink located on page 76162, second column, and on page 76163, third column, is corrected to read: *https://ftcpublic.commentworks.com/ftc/BusinessOpportunityRulePRA2.*

Additionally, the December 6, 2011 Notice inadvertently omitted the following instruction from the Request for Comments portion of the **SUPPLEMENTARY INFORMATION** section:

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

Donald S. Clark,

Secretary.

[FR Doc. 2011–31749 Filed 12–9–11; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[CDC–2011–0014]

Availability of Draft Vieques Report: An Evaluation of Environmental, Biological, and Health Data From the Island of Vieques, Puerto Rico

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (DHHS).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of the Draft Vieques Report: An Evaluation of *Environmental, Biological, and Health Data from the Island of Vieques, Puerto Rico* for review and comment. This report's principal focus is to review updated environmental data on Vieques air, water, soil, seafood, and locally grown foods. In addition, this report evaluates human biomonitoring and health outcome data. ATSDR is providing a public comment period for this draft report as a means to best serve public health and the residents of Vieques, Puerto Rico. The Draft Vieques Report is available in English and Spanish at www.regulations.gov in the docket identified by Docket ID No. CDC–2011–

0014 and *www.atsdr.cdc.gov/sites/vieques/*.

DATES: Written comments must be received on or before January 11, 2012.

ADDRESSES: Requests for Compact Disc copies of the draft Vieques Report should be sent via email to: *ATSDRRecordsCenter@cdc.gov,* or to Rolanda Morrison, ATSDR Records Center, Mailstop F–09, 4770 Buford Highway NE., Atlanta, GA 30341. Electronic access to this document is also available at the ATSDR *Web site: www.atsdr.cdc.gov/sites/vieques/*.

Electronic comments may be sent via *http://www.regulations.gov,* docket control number CDC–2011–0014. Please follow the directions on the site to submit comments. Comments may also be sent to the attention of Rolanda Morrison, ATSDR Records Center, Mailstop F–09, 4770 Buford Highway NE., Atlanta, GA 30341, Send one copy of all comments and three copies of all supporting documents. Comments may also be submitted by email to *ATSDRecordsCenter@cdc.gov*. Please ensure docket control number CDC–2011–0014 is included in the subject line of all written correspondence. Because all public comments regarding this draft report are available for public inspection, no confidential business information or other confidential information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: The Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Mailstop F–59, 1600 Clifton Road NE., Atlanta, Georgia 30333, *email: viequesreport@cdc.gov*.

SUPPLEMENTARY INFORMATION: The Agency for Toxic Substances and Disease Registry (ATSDR) is required by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), to conduct public health assessments at all sites on, or proposed for inclusion on, the National Priorities List [42 U.S.C. 9604(i)(6)(A)], and the agency may also conduct public health assessments in response to requests from the public [42 U.S.C. 9604(i)(6)(B)]. In addition, the U.S. Environmental Protection Agency (EPA) may request the conduct of a public health assessment under RCRA [42 U.S.C. 6939a(b)].

An ATSDR Public Health Assessment reviews available information about hazardous substances at a site and evaluates whether exposure to them might cause any harm to people. The ATSDR public health assessment includes an analysis and statement of the public health implications posed by the site under consideration. This analysis generally involves an evaluation of relevant environmental data, the potential for exposures to substances related to the site, available toxicologic, epidemiologic and health outcome data, and community concerns associated with a site where hazardous substances have been released. The public health assessment also identifies populations living or working on or near hazardous waste sites for which more extensive public health actions or studies are indicated.

This notice announces the availability of the draft Vieques Report: *An Evaluation of Environmental, Biological, and Health Data from the Island of Vieques, Puerto Rico.* ATSDR has worked to ensure that the analysis of Viequense environmental data is thorough; that it considers all readily available investigations and research, especially research completed since release of the 2001–2003 public health assessments.

ATSDR encourages the public's participation and comment on the further development of this report.

Dated: December 6, 2011.

Tom Sinks,

Deputy Director, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. 2011–31770 Filed 12–8–11; 11:15 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Public Health Preparedness and Response: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, Office of Public Health Preparedness and Response, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS), has been renewed for a 2-year period through November 5, 2013.

For information, contact Daniel M. Sosin, M.D., M.P.H., Designated Federal Officer, Board of Scientific Counselors, Office of Public Health Preparedness and Response, CDC, HHS, 1600 Clifton Road NE., Mailstop D44, Atlanta, Georgia 30333, Telephone 404/639–7855, Fax 404/639–7977.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 6, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–31787 Filed 12–9–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee on Procedures Review, Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned subcommittee:

Time and Date: 9 a.m.–5 p.m., January 9, 2012.

Place: Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018. Telephone (859) 334–4611, Fax (859) 334–4619.

Status: Open to the public, but without an oral public comment period. Written comments may be submitted. To access by conference call, dial the following information: (866) 659–0537, Participant Pass Code 9933701.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the compensation program. Key functions of the ABRWH include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add

classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the ABRWH to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2013.

Purpose: The ABRWH is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is a reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee on Procedures Review was established to aid the ABRWH in carrying out its duty to advise the Secretary, HHS, on dose reconstructions. The Subcommittee on Procedures Review is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Division of Compensation Analysis and Support (DCAS) and its dose reconstruction contractor.

Matters To Be Discussed: The agenda for the Subcommittee meeting includes discussion of the following ORAU and DCAS procedures: OCAS TIB–0010 (''Best Estimate External Dose Reconstruction for Glovebox Workers''); DCAS TIB–0013 (''Selected Geometric Exposure Scenario Considerations for External Dose Reconstruction at Uranium Facilities''), OTIB–0019 (''Analysis of Coworker Bioassay Data for Internal Dose Assignment''), OTIB–0047 (''External Radiation Monitoring at the Y–12 Facility During the 1948–1949 Period''), OTIB–0052 (''Parameters to Consider When Processing Claims for Construction Trade Workers''), and OTIB–0070 (''Dose Reconstruction During Residual Radioactivity Periods at Atomic Weapons Employer Facilities''); and a continuation of the comment-resolution process for other dose reconstruction procedures under review by the Subcommittee.

The agenda is subject to change as priorities dictate.

This meeting is open to the public, but without an oral public comment period. In the event an individual wishes to provide comments, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below in advance of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Theodore Katz, Executive Secretary, NIOSH, CDC, 1600 Clifton Road, Mailstop E20, Atlanta, Georgia 30333, *Telephone:* (513) 533–6800, *Toll Free:* 1–(800) CDC–INFO, Email *dcas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 6, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–31793 Filed 12–9–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Maternal, Infant and Early Childhood Home Visiting Evaluation: Baseline survey data collection.

OMB No.:

Description: The Administration for Children and Families (ACE) and Health Resources and Services Administration (HRSA) within the U.S. Department of Health and Human Services (HHS) have launched a national evaluation called the Maternal, Infant and Early Childhood Home Visiting Evaluation (MIECE). This evaluation, mandated by the Affordable Care Act, will inform the federal government about the effectiveness of the newly established MIECHV program in its first few years of operation, and provide information to help states develop and strengthen home visiting programs in the future. By systematically estimating the effects of home visiting programs across a wide range of outcomes and studying the variation in how programs are implemented, MIECE will provide valuable information on the effects of these programs on parents and children. This includes investigating the effects of home visiting on maternal and child well-being, how those effects vary for different home visiting approaches, and how variations in program design and implementation influence program fidelity and impacts.

The MIECE study includes two phases: Phase 1 includes baseline data collection and implementation data; Phase 2 includes follow up data collection. The purpose of the current document is to request approval of data collection efforts needed for Phase 1 of MIECE and to request a waiver for subsequent 60 day notices for Phase 2. Phase I will include data collected about families when they enter the study as well as data on program implementation. Those data collection efforts include the following: (1) Obtaining consent to collect data from all Phase 1 respondents, (2) surveys of parents when they enter the study, (3) annual semi-structured interviews with state MIECHV administrators, (4) annual surveys of home visiting program site managers, (5) annual surveys of home visiting program site supervisors, (6) annual surveys of program site home visitors, (7) annual surveys of administrators of community resources that provide services relevant to home visited families; (8) logs maintained by supervisors on supervisory activities, (9) logs maintained by home visitors on service delivery, (10) self-completed questionnaires by parents during selected home visits, (11) self-completed questionnaires by home visitors during selected home visits, and (12) qualitative interviews and focus groups with staff at participating program sites in each state. These data will be used to measure characteristics of participating families at the time of enrollment into the study; characteristics of program staff; factors for service delivery; and program implementation, fidelity, and costs. In addition to data collected during Phase 1, the evaluation will collect information on family outcomes around the time of the child's first birthday. These data will include a one-hour interview with the parent and 30-minutes of observed interactions between the parent and child. This notice does not seek comment on these follow-up data collection activities.

The baseline family survey will be used to collect information on background and experiences when families enter the study. The remaining data collection will be used to collect information on organizational and individual-level factors that influence how home visiting services are delivered. The visit logs for families participating in NIECE and assigned to the home visiting group and the videotaped home visits will be used to

collect information on the services provided to families.

Respondents: The respondents, who will be the same in Phases 1 and 2 of the evaluation, will include enrolled parents; state MIECHV administrators; home visiting program managers, supervisors, and home visitors; and administrators of community resources. Data collection activities will take place over a three-year period.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Consent for all Phase 1 respondents	2040	1	0.2	408
Baseline survey of parents in the study	1700	1	1.0	1700
Semi-structured interviews with state MIECHV administrators	8	1	2.0	16
Surveys of program site managers	28	2	3.0	168
Surveys of program site supervisors	33	2	1.25	85
Surveys of program site home visitors	170	2	1.25	425
Surveys of community resource administrators	567	1	0.1	57
Supervisor logs	33	48	0.5	792
Home visitor logs	170	48	0.5	4080
Self-completed questionnaires by parents	255	1	0.2	51
Self-completed questionnaires by home visitors	85	3	0.2	51
Qualitative interviews and focus groups with staff at participating program sites in each state	232	1	1.0	232
Estimated Total Annual Burden Hours	.....	.....	.....	8,065

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, *Attn:* OPRE Reports Clearance Officer. *Email address: OPREinfocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 5, 2011.

Steven M. Hanmer,

Reports Clearance Officer.

[FR Doc. 2011–31597 Filed 12–9–11; 8:45 am]

BILLING CODE 4184–22–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

U.S. National Authority for the WHO Global Code of Practice on the International Recruitment of Health Personnel; Notice of Public Meeting

AGENCY: Health Resources and Services Administration, HHS; Office of Global Affairs, HHS.

ACTION: Public meeting.

SUMMARY: In order to support the United States' implementation of the WHO Global Code of Practice on the International Recruitment of Health Personnel, notice is hereby given of the following meeting to update and engage interested parties in U.S. implementation efforts.

DATES: Meeting will be held on December 14, 2011, 9 a.m. to 10:30 a.m.

ADDRESSES: Meeting will be held at the Hubert H. Humphrey Building of the U.S. Department of Health and Human Services, 200 Independence Ave. SW., Washington, DC 20201, (877) 696–6775. The meeting is also being held via webinar.

FOR FURTHER INFORMATION CONTACT: For more information, please contact Margaret Glos, National Center for Health Workforce Analysis, Bureau of Health Professions, Health Resources and Services Administration, Room 9–57, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–3579 or email the United States National Authority for implementation of the WHO Global Code of Practice at *us.who.irhp@hhs.gov*.

SUPPLEMENTARY INFORMATION:

Status: The meeting will be open to the public.

Purpose: The purpose of the WHO Global Code of Practice on International Recruitment of Health Personnel is ''to establish and promote voluntary principles and practices for the ethical international recruitment of health personnel and to facilitate the strengthening of health systems'' (*http://www.who.int/hrh/migration/code/practice/en/*). The United States Government has designated the Office of Global Affairs (OGA) and the Health Resources and Services Administration (HRSA) as co-National Authority to be the point of contact for implementation activities. The Global Code encourages WHO member states to cooperate with all relevant stakeholders in their implementation efforts. This meeting is thus intended to provide an update to all interested stakeholders on U.S. Global Code implementation efforts to date and to provide a forum for questions on activities related to implementation of the Global Code.

Agenda: The meeting will be held on Wednesday, December 14. It will include a discussion of U.S. Government activities related to the

WHO Global Code. Members of the public will have the opportunity to provide comments during the latter part of the session.

The meeting will be open to the public as indicated above, with attendance limited to space available. Requests to attend via webinar can be made up to two days prior to the meeting at *us.who.irhp@hhs.gov*. Participants will receive an email response containing the link to the webinar. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed above at least 10 days prior to the meeting. Please note that foreign nationals planning to attend the session in person will require additional paperwork for security clearance and that this clearance process requires a minimum of ten days. Any foreign nationals who wish to attend in person should email *us.who.ihrp@hhs.gov* as soon as possible to receive the necessary paperwork.

Dated: December 5, 2011.

Mary K. Wakefield,

Administrator, Health Resources and Services Administration.

Dated: November 29, 2011.

Jimmy Kolker,

Principal Deputy Director, Office of Global Affairs.

[FR Doc. 2011–31775 Filed 12–9–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; The SSA–NIH Collaboration to Improve the Disability Determination Process: Validation of IRT–CAT Tools

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Clinical Research Center, the National Institutes of Health has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register**, September 8, 2011, Volume 76, Number 174, page 55690, and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

Potential persons who are to respond to the collection of information are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Proposed Collection: Title: The SSA–NIH Collaboration to Improve the Disability Determination Process: Validation of IRT–CAT tools. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The Epidemiology and Biostatistics section in RMD will be collecting information through a contractor (Boston University- Health and Disability Research Institute (BU–HDR)) and subcontractor for validation of the Computer Adaptive Tests which are being developed to assist in the SSA disability determination process. The utilization of CAT technology could potentially allow the SSA to collect more relevant and precise data about human functioning in a faster, more efficient fashion. To validate the CAT assessments that have been developed, the contractor will administer both the BU–HDR CAT and established legacy instruments in a small sample of adults who report their current employment status as ''permanently disabled''. Individuals will complete the CAT tools for the functional domains of Physical Demands and Interpersonal Interactions along with established legacy instruments. For the domain of physical function, individuals will complete the BU–HDR CAT; the PROMIS Item Bank v 1.0–Physical Functioning © PROMIS Health Organization and PROMIS Cooperative Group; and, The Short Form (36) Health Survey™ (SF–36). For the domain of interpersonal interactions, individuals will complete the BU–HDR CAT, the SF–36 and the BASIS–24© (Behavior and Symptom Identification Scale). Data collected will be used to validate the BU–HDR CAT tools. Without this information, completion of the BU–HDR CAT tools will not be possible. *Frequency of Response:* Once. *Affected Public:* Individuals who have opted in to participate in web surveys through a survey research firm. *Type of Respondents:* Adults who indicate ''permanently disabled'' as a working status. The annual reporting burden is as follows:

ESTIMATES OF HOUR BURDEN

Type of respondents	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Patients	1,000	1	0.5	500.00
Totals				500.00

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to (202) 395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Meghan Gleason, Rehabilitation Medicine Department, Clinical Research Center, NIH, Building 10, Room 1–2420, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 443–9085 or Email your request, including your address to: *meghan.gleason@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: December 5, 2011.

Elizabeth K. Rasch,

Chief, Epidemiology and Biostatistics Section, Rehabilitation Medicine Department, Clinical Research Center, National Institutes of Health.

[FR Doc. 2011–31828 Filed 12–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the meetings.

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 materials, 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: Biomedical Library and Informatics Review Committee.

Date: March 1–2, 2012.

Time: March 1, 2012, 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Time: March 2, 2012, 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Contact Person: Arthur A. Petrosian, Ph.D., Chief Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, (301) 496–4253, *petrosia@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–31818 Filed 12–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 a meeting of the Interagency Breast Cancer and Environmental Research Coordinating Committee.

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: Interagency Breast Cancer and Environmental Research Coordinating Committee.

Date: January 23–24, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: The purpose of the meeting is to continue the work of the Committee, which is to share and coordinate information on existing research activities, and to make recommendations to the National Institutes of Health and other Federal agencies regarding how to improve existing research programs related to breast cancer and the environment. In advance of the meeting, the agenda will be posted on the Web: *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: National Institute of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Gwen W. Collman, Ph.D., Director, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, National Institutes of Health, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Any member of the public interested in presenting oral comments to the Committee should submit their remarks in writing at least 10 days in advance of the meeting. Comments in document format (*i.e.* WORD, Rich Text, PDF) may be submitted via email to *ibcercc@niehs.nih.gov.* You do not need to attend the meeting in order to submit comments.

Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral comments you wish to present. Only one representative per organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person. Oral comments will begin at approximately 2:30 p.m. on Tuesday, January 24, 2012. Although time will not be allotted for comments on Monday, January 23, 2011, members of the public are welcome to attend the entire meeting.

Anyone who wishes to attend the meeting and/or submit comments to the committee is asked to RSVP via email to *ibcercc@niehs.nih.gov.* Comments are delivered to the Contact Person listed on this notice.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: December 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–31842 Filed 12–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Council.

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 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 Advisory Mental Health Council.

Date: January 20, 2012.

Open: 8:30 a.m. to 12:30 p.m.

Agenda: Presentation of NIMH Director's Report and discussion on NIMH program and policy issues.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D/E, Rockville, MD 20852.

Closed: 1:15 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D/E, Rockville, MD 20852.

Contact Person: Jane A. Steinberg, Ph.D., Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, (301) 443–5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their 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, 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.nimh.nih.gov/about/advisory-boards-and-groups/namhc/index.shtml,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–31839 Filed 12–9–11; 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 Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Pain Assessment for Traumatic Brain Injury Patients.

Date: January 11, 2012.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Tamizchelvi Thyagarajan, Ph.D., Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–0343, *tamizchelvi.thyagarajan@nih.gov.*

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Clinical Trial—Health Benefits Of Mother's Colostrum.

Date: January 18, 2012.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Tamizchelvi Thyagarajan, Ph.D., Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–0343, *tamizchelvi.thyagarajan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: December 6, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–31837 Filed 12–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities, Office of Science Policy, Office of the Director; 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 Science Advisory Board for Biosecurity (NSABB).

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(b), Title 5 U.S.C. as amended. Under authority 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established the NSABB to provide advice, guidance and leadership regarding federal oversight of dual use research, defined as biological research that generates information and technologies that could be misused to pose a biological threat to public health and/or national security.

The meeting will be open to the public via teleconference. Persons planning to participate in this teleconference should refer to the Call-in Information listed on this notice. For information about the open meeting connect to: *http://oba.od.nih.gov/biosecurity/biosecurity_meetings.html.* Please check this site for updates.

Name of Committee: National Science Advisory Board for Biosecurity.

Date: December 15, 2011.

Closed: December 15, 2011, 10 a.m. to 11:30 a.m.

Agenda: To review confidential information.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, Maryland 20892, (Telephone Conference Call).

Open: December 15, 2011, 12 p.m. to 1:30 p.m.

Agenda: Presentations and discussions regarding: (1) Review of proposed NSABB Codes of Conduct Working Group Draft Report: ''Enhancing Responsible Science Considerations for the Development and Dissemination of Codes of Conduct for Dual Use Research;'' (2) planning for future NSABB meetings; and (3) other business of the Board.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, Maryland 20892 (Telephone Conference Call).

Call-in Information: Toll-Free Number: 1–(888) 989–9721 Participant Passcode: 7857009.

Contact Person: Ronna Hill, NSABB Program Assistant, NIH Office of Biotechnology Activities, 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892, (301) 496–9838, *hillro@od.nih.gov.*

This notice is being published less than 15 days before it is held because NIH was asked by the Department of Health and Human Services to convene the NSABB as soon as possible due to the time-sensitive nature of the matter for review.

Any member of the public interested in presenting oral comments relevant to the mission of the NSABB at the open meeting should notify the Contact Person listed on this notice. Interested individuals and representatives of an organization may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments relevant to the mission of the NSABB. All written comments should be sent via email to the Contact Person listed on this notice. The written comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Dated: December 6, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–31833 Filed 12–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings 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 meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: January 30, 2012.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Mary Nuss, Committee Management Officer, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–7601, *mnuss@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

Date: January 30, 2012.

Open: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Closed: 1 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Mary Nuss, Committee Management Officer, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–7601, *mnuss@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: January 30, 2012.

Open: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room A, Bethesda, MD 20892.

Closed: 1 p.m. to adjournment.

Agenda: Program advisory discussions and reports from division staff.

Place: National Institutes of Health. Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Mary Nuss, Committee Management Officer, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–7601, *mnuss@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: January 30, 2012.

Open: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Closed: 1 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Contact Person: Mary Nuss, Committee Management Officer, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–7601, *mnuss@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: May 14, 2012.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Contact Person: Mary Nuss, Committee Management Officer, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–7601, *mnuss@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: May 14, 2012.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room A, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and reports from division staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Mary Nuss, Committee Management Officer, Division of Extramural Activities, National Institutes of Health/NIAID, 6700 Rockledge Drive, MSC 710, Bethesda, MD 20892–7610, (301) 496–7601, *mnuss@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

Date: May 14, 2012.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Mary Nuss, Committee Management Officer, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–7601, *mnuss@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: May 14, 2012.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Mary Nuss, Committee Management Officer, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–7601, *mnuss@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: September 24, 2012.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Contact Person: Mary Nuss, Committee Management Officer, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–7601, *mnuss@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

Date: September 24, 2012.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Mary Nuss, Committee Management Officer, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–7601, *mnuss@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: September 24, 2012.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room A, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and reports from division staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Mary Nuss, Committee Management Officer, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–7601, *mnuss@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: September 24, 2012.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Mary Nuss, Committee Management Officer, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–7601, *mnuss@niaid.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: *www.niaid.nih.gov/facts/facts.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 6, 2011.

Jennifer S. Spaeth,

Committee Management Officer, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–31832 Filed 12–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 materials, 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 Library of Medicine Special Emphasis Panel, Conflict R01/K99.

Date: January 25, 2012.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Zoe H. Huang, MD, Scientific Review Officer, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, (301) 594–4937, *hungz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 5, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–31831 Filed 12–9–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–1074]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0010

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collection of information: 1625–0010, Defect/Noncompliance Report and Campaign Update Report. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before February 10, 2012.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2011–1074] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov*.

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(4) *Fax:* (202) 493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–611), *Attn:* PAPERWORK REDUCTION ACT MANAGER, US COAST GUARD, 2100 2ND STREET SW., STOP 7101, WASHINGTON, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Kenlinishia Tyler, Office of Information Management, telephone (202) 475–3652, or fax (202) 475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, (202) 366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek approval of revisions of the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2011–1074], and must be received by February 10, 2012. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2011–1074], indicate the specific section of the document to which each comment applies, providing a reason for each comment. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or hand delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2011–1074'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–1074'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an

association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Request

Title: Defect/Noncompliance Report and Campaign Update Report.

OMB Control Number: 1625–0010.

Summary: Manufacturers whose products contain defects that create a substantial risk of personal injury to the public or fail to comply with an applicable Coast Guard safety standard are required to conduct defect notification and recall campaigns in accordance with 46 U.S.C. 4310. Regulations in 33 CFR Part 179 require manufacturers to submit certain reports to the Coast Guard concerning progress made in notifying owners and making repairs.

Need: Under 46 U.S.C. 4310(d) and (e); and 33 CFR 179.13 and 179.15, the manufacturer shall provide the Commandant of the Coast Guard with an initial report consisting of certain information about the defect notification and recall campaign being conducted and follow up reports describing progress. Upon receipt of information from a manufacturer indicating the initiation of a recall, the Recreational Boating Product Assurance Branch assigns a recall campaign number, and sends the manufacturer CG Forms CG–4917 and CG–4918 for supplying the information.

Forms: CG–4917 & CG–4918.

Respondents: Manufacturers of boats and certain items of ''designated'' associated equipment (inboard engines, outboard motors, sterndrive engines or an inflatable personal flotation device approved under 46 CFR 160.076).

Frequency: Quarterly.

Burden Estimate: The estimated burden has decreased from 291 to 252 hours annually.

Dated: December 5, 2011.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–31699 Filed 12–9–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Renewal of Information Collection; OMB Control Number 1040–0001, DOI Programmatic Clearance for Customer Satisfaction Surveys

AGENCY: Department of the Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Department of the Interior, DOI) plan to ask the Office of Management and Budget (OMB) to extend the approval for the information collection (IC) described below. This IC is scheduled to expire March 31, 2012. As required by the Paperwork Reduction Act 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.

DATES: You must submit comments on or before February 10, 2012.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Office of Policy Analysis; Attention: Don Bieniewicz; Mail Stop 3530; 1849 C Street NW., Washington, DC 20240. If you wish to email comments, the email address is *Donald_Bieniewicz@ios.doi.gov.* Reference ''DOI Programmatic Clearance for Customer Satisfaction Surveys'' in your email subject line. Include your name and return address in your email message and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Donald Bieniewicz on (202) 208–4915.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Government Performance and Results Act of 1993 (GPRA) (Pub. L. 103–62) requires agencies to ''improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction.'' Executive Order 13571 on ''Streamlining Service Delivery and Improving Customer Service'' requires Federal agencies to establish ''mechanisms to solicit customer feedback on Government services.'' To fulfill this responsibility, DOI bureaus and offices must collect data from their respective user groups to better understand the needs and desires of the public and to respond accordingly.

We use customer satisfaction surveys to help us fulfill our responsibilities to provide excellence in government by proactively consulting with those we serve. This programmatic clearance provides an expedited approval process for DOI bureaus and offices to conduct customer research through external surveys such as questionnaires and comment cards. We will use this information to support all aspects of planning to include buildings, roads, interpretive exhibits, and technical systems. We anticipate that the information obtained could lead to reallocation of resources, revisions in certain agency processes and policies, development of guidance related to customer services, and improvement in the way we serve the American public.

The proposed renewal covers all of the organizational units and bureaus in DOI. Bureaus and offices will voluntarily obtain information from their customers and stakeholders. No one survey will cover all the topic areas; rather, these topic areas serve as a guide within which the agencies will develop questions. Topic areas include:

(1) *Communication/information/education.* Questions will focus on customer satisfaction with aspects of communication/information/products/education offered. Respondents may be asked for feedback regarding the following attributes of the services provided:

(a) Timeliness.
(b) Consistency.
(c) Ease of Use and Usefulness.
(d) Ease of Information Access.
(e) Helpfulness and Effectiveness.
(f) Quality.
(g) Value for fee paid for information/product/service.
(h) Level of engagement in communications process (*i.e.,* whether respondent feels he/she was asked for input and whether or not that input was considered).

(2) *Disability accessibility.* This area will focus on customer satisfaction data related to disability access to DOI buildings, facilities, trails, etc.

(3) *Management practices.* This area covers questions relating to how well customers are satisfied with DOI management practices and processes, what improvements they might make to specific processes, and whether or not they feel specific issues were addressed and reconciled in a timely, courteous, and responsive manner.

(4) *Resource management.* We will ask customers and partners to provide satisfaction data related to DOI's ability to protect, conserve, provide access to, and preserve natural resources that we manage.

(5) *Rules, regulations, policies.* This area focuses on obtaining feedback from customers regarding fairness, adequacy,

and consistency in enforcing rules, regulations, and policies for which DOI is responsible. It will also help us understand public awareness of rules and regulations and whether or not they are explained in a clear and understandable manner.

(6) *Service delivery.* We will seek feedback from customers regarding the manner in which DOI delivers services. Attributes will range from the courtesy of staff to timeliness of service delivery and staff knowledge of the services being delivered.

(7) *Technical assistance.* Questions developed within this topic area will focus on obtaining customer feedback regarding attributes of technical assistance, including timeliness, quality, usefulness, and the skill level of staff providing this assistance.

(8) *Program-specific.* Questions for this area will reflect the specific details of a program that pertain to its customer respondents. The questions will address very specific and/or technical issues related to the program. The questions will be geared toward gaining a better understanding about how to provide specific products and services and the public's attitude toward their usefulness.

(9) *General demographics.* Some general demographics may be used to augment satisfaction questions so that we can better understand the customer and improve how we serve that customer. We may ask customers how many times they have used a service, visited a facility within a specific timeframe, their ethnic group, or their race.

II. Data

OMB Control Number: 1040–0001.

Title: DOI Programmatic Clearance for Customer Satisfaction Surveys.

Form Number(s): None.

Type of Request: Extension of an approved collection.

Affected Public: DOI customers. We define customers as anyone who uses DOI resources, products, or services. This includes internal customers (anyone within DOI) as well as external customers (*e.g.,* the American public, representatives of the private sector, academia, other government agencies). Depending upon their role in specific situations and interactions, citizens and DOI stakeholders and partners may also be considered customers. We define stakeholders to mean groups or individuals who have an expressed interest in and who seek to influence the present and future state of DOI's resources, products, and services. Partners are those groups, individuals, and agencies who are formally engaged in helping DOI accomplish its mission.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Estimated Annual Number of Respondents: 120,000. We estimate approximately 60,000 respondents will submit DOI customer satisfaction surveys and 60,000 will submit comment cards.

Estimated Total Annual Responses: 120,000.

Estimated Time per Response: 15 minutes for a customer survey; 3 minutes for a comment card.

Estimated Total Annual Burden Hours: 18,000.

III. Request for Comments

We invite comments concerning this IC on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include and/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 us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

A Federal 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.

Dated: December 6, 2011.

Benjamin Simon,

Assistant Director, Office of Policy Analysis, U.S. Department of the Interior.

[FR Doc. 2011–31750 Filed 12–9–11; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–R–2011–N186; FXRS12610200000S3–123–FF02R06000]

Attwater Prairie Chicken National Wildlife Refuge, Austin and Colorado Counties, TX; Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan (CCP) and an environmental assessment (EA) for Attwater Prairie Chicken National Wildlife Refuge (Refuge, NWR), located approximately 60 miles west of Houston, Texas, for public review and comment. The Draft CCP/EA describes our proposal for managing the refuge for the next 15 years.

DATES: To ensure consideration, please send your written comments by January 23, 2012. We will announce upcoming public meetings in local news media.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. You may request hard copies or a CD–ROM of the documents. Please contact Terry Rossignol, Refuge Manager, or Monica Kimbrough, Natural Resource Planner.

Email: Monica_Kimbrough@fws.gov. Include ''Attwater Prairie Chicken NWR draft CCP and EA'' in the subject line of the message.

Fax: Attn: Monica Kimbrough, (505) 248–6803.

U.S. Mail: Monica Kimbrough, Natural Resource Planner, U.S. Fish and Wildlife Service, NWRS Division of Planning, P.O. Box 1306, Albuquerque, NM 87103.

In-Person Drop-off, Viewing, or Pickup: In-Person Drop-off: You may drop off comments during regular business hours (8 a.m. to 4:30 p.m.) at 500 Gold Street SW., 4th Floor, Room 4019, Albuquerque, NM 87102.

FOR FURTHER INFORMATION CONTACT: Terry Rossignol, Refuge Manager, Attwater Prairie Chicken NWR, CCP—Project, P.O. Box 519, Eagle Lake, TX 77434; *phone:* (979) 234–3021; *fax:* (979) 234–3278.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for the Attwater Prairie Chicken

NWR. We started this process through a notice in the **Federal Register** (73 FR 65871; November 5, 2008).

The Attwater Prairie Chicken NWR, which consists of 10,538 acres located approximately 60 miles west of Houston, Texas, is one of the largest remnants of coastal prairie habitat remaining in southeast Texas. The Refuge was officially established on July 1, 1972, to preserve and restore coastal prairie habitat for the endangered Attwater's prairie-chicken (*Tympanuchus cupido attwateri*).

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

Public Outreach

Formal scoping began with publication of a notice of intent to prepare a comprehensive conservation plan and environmental assessment (EA) in the **Federal Register** on November 5, 2008 (73 FR 65871). In December 2008, a letter was sent to individuals at Texas Parks and Wildlife Department (TPWD) formally inviting them to participate in the development of the CCP. We received input from TPWD in January 2009. Information sheets were sent to the public, and news releases were sent to four area newspapers and published in two of the local newspapers (*Colorado County Citizen* and *Eagle Lake Headlight*). The news release also aired on KULM Radio in Columbus. Three public open house meetings were held. Despite advertising for these open houses, turnout was poor. Additional written comments were received prior to these open house meetings. The meetings were held at three locations in the area on three separate days between 10 a.m. and 6 p.m. A variety of stakeholders contributed feedback at the open house meetings and via written comments; we used the feedback in development of the CCP.

CCP Alternatives We Are Considering

During the public scoping process with which we started work on this draft CCP, we, other governmental partners, Tribes, and the public, raised multiple issues. Our draft CCP addresses them. A full description of each alternative is in the EA. To address these issues, we developed and evaluated the following alternatives, summarized below.

Issue topic	A—No action alternative	B—Optimal habitat management and public use (proposed action) alternative	C—Maximal habitat management and public use alternative
Habitat Management Issue 1: Prairie Restoration.	Combination of planting native grasses, grazing, burning, hydrologic restoration.	Same as Alternative A; plus explore partnership options to produce native grass seed increase the number of restoration acres; expand monitoring for grazing and burning effects; remove infrastructure, including two manmade wetland impoundments, restoring a functional level of hydrology.	Same as Alternative B; except establish seed harvest and production on the Refuge; grazing bison only.
Habitat Management Issue 2: Land/Property Acquisition.	Acquire acres within approved acquisition boundary; not proactively seeking out additional land protection options.	Continue to acquire land within acquisition boundary, proactively seek out land protection options and diversify those options.	Same as Alternative B.
Habitat Management Issue 3: Invasive Species Control (Flora).	Treatments include a combination of chemical, mechanical, and prescribed fire.	Same as Alternative A; plus conduct one-time systematic chemical invasive species control for entire refuge, unit by unit; afterward, treatment is expected to be required every 2–3 years as invasive species are re-established.	Same as Alternative B.
Wildlife Management Issue 1: Attwater's Prairie-Chicken Recovery.	Continue to implement Attwater's Prairie-Chicken Recovery Plan.	Same as Alternative A	Same as Alternative A.
Wildlife Management Issue 2: Invasive Species Control (Fauna).	Eliminate feral hogs and nutria based on sighting and/or documented damage; treat nest sites and conduct research on impacts of red imported fire ants on insect community.	Same as Alternative A; plus work with adjacent land owners to control feral hog population; remove brush and other elements of hog movement corridors; depending on results of current research of red imported fire ants, expand treated area to full extent of refuge and work with adjacent landowners to expand treatment off refuge.	Same as Alternative B.
Wildlife Management Issue 3: Wildlife Food Plots (Farming Program).	Manage three food plots totaling up to 150 acres.	Same as Alternative A; plus explore additional ways to provide supplemental food to Attwater's prairie-chicken, including capability to irrigate and addition of food plots when the species' populations expand.	Eliminate wildlife food plots.
Visitor Services Issue 1: Wildlife Observation and Wildlife Photography.	Provide wildlife observation and photography to include auto-tour route and two hiking trails.	Same as Alternative A; plus realign auto-tour route; exclude cattle from public hiking trails; establish a new platform and hiking trail around Horseshoe Lake; remove Pipit Trail; increase guided van tours.	Same as Alternative B.

Issue topic	A—No action alternative	B—Optimal habitat management and public use (proposed action) alternative	C—Maximal habitat management and public use alternative
Visitor Services Issue 2: Environmental Education.	Provide environmental education as requested and as staff time permits.	Develop an environmental education program and promote in local school districts.	Develop an outdoor classroom through partnerships with local schools, volunteers, and friends group.
Visitor Services Issue 3: Interpretation.	Host annual Attwater's Prairie-Chicken Festival; interpretive signage at headquarters and along auto-tour route.	Same as Alternative A; plus add interpretive signage and kiosk to new auto-tour route and new trail; expand interpretive opportunities using recent technologies.	Same as Alternative B.
Facilities Issue 1: Roads	Cooperate with county maintenance personnel for refuge entrance road, and maintain other refuge roads.	Same as Alternative A; plus acquire jurisdiction and maintenance responsibilities of existing refuge entrance road and widen to two full lanes; bury powerline along entrance road; evaluate and remove services roads where necessary.	Same as Alternative B.
Facilities Issue 2: Development of Administrative Complex.	Administrative operations conducted out of three portable structures.	Develop and approve site plan for new integrated administrative complex.	Same as Alternative B.

Public Availability of Documents

In addition to any methods in **ADDRESSES**, you can view or obtain documents at the following locations:

- Attwater Prairie Chicken NWR Headquarters Office, 1206 APCNWR Road, Eagle Lake, TX 77434 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.
- Our Web site: *http://www.fws.gov/southwest/refuges/Plan/publicinvolvement.html.*
- At the following public libraries:

Library	Address	Phone No.
Eula and David Wintermann Library	101 North Walnut Ave., Eagle Lake, TX 77434	(979) 234–5411
Nesbitt Memorial Library	529 Washington Street, Columbus, TX 78934	(979) 732–3392
Virgil and Josephine Gordon Memorial Library	917 North Circle Dr., Sealy, TX 77474	(979) 885–7469

Submitting Comments/Issues for Comment

We consider comments substantive if they:

- Question, with reasonable basis, the accuracy of the information in the document;
- Question, with reasonable basis, the adequacy of the environmental assessment (EA);
- Present reasonable alternatives other than those presented in the EA; and/or
- Provide new or additional information relevant to the assessment.

Next Steps

After this comment period ends, we will analyze the comments and address them in the form of a final CCP and finding of no significant impact.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 14, 2011.

Joy Nicholopoulos,

Acting Regional Director, Southwest Region.

[FR Doc. 2011–31808 Filed 12–9–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2010–N243; 1265–0000–10137–S3]

Lewis and Clark National Wildlife Refuge and Julia Butler Hansen Refuge for the Columbian White-Tailed Deer, Wahkiakum County, WA, and Clatsop and Columbia Counties, OR; Record of Decision for Final Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the record of decision (ROD) for the final environmental impact statement (EIS) for the Lewis and Clark National Wildlife Refuge and Julia Butler Hansen Refuge for the Columbian White-tailed Deer (Refuges). We completed a thorough analysis of the environmental, social, and economic considerations and presented it in our final EIS, which we released to the public on August 13, 2010.

DATES: The Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service, signed the ROD on September 23, 2010. We can implement the CCP immediately.

ADDRESSES: You may view or obtain copies of the final CCP and ROD by any of the following methods:

Agency Web Site: Download a copy of the document(s) at *http://www.fws.gov/pacific/planning/.*

Email: FW1PlanningComments@fws.gov. Include ''Lewis and Clark and Julia Butler Hansen ROD'' in the subject line of the message.

Mail: Willapa National Wildlife Refuge Complex, 3888 SR 101, Ilwaco, WA 98624.

Fax: (360) 484–3109.

In person viewing: Copies of the final CCP/EIS may be viewed at the Willapa National Wildlife Refuge Complex, 3888 SR 101, Ilwaco, WA 98624; and the Julia Butler Hansen Refuge for the Columbian

White-tailed Deer, 46 Steamboat Slough Road, Cathlamet, WA 98612.

Local Libraries: The final documents are also available for review at the libraries listed under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Charlie Stenvall, (360) 484–3482.

SUPPLEMENTARY INFORMATION:

Introduction

This notice completes the CCP process for the Refuges. We started the process in a **Federal Register** notice (71 FR 55214; September 21, 2006). We released the draft CCP/EIS to the public, announcing and requesting comments in a notice of availability in the **Federal Register** (75 FR 6694; February 10, 2010). We announced the availability of the final CCP/EIS in the **Federal Register** (75 FR 49516) on August 13, 2010.

The Lewis and Clark Refuge was established in 1972 to preserve vital fish and wildlife habitat of the Columbia River estuary. The Refuge's islands in the Columbia River encompass a variety of habitat types, from tidal sand flats and marshes to forested swamps. This combination of habitats supports large numbers of waterfowl, gulls, terns, wading birds, shorebirds, and a variety of raptors and songbirds. The Lewis and Clark Refuge's islands are accessible by boat, and include 18 named islands, a number of unnamed islands, and marshes stretching over 25 miles of the Columbia River.

The Julia Butler Hansen Refuge for the Columbian White-tailed Deer was established in 1971 to protect and manage the endangered Columbian white-tailed deer (CWT deer). The Refuge contains over 6,000 acres of pastures, forested tidal swamps, brushy woodlots, marshes, and sloughs along the Columbia River.

In accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements, this notice announces the availability of the ROD for the final EIS and CCP for the Refuges. We completed a thorough analysis of the environmental, social, and economic considerations, which we included in the final CCP/EIS. We included two alternatives for the Lewis and Clark Refuge and three alternatives for the Julia Butler Hansen Refuge. For Lewis and Clark Refuge, Alternative 1 was the no-action alternative and Alternative 2 was the preferred alternative. For Julia Butler Hansen Refuge, Alternative 1 was our no-action alternative, Alternative 2 was our preferred alternative, and Alternative 3 was similar to Alternative 2 except that the timeframe for predator management would have been limited to January through August. For both Refuges, we selected Alternative 2, our preferred alternative, for implementation. The ROD documents our selections.

The CCP will guide us in managing and administering the Refuges for the next 15 years. For each of the two refuges, the selected alternative, as we described in the final EIS and ROD, is the foundation for the CCP.

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

CCP Alternatives and Selected Alternatives

We identified several issues in our draft CCP/EIS. To address these, we developed and evaluated management alternatives for the Refuges as required under the Council on Environmental Quality's regulations (40 CFR 1500–1508). A summary of each alternative follows.

Lewis and Clark Refuge Alternative 1

No changes to the Refuge's current management programs would occur under Alternative 1. Habitat management would consist of monitoring Refuge islands and treating invasive plant infestations as funding allows. Refuge staff members would continue to protect and maintain wintering and foraging habitat for migratory waterfowl, and nesting and roosting habitat for bald eagles. Hunting, fishing, wildlife observation, and photography would continue at current levels.

Lewis and Clark Refuge Alternative 2

Under Alternative 2 (the preferred alternative), current wildlife and habitat management would be maintained and improved. Key Refuge enhancements would include establishing or expanding partnerships for managing invasive species, recruiting graduate students to conduct wildlife and habitat research, and exploring options for managing Oregon Department of State Lands property within the approved Refuge boundary. The Refuge would also expand opportunities for wildlife observation and photography, evaluate the Refuge's Wilderness Study Area (WSA) for a wilderness designation proposal, and work with partners to ensure that dredge-spoil islands provide benefits for wildlife.

Julia Butler Hansen Refuge Alternative 1

Under Alternative 1, no changes to the current Refuge management programs would occur at Julia Butler Hansen Refuge. We would continue to maintain and protect habitats, establish early successional riparian forest habitat, maintain predator management January through April, and continue public use programs.

Julia Butler Hansen Refuge Alternative 2

Refuge management changes under Alternative 2 (the preferred alternative) would include opening Crims and Price Islands to waterfowl hunting, closing portions of Refuge lands along the lower Elochoman River to waterfowl hunting for public safety purposes, evaluating the Refuge's WSA for a wilderness designation proposal, developing two trails, and improving interpretive media. To achieve CWT deer recovery goals, predator management would take place as needed, year round, and we would expand the CWT deer population by establishing an experimental population upriver.

Julia Butler Hansen Refuge Alternative 3

Refuge management changes under Alternative 3 would include opening Crims and Price Islands to waterfowl hunting, closing portions of Refuge lands along the lower Elochoman River to waterfowl hunting for public safety purposes, studying potential wilderness lands, developing a bicycling and hiking trail, installing interpretive panels, and developing curriculum for Refuge study sites. To achieve CWT deer recovery goals, predator management would take place January through August under this alternative.

After considering the comments we received, we have selected Alternative 2 for each Refuge. Alternative 2 was selected for implementation for the Lewis and Clark Refuge because it will best achieve Refuge purposes and fulfill the Service's mission. It is consistent with the principles of sound wildlife management, and will facilitate priority public uses that are compatible with the purposes of the Refuge. This alternative is based on a land management approach that protects natural

resources, habitats, and landscapes, while allowing for recreational public uses. This management approach will be effective for protecting Refuge resources, improving public information, working with our partners, and providing research opportunities on the Refuge for graduate students. Studying the Refuge islands' 6,745-acre WSA will enable us to assess a proposal for possible wilderness designation.

Alternative 2 was selected for implementation for the Julia Butler Hansen Refuge because it will best achieve the Refuge purposes and fulfill the Service's mission. It is consistent with the principles of sound wildlife management, and will facilitate priority public uses that are compatible with the purposes of the Refuge. We will incorporate several new components to current management by addressing a variety of resource needs, while improving CWT deer protection with a focus on recovery. Recovery measures include an opportunity for an experimental CWT deer population upriver, expanded habitat restoration, and increased predator control, as needed, year-round. Other actions include conducting research for management purposes and improving priority public use opportunities. The combination of these components will contribute to achieving the Refuge's vision, purposes, and goals. Implementing this alternative will provide an achievable balance of opportunities for priority public uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation), while providing sufficient protection and sanctuary areas for endangered CWT deer, other wildlife, and their habitats. Studying the 1,344-acre WSA for Wallace and Hunting Islands will enable us to assess a proposal for wilderness designation.

Public Availability of Documents

In addition to the methods in **ADDRESSES**, you can view our CCP at the following libraries:

- Blanch Bradley Library, 100 Main Street, Cathlamet, WA 98612.
- Astoria Public Library, 450 10th Street, Astoria, OR 97103.
- Clatskanie Library District, 11 Lillich Street, Clatskanie, OR 97016.
- Ilwaco Timberline Regional Library, 158 1st Ave., Ilwaco, WA 98624.
- Longview Public Library, 1600 Louisiana Street, Longview, WA 98632.
- Fort Vancouver Regional Library, 1007 E. Mill Plain Blvd., Vancouver, WA 98663.

Dated: November 30, 2011.

Richard Hannan,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 2011–31811 Filed 12–9–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Winter Use Plan, Final Environmental Impact Statement Record of Decision, Yellowstone National Park, Idaho, Montana, and Wyoming

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of a Record of Decision on the Final Environmental Impact Statement for a Winter Use Plan, Yellowstone National Park.

SUMMARY: Pursuant to Sec. 102(2)(C) of the National Environmental Policy Act of 1969, 83 Stat. 852, 853, codified as amended at 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the Winter Use Plan for Yellowstone National Park, located in Idaho, Montana, and Wyoming. On December 5, 2011, the Director, Intermountain Region, approved the Record of Decision for the plan.

The National Park Service (NPS) will implement this Decision through regulation that will take effect on December 15, 2011.

The Record of Decision selects Alternative 8 for implementation. The NPS will allow oversnow vehicle use in the park for the winter of 2011/2012 at the same levels that were allowed under the interim regulation in place for the winters of 2009/2010 and 2010/2011. Up to 318 commercially guided, best-available-technology snowmobiles and 78 commercially guided snowcoaches will be allowed in the park per day. All snowmobiles and snowcoaches will be 100% commercially guided and Sylvan Pass will remain open under the same conditions as the past two winter seasons.

The Final Environmental Impact Statement analyzed eight alternatives, including a no-action alternative. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified.

The Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferred alternative, a listing of measures to minimize environmental harm, and an overview of public involvement in the decision-making process.

FOR FURTHER INFORMATION CONTACT: Steve Iobst, Deputy Superintendent, Yellowstone National Park, (307) 344–2002.

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above or online at *http://parkplanning.nps.gov/yell.*

Dated: December 5, 2011.

John Wessels,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. 2011–31780 Filed 12–9–11; 8:45 am]

BILLING CODE 4312–CT–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–1111–8950; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before November 19, 2011. Pursuant to section 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by December 27, 2011. 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.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

CALIFORNIA

San Bernardino County

Wigwam Village No. 7, (U.S. Highway 66 in California MPS) 2728 Foothill Rd., San Bernardino, 11000957

FLORIDA

Orange County

Lake Adair—Lake Concord Historic District, Roughly Golfview St., Edgewater Ct., Alameda St., & Peachtree Rd., Orlando, 11000958

GEORGIA

Screven County

Georgia Welcome Center, 8463 Burtons Ferry Hwy., Sylvania, 11000959

MARYLAND

Baltimore Independent City

Zion Lutheran Church, 400 E. Lexington St., Baltimore, 11000960

Montgomery County

Riley—Bolten House, 11420 Old Georgetown Rd., North Bethesda, 11000961

Rockville Park Historic District,

Roughly bounded by Baltimore Rd., Joseph St., Grandin, Reading, & S. Stonestreet Aves., Rockville, 11000962

Prince George's County

St. Thomas' Episcopal Parish Historic District, From E. side of Croom Rd. along N. & S. sides of St. Thomas Church Rd. eastward for about 1500 ft., Upper Marlboro, 11000963

NEW HAMPSHIRE

Cheshire County

Buckminster—Kingsbury Farm, 80 Houghton Ledge Rd., Roxbury, 11000964

NEW JERSEY

Mercer County

American Cigar Company Building, 176 Division St., Trenton, 11000965

Monmouth County

Parker Homestead, 235 Rumson Rd., Little Silver, 11000966

NEW YORK

Bronx County

Riverdale—Spuyten Duyvil—Kingsbridge Memorial Bell Tower, Riverdale Ave. at W. 239th St. & Henry Hudson Pkwy., Bronx, 11000967

New York County

Eleventh Street Methodist Episcopal Church, 543–547 E. 11th St., New York, 11000968

West End Presbyterian Church and Parish House, 165 W. 165th St., New York, 11000969

Schenectady County

Nott Street School, 487 Nott St., Schenectady, 11000970

Warren County

Lake George Battlefield Park Historic District, 139 Beach Rd., Lake George, 11000971

NORTH CAROLINA

Buncombe County

Downtown Asheville Historic District (Boundary Increase III and Boundary Decrease), (Asheville Historic and Architectural MRA) 76–129 Biltmore Ave., 64 Carter St., 11–23 Grove St., 14–44 N. French Broad Ave., 12–25 S. French Broad Ave., Asheville NC, 11000972

Chatham County

Bray—Paschal House, (Chatham County MRA) 2488 Wade Paschal Rd., Siler City, 11000973

Henderson County

Rice, Clough H., House, 219 Stoney Mountain Rd., Hendersonville, 11000974

Johnston County

West Selma Historic District, Bounded by W. Railroad, N. Brevard, W. Richardson & N. Pollock Sts., Selma, 11000975

OREGON

Umatilla County

Weston School, 205 E. Wallace St., Weston, 11000976 Winn Barn, 79560 Winn Rd., Weston, 11000977

RHODE ISLAND

Providence County

Esten—Bowen House, 299 Iron Mine Rd., Burrillville, 11000978

TENNESSEE

Loudon County

War Memorial Building, 103 N. B St., Lenoir City, 11000979

TEXAS

Gregg County

Rembert, Frank Taylor and Kate Womack, House, 316 S. Fredonia St., Longview, 11000980

Harris County

Yale Street Bridge over White Oak Bayou, (Historic Bridges of Texas MPS) Yale St. at White Oak Bayou, Houston, 11000981

Tarrant County

Ridglea Theatre, 6025–6033 Camp Bowie Rd. & 3309 Winthrop Ave., Fort Worth, 11000982

Travis County

Gethsemane Lutheran Church, 200 W. Anderson Ln., Austin, 11000983

VIRGINIA

Roanoke Independent City

Wasena Historic District, Wiley Dr., Winchester, Winona, Wasena, Howbert, Valley, Hamilton, Kerns, Floyd & Summit Aves., Brighton Rd., Roanoke (Independent City), 11000984

WASHINGTON

Island County

Kristoferson Dairy, (Barns of Washington State MPS) 393 N. East Camano Dr., Stanwood, 11000986

King County

Federal Reserve Bank of San Francisco, Seattle Branch, 1015 2nd. Ave., Seattle, 11000985

Whatcom County

Bellingham City Hall, 210 Lottie St., Bellingham, 11000987

[FR Doc. 2011–31751 Filed 12–9–11; 8:45 am]

BILLING CODE 4312–51–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Committee on Civil Rules

AGENCY: Advisory Committee on Civil Rules, Judicial Conference of the United States.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Civil Procedure has been canceled: Civil Rules Hearing, January 4, 2012, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Robinson, Deputy Rules Officer and Counsel Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 6, 2011.

Benjamin J. Robinson,

Rules Committee Deputy and Counsel.

[FR Doc. 2011–31836 Filed 12–9–11; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODVA, Inc.

Notice is hereby given that, on November 1, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ODVA, Inc. (''ODVA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the

Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, TDK–Lambda Americas Inc., Neptune, NJ; RF IDeas, Inc., Rolling Meadows, IL; ENTRON Controls LLC, Greer, SC; and MTS Systems Corporation, Eden Prairie, MN, have been added as parties to this venture.

Also, Actel Corporation, Mountain View, CA; Toshiba Corporation, Tokyo, JAPAN; Azbil North America, Inc. (formerly Yamatake Sensing Control), Santa Clara, CA; Shanghai Sibotech Automation Co. Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA; and ELAU AG, Marktheidenfeld, GERMANY, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on June 24, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 9, 2011 (76 FR 48884).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–31744 Filed 12–9–11; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Manufacturers Standardization Society

Notice is hereby given that, on November 7, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Manufacturers Standardization Society (''MSS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Manufacturers Standardization Society, Vienna, VA. The nature and scope of MSS's standards development activities are: Valves, Valve Actuators, Pipe Fittings, Valve Modification, Flanges, Pipe Hangers and Supports, and Associated Seals.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–31745 Filed 12–9–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consortium for Command, Control, Communications and Computer Technologies

Notice is hereby given that, on November 18, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Consortium for Command, Control, Communications and Computer Technologies (''Consortium for Command'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Consortium for Command, Control, Communications and Computer Technologies, Washington, DC; 3D–4U Inc., Blacksburg, VA; Mississippi State University, Mississippi State, MS; Paul Cibuzar Consulting, Nisswa, MN; Science Applications International Corporation, Crane, IN; Scientia LLC, Bloomington, IN; Signal Innovations Group, Inc., Durham, NC; Stevens Institute of Technology, Hoboken, NJ; T2 Solutions LLC, Greenville, SC; Tiburon Associates, Inc, Dayton, OH; TS2 Tactical Spec-Solutions Inc., Bedford, IN; UXB International, Blacksburg, VA; Virginia Tech Applied Research Corporation, Blacksburg, VA; and Wyle Laboratories, Lexington Park, MD.

The general area of Consortium for Command's planned activity is (a) to enter into an Other Transaction Agreement (''OT Agreement'') with the U.S. Army (the Government), pursuant to Section 845 of the 1994 National Defense Authorization Act, as amended, for the funding of certain research, development, testing and evaluation of prototypes to be conducted as a collaboration between the Government and Consortium Members, to enhance the capabilities of the U.S. Government and its departments and agencies in the fields of Intelligence, Surveillance, and Reconnaissance (ISR) mission enabled by new technologies for command, control, communications, computing (C4), and decision-enhancing technologies; (b) participate in the establishment of sound technologies and programmatic performance goals based on the needs and requirements of the Government's Technology Objectives and create programs and secure funding for the Technology Objectives; (c) provide a unified voice to effectively articulate the global and strategically important role which ISR-enabling technologies play in current and future kinetic and non-kinetic weaponry; and (d) maximize the utilization of the Government's and Members' capabilities to effectively develop critical sensor, communications, and computer-focused technologies which can be transitioned and commercialized.

Additional information concerning the Consortium can be obtained from Charlie McBride, President, Consortium for Command, Control, Communications and Computer Technologies, 1025 Connecticut Ave. NW., Suite 904, Washington, DC 20036, Telephone (202) 466–4210, Fax (202) 466–4213, *email: mcbride@cmcbride.com.*

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–31746 Filed 12–9–11; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Green Seal, Inc.

Notice is hereby given that, on November 9, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993,

15 U.S.C. 4301 *et seq.* (''the Act''), Green Seal, Inc. (''Green Seal'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Green Seal has issued new standards for specialty cleaning products and a comprehensive revision to the standard for reusable bags.

On January 26, 2011, Green Seal filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 7, 2011 (76 FR 12370).

The last notification was filed with the Department on June 28, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2011 (76 FR 46843).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–31752 Filed 12–9–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–353E]

Established Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2012

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice.

SUMMARY: This notice establishes the initial 2012 assessment of annual needs for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

DATES: *Effective Date:* December 12, 2011.

FOR FURTHER INFORMATION CONTACT: John W. Partridge, Chief, Liaison and Policy Section, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, *Telephone:* (202) 307–7184.

SUPPLEMENTARY INFORMATION:

Background

The 2012 assessment of annual needs represents those quantities of ephedrine, pseudoephedrine, and phenylpropanolamine which may be manufactured domestically and imported into the United States in 2012 to provide adequate supplies of each chemical to meet the estimated medical, scientific, research, and industrial needs of the United States, lawful export requirements, and the establishment and maintenance of reserve stocks of such chemicals. Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires that the Attorney General establish an assessment of annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine. This responsibility has been delegated to the Administrator of the DEA by 28 CFR 0.100.

On September 14, 2011, a notice entitled ''Proposed Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2012'' was published in the **Federal Register** (76 FR 56809). That notice proposed the 2012 assessment of annual needs for ephedrine (for sale), ephedrine (for conversion), pseudoephedrine (for sale), phenylpropanolamine (for sale), and phenylpropanolamine (for conversion). All interested persons were invited to comment on or object to the assessments on or before October 14, 2011.

Comments Received

DEA received one comment regarding the proposed assessment of annual needs for pseudoephedrine. The commenter stated that ''the quotas should be increased to cover our needs. The appropriate DEA Form 250 will be submitted shortly pertaining to the items for which we submitted comments.'' As of October 17, 2011, the commenter was not registered to manufacture the chemical pseudoephedrine and DEA had not received the commenter's request for 2012 quota for pseudoephedrine. DEA will consider the commenter's request for quota after they become registered to manufacture pseudoephedrine and submit a quota application pursuant to 21 CFR 1315.22.

Conclusion

In determining the 2012 assessments, DEA took into account the criteria that DEA is required to consider in accordance with 21 U.S.C. 826(a) and 21 CFR 1315.11. DEA has increased the assessment of annual need for ephedrine (for sale) and pseudoephedrine (for sale) over the proposed amount based on additional data that was received regarding the total net disposals (*i.e.* sales) of these List I chemicals for the current and preceding two years, actual and estimated inventories, projected demand (2012), industrial use, and export requirements. The relevant inventory, acquisition (purchases), and disposition (sales) data was provided by DEA registered manufacturers and importers in procurement quota applications (DEA 250), manufacturing quota applications (DEA 189), import quota applications (DEA 488), and declarations for import and export received by DEA as of October 17, 2011. After reviewing the additional data, DEA determined that an increase in the proposed assessment of annual need for ephedrine (for sale) and pseudoephedrine (for sale) was warranted. This notice reflects that increase.

In accordance with 21 U.S.C. 826 and 21 CFR 1315.11, the Administrator hereby determines that the 2012 assessment of annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in kilograms of anhydrous acid or base, is established as follows:

List I chemical	Established 2012 assessment of annual needs (kg)
Ephedrine (for sale)	4,000
Phenylpropanolamine (for sale)	5,200
Pseudoephedrine (for sale)	258,000
Phenylpropanolamine (for conversion)	26,200
Ephedrine (for conversion)	12,000

The assessment of annual needs may be adjusted at a later date pursuant to 21 CFR 1315.13.

Dated: December 1, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–31777 Filed 12–9–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated September 27, 2011, and published in the **Federal Register** on October 7, 2011, 76 FR 62446, Fisher Clinical Services, Inc., 7554 Schantz Road Allentown, Pennsylvania 18106, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Noroxymorphone (9668)	II
Sufentanil (9740)	II
Tapentadol (9780)	II

The company plans to import the listed substances for analytical research and clinical trials.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Fisher Clinical Services, Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Fisher Clinical Services, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: December 5, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–31776 Filed 12–9–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on October 17, 2011, Hospira Inc., 1776 North Centennial Drive, McPherson, Kansas 67460–1247, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Remifentanil (9739), a basic class of controlled substance listed in schedule II.

The company plans to import Remifentanil for use in dosage form manufacturing.

Any bulk manufacturers who are presently, or are applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than January 11, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR § 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745, all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: December 5, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–31766 Filed 12–9–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on September 12, 2011, Johnson Matthey, Inc., Pharmaceutical Materials, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances listed in schedule II:

Drug	Schedule
Coca Leaves (9040)	II
Thebaine (9333)	II
Opium, raw (9600)	II
Noroxymorphone (9668)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances as raw materials, to be used in the manufacture of bulk controlled substances, for distribution to its customers.

No comments, objections, or requests for any hearings will be accepted on any application for registration or re-registration to import crude opium, poppy straw, concentrate of poppy straw, and coca leaves. Comments and requests for hearings on applications to import narcotic raw material are not appropriate, in accordance with 72 FR 3417 (2007).

In regards to the non-narcotic raw material, the company plans to import gram amounts to be used as reference standards for sale to its customers. Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule I or II, which fall under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C.

958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than January 11, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745, all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: December 2, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–31765 Filed 12–9–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 23, 2011, and published in the **Federal Register** on July 5, 2011, 76 FR 39123, Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Fenethylline (1503)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590)	I
Gamma Hydroxybutyric Acid (2010)	I
Methaqualone (2565)	I
Mecloqualone (2572)	I
1-Pentyl-3-(1-naphthoyl)indole (7118)	I
1-Butyl-3-(1-naphthoyl)indole (7173)	I
1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl) indole (7200)	I
Alpha-ethyltryptamine (7249)	I
Ibogaine (7260)	I
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (7297)	I
5-(1,1-Dimethylloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (7298)	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Parahexyl (7374)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390)	I
4-Bromo-2,5-dimethoxyamphetamine (7391)	I
4-Bromo-2,5-dimethoxyphenethylamine (7392)	I
4-Methyl-2,5-dimethoxyamphetamine (7395)	I
2,5-Dimethoxyamphetamine (7396)	I
2,5-Dimethoxy-4-ethylamphetamine (7399)	I
3,4-Methylenedioxyamphetamine (7400)	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401)	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402)	I
3,4-Methylenedioxy-N-ethylamphetamine	I
(7404) 3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Peyote (7415)	I
Alpha-methyltryptamine (7432)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
5-Methoxy-N,N-diisopropyltryptamine (7439)	I
N-Ethyl-1-phenylcyclohexylamine (7455)	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470)	I
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine	I
(7473) N-Ethyl-3-piperidyl benzilate (7482)	I
N-Methyl-3-piperidyl benzilate (7484)	I
N-Benzylpiperazine (7493)	I
Acetyldihydrocodeine (9051)	I

Drug	Schedule
Benzylmorphine (9052)	I
Codeine-N-Oxide (9053)	I
Cyprenorphine (9054)	I
Desomorphine (9055)	I
Etorphine except HCl (9056)	I
Codeine methylbromide (9070)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Heroin (9200)	I
Hydromorphinol (9301)	I
Methyldesorphine (9302)	I
Methyldihydromorphine (9304)	I
Morphine methylbromide (9305)	I
Morphine methylsulfonate (9306)	I
Morphine-N-Oxide (9307)	I
Myrophine (9308)	I
Nicocodeine (9309)	I
Nicomorphine (9312)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Thebacon (9315)	I
Acetorphine (9319)	I
Drotebanol (9335)	I
Acetylmethadol (9601)	I
Allylprodine (9602)	I
Alphacetylmethadol except levo-alphacetylmethadol (9603)	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Benzethidine (9606)	I
Betacetylmethadol (9607)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Clonitazene (9612)	I
Dextromoramide (9613)	I
Diampromide (9615)	I
Diethylthiambutene (9616)	I
Dimenoxadol (9617)	I
Dimepheptanol (9618)	I
Dimethylthiambutene (9619)	I
Dioxaphetyl butyrate (9621)	I
Dipipanone (9622)	I
Ethylmethylthiambutene (9623)	I
Etonitazene (9624)	I
Etoxeridine (9625)	I
Furethidine (9626)	I
Hydroxypethidine (9627)	I
Ketobemidone (9628)	I
Levomoramide (9629)	I
Levophenacylmorphan (9631)	I
Morpheridine (9632)	I
N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (9834)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Norpipanone (9636)	I
Phenadoxone (9637)	I
Phenampromide (9638)	I
Phenoperidine (9641)	I
Piritramide (9642)	I
Proheptazine (9643)	I
Properidine (9644)	I
Racemoramide (9645)	I
Trimeperidine (9646)	I
Phenomorphan (9647)	I
Propiram (9649)	I
1-Methyl-4-phenyl-4-propionoxypiperidine (9661)	I
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine (9663)	I
Tilidine (9750)	I
Para-Fluorofentanyl (9812)	I
3-Methylfentanyl (9813)	I
Alpha-methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815)	I

Drug	Schedule
N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (9818)	I
Beta-hydroxyfentanyl (9830)	I
Beta-hydroxy-3-methylfentanyl (9831)	I
Alpha-methylthiofentanyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thiofentanyl (9835)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Glutethimide (2550)	II
Secobarbital (2315)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
4-Anilino-N-phenethyl-4-piperidine (8333)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
Alphaprodine (9010)	II
Anileridine (9020)	II
Coca Leaves (9040)	II
Cocaine (9041)	II
Codeine (9050)	II
Etorphine HCl (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Meperidine intermediate-C (9234)	II
Metazocine (9240)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Metopon (9260)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Dihydroetorphine (9334)	II
Opium, raw (9600)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Powdered opium (9639)	II
Opium, granulated (9640)	II
Levo-alphacetylmethadol (9648)	II
Opium poppy/Poppy Straw (9650)	II
Oxymorphone (9652)	II
Poppy Straw Concentrate (9670)	II
Phenazocine (9715)	II
Piminodine (9730)	II
Racemethorphan (9732)	II
Racemorphan (9733)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Tapentadol (9780)	II
Bezitramide (9800)	II
Fentanyl (9801)	II
Moramide-intermediate (9802)	II

The company plans to import small quantities of the listed controlled substances for the National Institute on Drug Abuse (NIDA) for research activities.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate, 72 FR 3417 (2007). Regarding all other basic classes of controlled substances, no comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Research Triangle Institute to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Research Triangle Institute to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: December 5, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–31767 Filed 12–9–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 15, 2011, Johnson Matthey Pharma Services, 70 Flagship Drive, North Andover, Massachusetts 01845, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Hydrocodone (9193)	II

The company plans to utilize this facility to manufacture small quantities of the listed controlled substances in bulk and to conduct analytical testing in support of the company's primary manufacturing facility in West Deptford, New Jersey. The controlled substances manufactured in bulk at this facility will be distributed to the company's customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than February 10, 2012.

Dated: December 5, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–31771 Filed 12–9–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 10, 2011, and published in the **Federal Register** on August 18, 2011, 76 FR 51400, Cambridge Isotope Lab, 50 Frontage Road, Andover, Massachusetts 01810, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Morphine (9300), a basic class of controlled substance listed in schedule II.

The company plans to utilize small quantities of the listed controlled substance in the preparation of analytical standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cambridge Isotope Lab to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Cambridge Isotope Lab to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: December 5, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–31774 Filed 12–9–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated August 10, 2011, and published in the **Federal Register** on August 18, 2011, 76 FR 51401, Chemica, 316 West 130th Street, Los Angeles, California 90061, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Methamphetamine (1105), a basic class of controlled substance listed in schedule II.

The above listed controlled substance is an intermediate in the manufacture of Benzphetamine, a schedule III non-narcotic controlled substance. The company plans to utilize a bulk active pharmaceutical ingredient (API) as an intermediate for the development of another controlled substance, and further distribution to its customers. The methamphetamine will not be sold as a commercial product.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Chemica to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Chemica to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: December 5, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–31773 Filed 12–9–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 8, 2011, and published in the **Federal Register** on August 18, 2011, 76 FR 51402, Lin Zhi International Inc., 670 Almanor Avenue, Sunnyvale, California 94085, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxymethamphetamine (7405).	I
Cocaine (9041)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II

The company plans to manufacture the listed controlled substances as bulk reagents for use in drug abuse testing.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Lin Zhi International Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Lin Zhi International Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. § 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: December 5, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–31768 Filed 12–9–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0142]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Extension of a Currently Approved Collection; Victim of Crime Act, Crime Victim Assistance Grant Program, Subgrant Award Report

ACTION: 60-Day Notice of Information Collection Under Review.

Department of Justice (DOJ), Office of Justice Programs (OJP), Office for Victims of Crime (OVC) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 10, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact DeLano Foster (202) 616–3612, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 7th Street NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Victims of Crime Act, Victim Assistance Grant Program, Subgrant Award Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form number: 1121–0142. Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State government. Other: None. The VOCA, Crime Victim Assistance Grant Program, Subgrant Award Report is a required submission by state grantees, within 90 days of their awarding a subgrant for the provision of crime victim services. VOCA and the Program Guidelines require each state victim assistance office to report to OVC on the impact of the Federal funds, to certify compliance with the eligibility requirements of VOCA, and to provide a summary of proposed activities. This information will be aggregated and serve as supporting documentation for the Director's biennial report to the President and to the Congress on the effectiveness of the activities supported by these grants.

This request is for an extension of a currently approved reporting instrument, with no revisions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The number of VOCA-funded victim assistance programs varies widely from State to State. A review of information currently available to this Office on the number of active victim assistance programs in 15 states selected for variance in size and population revealed that a State would be responsible for entering subgrant data for as many as 499 programs (California) to as few as 9 programs (District of Columbia).

The estimated time to enter a record via the Grants Management System is

three minutes (.05 hour). Therefore, the estimated clerical time can range from 27 minutes to 25 hours, based on the number of records that are entered. It would take 265 hours to enter 5,300 responses electronically [5,300 × .05 hour].

(6) *An estimate of the total public burden (in hours) associated with the collection:* The current estimated burden is 265 (5,300 responses × .05 hour per response = 265 hours). There is no increase in the annual recordkeeping and reporting burden.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–31710 Filed 12–9–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Proposed Information Collection Request (ICR) for the Voice in the Workplace Survey; Comment Request

AGENCY: Office of the Assistant Secretary for Policy, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL or the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that required 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. 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 the related materials display a currently valid OMB control number. 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 related materials do not display a currently valid OMB control number. See 5 CFR 1320.5(a) and 1320.6. A copy of the proposed ICR can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice or by accessing *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be received by the office listed in the **ADDRESSES** section below on or before February 10, 2012.

ADDRESSES: Send comments to Celeste Richie, U.S. Department of Labor, Chief Evaluation Office, Office of the Assistant Secretary for Policy, 200 Constitution Avenue NW., Frances Perkins Bldg., Room S–2312, Washington, DC 20210, telephone number (202) 693–5959 (this is not a toll-free number). Email address is *richie.celeste.j@dol.gov* and fax number is (202) 693–5960.

SUPPLEMENTARY INFORMATION:

1. *Background:* The purpose of this evaluation is to gauge the current level of workers' voice in the workplace and the factors affecting voice, specifically voice as it relates to the laws administered and enforced by the Department of Labor's Occupational Safety and Health Administration (OSHA) and Wage and Hour Division (WHD). Voice in the workplace is a key outcome goal for the Secretary of Labor and part of her vision of good jobs for everyone. DOL's working definition of voice in the workplace is the ''worker's ability to access information on their rights in the workplace, their understanding of those rights, and their ability to exercise those rights without fear of recrimination.'' The survey will measure each of these items, first individually, and then combine those to come up with an overall measure of voice. The Department also hopes to learn how voice is related to workers' perceptions of employer noncompliance, such as whether or not particular dimensions of voice correlate to workers' perceptions of noncompliance. The study will also be useful in examining how noncompliance in one area, such as safety, is related to voice in the workplace and noncompliance in another area, such as wages.

The evaluation of voice will benefit the Department of Labor (DOL) in several important ways:

- It will establish a baseline level of voice to which future measurement could be compared.
- The study should provide the Department with information about what factors affect voice and how voice can be promoted in the workplace. In particular, the analysis of survey results should identify which aspects of voice are particularly sensitive or linked to actions the Department may conduct to increase workers' knowledge of their rights.
- The relationship between worker voice and worker outcomes, such as perceived workplace safety, fair compensation, and employer noncompliance (or perceived noncompliance) will also be explored.
- It may also provide information about types of workplaces where workers believe OSHA and WHD violations are more prevalent, which will be useful for targeting the Department's limited enforcement resources.

Because this evaluation will collect new and unique data, the contractor is engaged in a rigorous process to develop the survey questions.

1. A comprehensive one-on-one qualitative review was undertaken with 25 stakeholders provided by OSHA and WHD, in order to understand concerns of DOL's constituency groups (see Attachment A—Stakeholder Interviewer Guide). Stakeholders came from both Federal and third-party nonprofit agencies. A report was prepared from these interviews and suggestions from the report were incorporated into the survey instrument.[1]

2. The contractor conducted a thorough review of the literature that examined existing research and surveys related to the traditional concept of worker voice as well as the concept of voice as defined for this study. The literature review resulted in a comprehensive bibliography of research articles, reports, and studies that are relevant to this effort.[2] Through the literature review, similar survey instruments on the concept of voice were identified and a few applicable questions incorporated into DOL's survey instrument. However, it was also discovered in the course of the literature review that DOL's undertaking is unique to the voice literature as its mandate focuses on compliance-related issues. As such, it is expected that this research will be groundbreaking in the voice (as defined for this study) literature and may lead to follow-on research articles.

3. A pilot survey will be undertaken so that the instrument and sampling design will be tested thoroughly to ensure the instrument is performing

[1] Gallup, Inc. *Stakeholder Interview Report: Department of Labor Voice in the Workplace.* Washington, DC: 2011.

[2] Gallup, Inc. *Worker Voice Literature Review.* Washington, DC: 2011.

according to DOL needs. Upon completion of the pilot, a report will be written so that final results will be clearly outlined.

Using results from the first two tasks, the contractor developed a modularized survey questionnaire that is approximately 18 minutes in length. The questionnaire begins with a core set of questions about the DOL voice definition. These questions will be the crux of the voice survey and will provide DOL with an index for each respondent or a voice ''score.'' This score will be applicable across agencies and is expected to be used in other research being undertaken with the Department. The second part of the instrument is two rotating modules, one each for OSHA and for WHD, in which specific questions can be directed to respondents about each agency. Each respondent will be directed to just one module (*i.e.,* no respondent will get both the OSHA and the WHD modules). Each module will focus on knowledge, voice, and perceived noncompliance for the given agency, providing a second gauge of a voice measure—one that has more granularities around the topics. For example, knowledge of specific laws will be tested for each agency as well as more detail on noncompliance. A final section will query how worker rights are being communicated. In the knowledge section, respondents will be asked about worker rights (corresponding to agency specifics) and a knowledge score will be derived to assess a knowledge index score for each respondent. This knowledge index will then play into a second overall actual voice score that is calculated for each respondent. The survey will be conducted in both Spanish and English, and will be administered only to people who, according to the CPS, say they are currently employed.

2. *Desired Focus of Comments:* Currently, the Department of Labor is soliciting comments concerning the above data collection. Comments are requested 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 information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

3. *Current Actions:* Pursuant to the PRA implementing regulations at 5 CFR 1320.8(d)(1), this notice requests comments on the proposed information collection request discussed above in the Background section of this notice. Interested parties are encouraged to provide comments to the individual list in the **ADDRESSES** section above.

Agency: Office of the Assistant Secretary for Policy.

Type of Review: New Collection

Title of Collection: Voice in the Workplace Survey.

OMB Control Number: [Insert OMB Control Number].

Affected Public: Individuals or households.

Two survey undertakings will be completed, the first being the pilot with 800 respondents and the second being the full study with 4,000 respondents.

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
General Working Population	Pilot Voice Study	800	1	18/60	240
General Working Population	Full Voice Study	4,000	1	18/60	1,200

Comments submitted in response to this request will be summarized and/or included in the request for OMB approval; they will also become a matter of public record.

Signed: at Washington, DC, this 6th day of December, 2011.

William E. Spriggs,

Assistant Secretary, Office of the Assistant Secretary for Policy.

[FR Doc. 2011–31821 Filed 12–9–11; 8:45 am]

BILLING CODE 4510–22–P

DEPARTMENT OF LABOR

Proposed Information Collection Request (ICR) for the Evaluation of the Unemployment Compensation Provisions of the American Recovery and Reinvestment Act of 2009; Comment Request

AGENCY: Office of the Assistant Secretary for Administration and Management, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL or the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that required 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.

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 the related materials display a currently valid OMB control number. 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 related materials do not display a currently valid OMB control number. See 5 CFR 1320.5(a) and 1320.6.

A copy of the proposed ICR can be obtained by contacting the office listed

below in the addressee section of this notice or by accessing *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 10, 2012.

ADDRESSES: Send comments to Jonathan Simonetta, U.S. Department of Labor, Office of the Chief Evaluation Officer, 200 Constitution Avenue NW., Frances Perkins Bldg., Room S2316, Washington, DC 20210, telephone number (202) 693–5959 (this is not a toll-free number). His email address is *simonetta.jon.a@dol.gov* and fax number is (202) 693–6061.

SUPPLEMENTARY INFORMATION:

I. Background

The recession that began in late 2007 posed major challenges for the U.S. system of unemployment compensation (UC). For example, sharply increasing lengths of unemployment spells prompted Federal legislation that extended the potential duration of UC benefits to unprecedented levels and led to the adoption of changes to the ways those benefits are financed.

To determine the effectiveness of the most significant UC policy initiatives undertaken in response to these challenges—those included in the American Recovery and Reinvestment Act of 2009 (ARRA) and related extended UC provisions included in the Emergency Unemployment Compensation Act of 2008 (EUC08)—the Department is undertaking the Evaluation of the Unemployment Compensation Provisions of the American Recovery and Reinvestment Act of 2009. The evaluation includes examinations of the UC-related components of ARRA associated with (1) The provision of extended UC benefits through the Extended Benefits (EB) and EUC08 programs, (2) the incentives designed to encourage states to modernize certain aspects of their UC systems, and (3) additional assistance provided to unemployed workers and states to help them weather the effects of the recession. This latter assistance includes the Federal Additional Compensation program and an exemption of the taxation of some UC benefits—approaches to help unemployed workers—and suspension of interest payment provisions to help states. DOL has contracted with Mathematica Policy Research and its subcontractor, Urban Institute, to conduct this evaluation.

The evaluation will address the following research questions:

1. What factors are related to states' decisions on whether to adopt ARRA modernization provisions and the Total Unemployment Rate trigger for EB? What are the economic and political factors related to states' decisions? What do states' experiences imply for future roll-outs of modifications to the UC system?

2. What are states' experiences implementing each of the UC-related ARRA provisions? What factors shape states' implementation experiences? What are the effects of enacting provisions? What are the costs of implementation? How have states used the incentive payments?

3. What are the demographic and economic characteristics of UC recipients? What are their post-UC labor market outcomes?

4. What are the impacts of UC ARRA provisions on recipients' outcomes, such as their unemployment durations and reemployment rates?

5. How well did EUC08 and related programs help to stabilize the economy? To what extent were extended benefits timed to mitigate the effects of the economic downturn? How effective were EB and EUC08 triggers in targeting benefits to states with the most severe unemployment?

In addition to using published and administrative data, the analysis will rely on high-quality data collected from three major sources.

1. *UI Recipient Survey.* From 20 states that were randomly selected to represent the nation as a whole, 3,000 recipients will be sampled and asked to complete the UI recipient survey. This sample is expected to lead to 2,400 completed surveys based on an expected response rate of 80 percent. The survey will collect information such as the recipients' demographic and economic characteristics; pre-unemployment earnings, occupation, and industry; length of unemployment and time to reemployment; UI benefits accessed; other government support (such as Temporary Assistance for Needy Families and food stamps); household income and assets; the effects of reduced income; training received and completed; coverage by health insurance; reemployment earnings; and other characteristics of post-UI jobs, such as fringe benefits, industry, and occupation.

2. *Survey of UI Administrators.* A survey of administrators from the 50 states and the District of Columbia will ask about three main study topics, including (1) The decision to adopt UI modernization provisions, (2) general implementation issues, and (3) use of ARRA incentive funds.

3. *Site Visits.* On-site visits conducted in 20 purposively selected states facilitate the collection of detailed information about why states decided whether to implement certain modernization and EB provisions, as well as states' successes and challenges in implementing the modernization provisions, EUC08, EB, and the Federal Additional Compensation program; an exemption of the taxation of UC benefits; and/or interest payment provisions allowed under ARRA. On-site visits will be supplemented by a Data Systems Survey provided to state-level staff in advance of the in-person visits but discussed during the visits.

II. Desired Focus of Comments

Currently, the Department is soliciting comments concerning the above data collection for the Evaluation of the Unemployment Compensation Provisions of the American Recovery and Reinvestment Act of 2009. Comments are requested to:

- Evaluate whether the proposed ICR 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 ICR, including the validity of the methodology and assumptions used
- Enhance the quality, utility, and clarity of the ICR
- Minimize the burden of the ICR on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submissions of responses.

III. Current Actions

At this time, DOL is requesting clearance for the UI Recipient Survey, the Survey of UI Administrators, and the site visit data collection materials (which include the protocol and the Data Systems Survey).

Type of Review: New ICR.

OMB Number: XXXX–XXXX.

Affected Public: UI recipients, state UI administrators and other UI program staff, state legislators, lobbyists, and One-Stop Career Center staff.

For the UI Recipient Survey

Frequency: Once.

Total Responses: 2,400.

Average Time per Response: 30 minutes for the survey of UI recipients.

Estimated Total Burden Hours: 1,200.

Total Burden Cost: $17,280.

For the Survey of UI Administrators

Frequency: Once.
Total Responses: 77.[1]
Average Time per Response:
• 51 State Administrators at 15 minutes each.
• 26 state Administrators at 30 minutes each.
Estimated Total Burden Hours: 26.
Total Burden Cost: $1,318.

For the Site Visit Data Collection

Frequency: Once.
Total Responses:
• State UI office staff time to plan for the site visits.
—80 responses (= 4 staff per state, for 20 states).
—Average time per response = 30 minutes per staff.
—Estimated total burden hours = 40 hours.

• State UI office staff for in-person interviews.
—180 responses (= 9 staff per state, for 20 states).
— Average time per response = 90 minutes per staff.
—Estimated total burden hours = 270 hours.

• Call center administrators for in-person interviews.
—30 responses (= 1.5 staff per state, for 20 states).
—Average time per response = 90 minutes per staff.
— Estimated total burden hours = 45 hours.

• Local One-Stop Career Center administrator for in-person interviews.
—20 responses (= 1 staff per state, for 20 states).
—Average time per response = 90 minutes per staff.
—Estimated total burden hours = 30 hours.

• Other stakeholders for in-person interviews.
—120 responses (= 6 staff per state, for 20 states).
—Average time per response = 90 minutes per staff.
—Estimated total burden hours = 180 hours.

• State staff for the Data Systems Survey.
—20 responses (= 1 staff per state, for 20 states).
—Average time per response = 30 minutes per staff.
—Estimated total burden hours = 10 hours.

Total burden cost for the site visit data collection: $29,147.

Respondents	Total respondents	Frequency of collection	Average time per response (minutes)	Burden (hours)	Burden cost
UI Recipients Survey	2,400	Once	30	1,200	$17,280
Survey of UI Administrators	[2]77	Once	30	26	1,318
Site Visit Data Collection					
Planning for the Site Visits	80	Once	30	40	2,028
On-Site Interviews—State UI Office Staff	180	Once	90	270	13,686
Call Center Administrator	30	Once	90	45	2,281
Local One-Stop Career Center Administrator	20	Once	90	30	1,521
Other Stakeholders	120	Once	90	180	9,124
Data Systems Survey—State Staff	20	Once	30	10	507
Total for Site Visit Data Collection	450			575	29,147
Total for Surveys and Site Visits	2,927			1,801	47,745

The total burden cost for the UI Recipient Survey represents 30 minutes, on average, for participant respondents to complete the questionnaire multiplied by the number of expected respondents (2,400) and by an estimated average hourly wage of $14.40 per hour.[3]

The burden cost for the Survey of UI Administrators represents 30 minutes, on average, for respondents to complete the questionnaire multiplied by the number of respondents and by an estimated average hourly wage of $50.69, the average hourly rate for a management position. Thus, the total participant burden for the completion of the enrollment forms is $17,280 (= 2,400 × 30/60 × $14.40).[4]

The burden cost for site visit data collection is estimated to be 575 hours. For each of 20 states that will be part of this data collection effort, an average of two hours of previsit planning and coordination with the evaluation team is expected. The on-site interviews are expected to include interviews averaging 90 minutes each of (1) 9 state UI office staff; (2) 1.5 call center administrators; (3) 1 administrator in half of the states and 2 administrators in half of the states; (4) 1 local One-Stop Career Center administrator; and (5) 6 other stakeholders, such as lobbyists, legislators, and individuals on the UI Advisory Council. Each state that is part of the site visit data collection effort also will be asked to have a staff person complete the Data Systems Survey in advance of the visit; the time to complete this survey is expected to be 30 minutes. Assuming a wage of $50.69 per hour, the total burden on participants for the site visits is estimated to be 575 hours with a total cost of $29,146 (= $50.69 × 575). Thus the total administrator burden for the completion of the survey is $1,318 (=$50.69 × 26).

The total burden for this ICR is estimated to be 1,801 hours ($47,745 in

[1] The number of respondents and average time per response for the survey of UI administrators are based on an assumption that (1) 26 UI jurisdictions will take 45 minutes to respond (involving 1 respondent for 30 minutes and 1 respondent for 15) and (2) 25 UI jurisdictions will take 15 minutes to respond (1 respondent for 15 minutes).

[2] The number of respondents and average time per response for the survey of UI administrators are based on an assumption that (1) 26 UI jurisdictions will take 45 minutes to respond (involving 1 respondent for 30 minutes and 1 respondent for 15) and (2) 25 UI jurisdictions will take 15 minutes to respond (1 respondent for 15 minutes).

[3] This hourly wage estimate is the midpoint of wages reported by participants in another DOL study, the initial Individual Training Account Evaluation. In that study, hourly wages for the Individual Training Account study participants ranged between $13.60 and $15.20. McConnell, *et al.* 2006, ''Managing Customers' Training Choices: Findings from the Individual Training Account Experiment.'' Washington, DC: Mathematica Policy Research, Inc., December 2006.

[4] This average hourly wage rate is from the ''May 2010 National Occupational Employment and Wage Estimates: United States,'' available from the Bureau of Labor Statistics, *http://www.bls.gov/oes/current/oes_nat.htm#11-0000,* accessed May 17, 2011.

burden cost), which is the sum of the burdens (and burden costs) for the surveys and site visit data collection effort.

Comments submitted in response to this request will be summarized and/or included in the request for OMB approval; they will also become a matter of public record.

Signed: at Washington, DC, this 7th day of December, 2011.

William E. Spriggs,

Assistant Secretary, Office of the Assistant Secretary for Policy.

[FR Doc. 2011–31812 Filed 12–9–11; 8:45 am]

BILLING CODE 4510–22–P

DEPARTMENT OF LABOR

Proposed Information Collection Request (ICR) for the Impact of the American Recovery and Reinvestment Act (ARRA) COBRA Subsidy Survey; Comment Request

AGENCY: Office of the Assistant Secretary for Policy, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL or the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that required 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. 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 the related materials display a currently valid OMB control number. 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 related materials do not display a currently valid OMB control number. See 5 CFR 1320.5(a) and 1320.6. A copy of the proposed ICR can be obtained by contacting the office listed below in the addresses section of this notice or by accessing *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be received by the office listed in the addresses section below on or before February 10, 2012.

ADDRESSES: Send comments to Celeste Richie, U.S. Department of Labor, Chief Evaluation Office, Office of the Assistant Secretary for Policy, 200 Constitution Avenue NW., Frances Perkins Bldg., Room S–2316, Washington, DC 20210, telephone number (202) 693–5076 (this is not a toll-free number). Email address is *richie.celeste@dol.gov* and fax number is (202) 693–5960.

SUPPLEMENTARY INFORMATION

1. *Background:* The Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 gave some employees the ability to continue employer-sponsored health coverage for a limited time after they left employment. COBRA required that private employers with 20 or more employees offer continued health coverage to workers who were enrolled in the employer's health plan and lost coverage as a result of termination of employment or a reduction in work hours for reasons other than gross misconduct. It also ensured a continued offer of coverage to spouses and dependent children who otherwise might lose coverage because (1) Of a covered worker's job loss, death, a divorce or legal separation, or eligibility for Medicare; or (2) they ceased to be a dependent under the applicable plan provisions (for example, a child who ages out of eligibility).[1] Qualified employees and dependents may elect COBRA coverage any time within 60 days of a qualifying event and continue it for up to 18 months.[2] Because COBRA does not require employers to contribute toward the cost of continued coverage, recipients generally must pay the full health insurance premium plus a 2 percent administrative fee. Although Federal COBRA coverage does not apply to private companies with fewer than 20 employees, many states have established continuation-of-coverage laws (sometimes called mini-COBRA) that extend all or some of COBRA's provisions to smaller firms. Separate Federal laws offer continuation rights comparable to COBRA to Federal civilian and military employees. One provision of the American Recovery and Reinvestment Act (ARRA) of 2009 was intended to help make COBRA coverage more affordable to involuntarily unemployed workers. It required employers to pay 65 percent of the COBRA premium (or comparable state continuation coverage) for qualified workers and dependents for up to nine months. The employers subsequently received a credit of that amount against their Federal payroll taxes. Qualified workers and dependents were eligible to receive ARRA subsidies for COBRA if the worker (1) Experienced an involuntary termination of employment between September 1, 2008, and December 31, 2009 (later extended to May 31, 2010); and (2) was not eligible for group health coverage (such as through the plan of a spouse or new employer) or Medicare. Workers also had to have an adjusted gross income under $125,000 (filing singly) or $250,000 (filing jointly), with more modest subsidies available for incomes between $125,000 and $145,000 or between $250,000 and $290,000, respectively. Pursuant to this legislation, many people eligible for COBRA (or mini-COBRA) coverage might be (or might have been) eligible to pay a reduced premium for COBRA coverage for up to 15 months. Little is known about the number and characteristics of workers and dependents who are eligible for COBRA coverage or about the workers that used the subsidy to continue coverage. The Chief Evaluation office in the Office of the Assistant Secretary for Policy (CEO) in the U.S. Department of Labor (DOL) is seeking to fill this knowledge gap. Specifically, CEO would like a reliable estimate of the share of the eligible population that enrolled in ARRA-subsidized COBRA coverage, the number of dependents that enrolled, the duration of ARRA-subsidized enrollment, and how the outcomes of workers would have differed without subsidy. By sponsoring this study, CEO also offers the opportunity to better understand what factors drive COBRA enrollment, and to learn about differences in the experiences of those who were eligible for the subsidy and those ineligible for the subsidy. Mathematica has been contracted to conduct this evaluation on behalf of DOL's CEO. The evaluation will estimate the impact of the subsidy's availability on COBRA insurance take-up and explore factors correlated with take-up and reasons why individuals choose to enroll or not to enroll in COBRA. Specifically, the study will address the following research questions using administrative claims data and a one-time survey of unemployment

[1] In general, qualified employees, spouses, and dependent children must have been covered by the health plan the day preceding the qualifying event.

[2] Under certain circumstances, qualified dependents may elect COBRA coverage for up to 36 months or longer from the first qualifying event.

insurance recipients. The research questions are:

a. What are the characteristics of COBRA- and subsidy-eligible individuals? Documenting the extent of COBRA- and subsidy-eligibility and the characteristics of subsidy-eligible and ineligible individuals will provide a picture of what types of individuals have the potential to benefit from the subsidy. As with any program, the subsidy may have failed to reach some of the intended recipients or it may have benefited some individuals who did not need these benefits as much as others. Documenting such unintended consequences may suggest ways that the programs similar to the subsidy could be targeted more efficiently. In addition, understanding who is eligible for the subsidy will provide a context for interpreting the results of the impact analysis of the effectiveness of the subsidy in increasing take-up of COBRA, described below.

b. What are the characteristics of COBRA enrollees? By documenting the characteristics of individuals who enroll or choose not to enroll in COBRA, we can identify the most important predictors of take-up. As with understanding the characteristics of COBRA- and subsidy-eligible individuals, the characteristics of COBRA enrollees and non-enrollees will help identify whether COBRA and the subsidy are benefitting the intended recipients. Identifying characteristics that are correlated to take-up may also provide suggestive evidence on why individuals chose to enroll or not to enroll in COBRA, and how these compare with individuals' self-reported reasons for their choices. Such analyses may provide information that could help policymakers adjust program elements to increase take-up rates.

c. What is the impact of the subsidy on COBRA take-up and other outcomes? In order to evaluate the effectiveness of the policy, we must estimate its impact, or how much COBRA take-up rates and other outcomes changed because of the policy. This analysis will provide policymakers with a sense of whether the subsidy had the intended effects on the main outcome of interest which is COBRA coverage, as well as whether it affected other related outcomes of interest. The subgroup analyses will provide insights on whether the subsidies had similar effects on various groups of workers, or whether it benefited some groups more than others. These types of estimates may be particularly useful in evaluating the cost-effectiveness of the subsidy.

2. *Desired Focus of Comments:* Currently, the Department of Labor is soliciting comments concerning the above data collection. Comments are requested which:

a. 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;

b. 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;

c. Enhance the quality, utility, and clarity of the information to be collected; and

d. Minimize the burden of the information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Agency: Office of the Assistant Secretary for Policy.

Type of Review: New Collection.

Title of Collection: American Recovery and Reinvestment Act COBRA Subsidy Survey.

OMB Number: XXXX–XXXX.

Affected Public: Unemployment insurance recipients who became unemployed between February 17, 2009 and March 31, 2011 across 20 states.

Cite/Reference/Form/etc: American Recovery and Reinvestment Act of 2009.

	UI recipients	
	Screeners	Full interviews
Number of Respondents	22,000–26,000	5,800
Responses per Respondent	1	1
Minutes per Response	2	45
Total Respondent Burden (Hours)	733–867	4,350
Total Burden Cost	$10,555–$12,485	$62,640

The total burden cost represents an estimated two minutes to complete the screener and 45 minutes to complete the full interview multiplied by the number of respondents, using an estimated average hourly wage of $14.40 per hour. Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval; they will also become a matter of public record.

Comments submitted in response to this request will be summarized and/or included in the request for OMB approval; they will also become a matter of public record.

Signed: At Washington, DC, this 6th day of December 2011.

William E. Spriggs,

Assistant Secretary, Office of the Assistant Secretary for Policy.

[FR Doc. 2011–31824 Filed 12–9–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: D–11661, Bayer Corporation (Bayer or the Applicants), PTE 2011–23; L–11618, Oregon-Washington Carpenters Employers Apprenticeship and Training Trust Fund (the Plan), PTE 2011–24: A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred

interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Bayer Corporation (Bayer or the Applicant) Located in Pittsburgh, PA

[Prohibited Transaction Exemption 2011–23; Exemption Application No. D–11661]

Exemption

The restrictions of sections 406(a)(1)(A) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) and (E) of the Code, shall not apply, effective September 14, 2011, to the one-time, in kind contribution (the Contribution) of certain U.S. Treasury Bills (the Securities) to the Bayer Corporation Pension Plan (the Plan) by the Applicant, a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) In addition to the Securities, Bayer contributed to the Plan, by September 15, 2011, such cash amounts as are needed to allow the Plan to attain an Adjusted Funding Target Attainment Percentage (AFTAP) of 90%, as determined by the Plan's actuary (the Actuary);

(b) The fair market value of the Securities was determined by Bayer on the date of the Contribution (the Contribution Date) based on the average of the bid and ask prices as of 3 p.m. Eastern Time, as quoted in The Wall Street Journal on the Contribution Date;

(c) The Securities represented less than 20% of the Plan's assets.

(d) The terms of the Contribution were no less favorable to the Plan than those negotiated at arm's length under similar circumstances between unrelated parties;

(e) The Plan paid no commissions, costs or fees with respect to the Contribution; and

(f) The Plan fiduciaries reviewed and approved the methodology used to value to the Securities and ensured that such methodology was properly applied in determining the fair market value of the Securities.

DATES: *Effective Date:* This exemption is effective as of September 14, 2011.

Written Comments

In the Notice of Proposed Exemption (76 FR 49795, August 11, 2011)(the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the Notice within forty (40) days of the date of the publication of such Notice in the **Federal Register**. All comments and requests for a hearing from interested persons were due by September 20, 2011.

During the comment period, the Department received over 150 telephone calls, 15 written comments, which included one from Bayer, and 3 requests for a public hearing. The majority of telephone callers requested an explanation of the Notice while a minority expressed opposition to the granting of the Notice because of concern that the Securities were not safe investments for the Plan.

With respect to the written comments that were submitted by Plan participants or beneficiaries, four commenters said they were in favor of the Department granting the exemption while ten commenters said they were opposed due to concern that the Securities were not a safe investment for the Plan. Three such commenters requested that a public hearing be convened, but they did not raise any material issues that would warrant a hearing.

The sole substantive written comments received by the Department were submitted by 2 commenters in identical letters requesting that Bayer explain: (1) Certain benefit restrictions that would be imposed on Plan participants in the absence of the Contribution; (2) Bayer's rationale for making bonus payments to active employees rather than making up Plan losses; and (3) Bayer's rationale for allowing profits from its U.S. operations to be taken overseas while neglecting the Plan.

With respect to their first comment regarding benefit restrictions, the commenters asked why Bayer had mentioned the potential restrictions of sections 206(g) of the Act and section 436(d)(3) of the Code in its application, which would limit lump sum payments to 50% of the participant's benefit and would defer Plan Social Security level income payouts. In response, to the commenters' concern, Bayer stated that the Pension Protection Act required it to fund a minimum required amount based on an actuarial calculation, which for Plan Year 2010 was approximately $13 million. Consistent with past practice, Bayer explained that its goal for Plan Year 2010 was to fund the Plan at 90% or greater AFTAP level. To reach this objective, Bayer said it would contribute $300 million in Securities to the Plan. As a result, Bayer believed the exemption would benefit the participants by adding an extra $285 million of value into the Plan above the minimum funding requirement.

In their second comment, the commenters asked Bayer why it had paid out generous bonuses to all active employees over the last two years instead of paying lost monies when the Plan had investment losses of 28% in 2008. In response, Bayer explained that it would meet its minimum funding obligation requirement for Plan Year 2010. Since 2008, Bayer noted that it had consistently exceeded the minimum funding requirement. Bayer also explained it had an obligation to pay bonuses in order to attract and retain talent.

In their third comment, the commenters questioned why Bayer had been allowed to take profits made from its U.S. operations out of the country, when the Plan had not been paid up to the extent required. In response, Bayer explained that since 2008, it has exceeded the funding requirements irrespective of its financial performance.

The Applicant's Comment

Bayer submitted a written comment requesting certain clarifications to the Notice. First, in order to comply with the wishes of its Tax Department, Bayer requested that it be allowed to make the

Contribution on September 14, 2011 instead of September 15, 2011.

The Department concurred with this date change shortly before the Contribution and it has revised the grant notice in the operative language in the transaction description and in the section captioned ''*Effective Date''* to reflect the actual Contribution date of September 14, 2011. The Department also notes a corresponding change to the Notice on page 49796 in Representation 13.

Second, Bayer requested that on page 49795, Representation 2 of the Notice should be amended to state that the Plan had total assets of ''$2,126,444,422'' instead of ''$2,126,444,442.'' In response, the Department notes this revision to Representation 2 of the Notice.

Third, Bayer requested that the heading ''Plan Funding for Plan Year 2011'' on page 49795 of the Notice be modified to read ''Plan Funding for Plan Year 2010'' instead. The Department notes this change to page 49795 of the Notice.

Fourth, Bayer requested that on page 49795 of the Notice, the first sentence of Representation 4, which states that the AFTAP funding level for the Plans ranges from ''90% to 96%'' should be changed to ''90% to 98%.'' The Department notes this modification to Representation 4 of the Notice.

Fifth, Bayer requested that on page 49796 of the Notice, the third sentence of Representation 12 which reads: ''The Applicant states that the proposed Contribution also would violate sections 406(b)(1) and (2) of the Act,'' should be revised by changing the words ''would violate'' to ''may implicate.'' In response to this comment, the Department disagrees with this modification requested by Bayer because the Contribution would have constituted a violation of section 406(b)(1) and (2) of the Act, absent an administrative exemption. Accordingly, the Department has not noted this clarification to the Notice.

Contribution Amount Discrepancy

At the Department's request, Bayer confirmed that it had made the Contribution to the Plan on September 14, 2011. The face value of the Securities as of 3 p.m. Eastern Time on September 14, 2011 was $299,997,330. Bayer contributed an additional $2,670 in cash to bring the Contribution to $300,000,000. Then, Bayer made an additional cash contribution of $4,997,330 to the Plan. Bayer represented that the Contribution and the additional cash contribution raised the Plan's AFTAP to 92.56%. However, the total cash contribution of $5,000,000 differed from the estimated $58 million cash contribution discussed in Representation 14 of the Notice. This discrepancy concerned the Department, which requested a written explanation from Bayer.

Subsequently, Bayer submitted an explanation prepared by the Plan's Actuary, which attributed this discrepancy to in large part to 2010 investment returns of approximately 14% instead of the assumed 8% rate of return. Additional factors considered by the Plan's Actuary included the use of actual census data and the reflection of updated prescribed assumptions, including an actual 6.29% effective interest rate instead of an assumed 6.20% effective interest rate. As a result, Bayer had only to contribute approximately $305 million in cash and the Securities to obtain an AFTAP of 92.56%.

The Department reviewed the Actuary's explanation, the Actuary's Plan estimates as of November 1, 2010, the Bayer Corporation Pension Plan Actuarial Valuation Report for Plan Year Beginning January 1, 2011 (the Actuary's Report), the Actuary's Report for Plan Year Beginning January 1, 2010, and supporting memoranda. The Department used the submitted information to estimate what would have been (1) the Plan's assets as of January 1, 2011, (2) the funding target, and (3) the funding target asset percentage, based on the Plan's investment rate of return for 2010 and the effective interest rate for 2011, that were assumed by the Plan's Actuary when it prepared the November 1, 2010 estimates of the then estimated $358 million contribution. Based on the Department's findings, the lowering of the funding contribution by $50 million to a total contribution of $308 million (which also included a $3.5 million cash contribution that Bayer made to the Plan in January 2011), seemed reasonable.

Accordingly, after giving full consideration to the entire record, including the Applicant's written comments and the written comments and requests for a public hearing submitted by Plan participants and beneficiaries, the Department has determined to grant the exemption as clarified herein. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published on August 11, 2011 at 76 FR 49795.

FOR FURTHER INFORMATION CONTACT: Mr. Anh-Viet Ly of the Department at (202) 693–8648. (This is not a toll-free number.)

Oregon-Washington Carpenters Employers Apprenticeship and Training Trust Fund (the Plan) Located in Portland, Oregon

[Prohibited Transaction Exemption 2011–24; Exemption Application No. L–11618]

Exemption

The restrictions of sections 406(a)(1)(A) and (D) of the Act, shall not apply to the sale by the Plan of certain unimproved real property known as ''Tax Lot 300'' and ''Tax Lot 400'' (together, the Tax Lots or the Property), to the Pacific Northwest Regional Council of Carpenters (the Union), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The sale is a one-time transaction for cash;

(b) At the time of the sale, the Plan receives the greater of either: (1) $390,000; or (2) the fair market value of the Property as established by a qualified, independent appraiser in an updated appraisal of such Property on the date of the sale;

(c) The Plan pays no fees, commissions or other expenses associated with the sale;

(d) The terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated third party;

(e) The Plan trustees appointed by the Union recuse themselves from discussions and voting with respect to the Plan's decision to enter into the proposed sale; and

(f) The Plan trustees appointed by the employer associations, who have no interest in the proposed sale, (1) determine, among other things, whether it is in the best interest of the Plan to proceed with the sale of the Property; (2) review and approve the methodology used in the appraisal that is being relied upon; and (3) ensure that such methodology is applied by the qualified, independent appraiser in determining the fair market value of the Property on the date of the sale.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 26, 2011 in the **Federal Register** at 76 FR 59438.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department at (202) 693–8556. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of December, 2011.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2011–31742 Filed 12–9–11; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0195]

Acrylonitrile Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified by the Acrylonitrile Standard (29 CFR 1910.1045).

DATES: Comments must be submitted (postmarked, sent, or received) by February 10, 2012.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0195, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2011–0195) for this Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the Acrylonitrile (AN) Standard protect workers from the adverse health effects that may result from their exposure to AN. The major information collection requirements of the AN Standard include notifying workers of their AN exposures, implementing a written compliance program, providing examining physicians with specific information, ensuring that workers receive a copy of their medical examination results, maintaining workers' exposure monitoring and medical records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected workers, and designated representatives.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;

• The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;

• The quality, utility, and clarity of the information collected; and

• Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

The Agency is requesting an adjustment in the burden hours from 3,163 to 2,199, a total decrease of 864 hours. The change in burden hours is due to reducing the number of plants using AN. There was also a reduction in cost from $180,946 to $146,718 as a result of fewer workers receiving exposure monitoring and medical examinations.

The Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Acrylonitrile Standard (29 CFR 1910.1045).

OMB Control Number: 1218–0126.

Affected Public: Business or other for-profits:

Number of Respondents: 17.

Total Responses: 5,624.

Frequency: On occasion.

Average Time per Response: Varies from 5 minutes (.08 hour) to provide information to the examining physician to 1.5 hours for a worker to receive a medical examination.

Estimated Total Burden Hours: 2,299.

Estimated Cost (Operation and Maintenance): $146,718.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0195). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information, such as Social Security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (75 FR 55355).

Signed at Washington, DC, on December 7, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–31779 Filed 12–9–11; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Thursday, December 15, 2011.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

Matters To Be Considered

1. Final Rule—Part 704 of NCUA's Rules and Regulations, Corporate Credit Unions.
2. NCUA Strategic Plan 2011–2014.
3. NCUA Annual Performance Budget 2012.
4. National Security Delegations of Authority.
5. Request from Henrico Federal Credit Union to Expand its Community Charter.
6. Proposed Rule—Parts 701, 703 and 742 of NCUA's Rules and Regulations, Reg Flex Relief.
7. Proposed Rule—Parts 701 and 741 of NCUA's Rules and Regulations, Loan Participations.
8. Advance Notice of Proposed Rulemaking, Part 741 of NCUA's Rules and Regulations, Maintaining Access to Emergency Liquidity.
9. 2012 Budget for NCUA Guaranteed Note Securities Management and Oversight.
10. Insurance Fund Report.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, *Telephone:* (703) 518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2011–31928 Filed 12–8–11; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice Revised

The National Science Board, 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 revised notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: Monday, December 12, 2011 at 2 p.m., Tuesday, December 13 at 8 a.m., and Wednesday, December 14, at 8 a.m.

PLACE: These meetings will be held at the National Science Foundation, 4201Wilson Blvd., Room 1235, Arlington, VA 22230. 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 and provide name and organizational affiliation. 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.

WEBCAST INFORMATION: The public meetings and public portions of meetings will be webcast. To view the meetings, go to *http://www.tvworldwide.com/events/nsf/111213* and follow the instructions.

UPDATES: Please refer to the National Science Board Web site *http://www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.*

AGENCY CONTACT: Jennie L. Moehlmann, *jmoehlma@nsf.gov,* (703) 292–7000.

PUBLIC AFFAIRS CONTACT: Dana Topousis, *dtopousi@nsf.gov,* (703) 292–7750.

STATUS: Portions open; portions closed.

CLOSED SESSIONS:

December 12, 2011

4 p.m.–4:45 p.m.

December 13, 2011

9:40 a.m.–9:45 a.m.
11:15 a.m.–12 p.m.
4:45 p.m.–5 p.m.

December 14, 2011

11 a.m.–11:15 a.m.
11:15 a.m.–11:45 a.m.

OPEN SESSIONS:

December 12, 2011

2 p.m.–4 p.m.

December 13, 2011

8 a.m.–8:20 a.m.
8:20 a.m.–9 a.m.
9 a.m.–9:40 a.m.
9:45 a.m.–11:15 a.m.
1:15 p.m.–2:30 p.m.
2:30 p.m.–3:30 p.m.
3:30 p.m.–4:45 p.m.

December 14, 2011

8 a.m.–8:45 a.m.
8:45 a.m.–9:45 a.m.
9:45 a.m.–10:45 a.m.
11:45 a.m.–12:15 p.m.
1:15 p.m.–3 p.m.

MATTERS TO BE DISCUSSED:

Monday, December 12, 2011

Committee on Programs and Plans (CPP)

Open Session: 2 p.m.–4 p.m.

- Approval of Open CPP Minutes for July 2011
- Committee Chairman's Remarks: *CY 2012 Schedule of Action and Information Items for NSB Review; CPP Task Force on Unsolicited Mid-Scale Research—Charge Revision*
- Discussion Item: Status of CPP Program Portfolio Planning
- NSB Information Items: Update on Polar Contracts, Update Subcommittee on Recompetition of NSF Facilities
- NSB Information Item & Discussion: NSF High Performance Computing Strategy
- NSB Briefing: Update on Changes in BIO Process in Receipt of Proposals

Committee on Programs and Plans (CPP)

Closed Session: 4 p.m.–4:45 p.m.

- Committee Chairman's Remarks
- Approval of Closed CPP Minutes for July 2011 and October 2011
- NSB Action: Operation of the International Astronomy Observatory

Tuesday, December 13, 2011

Plenary Board Meeting

Open Session 8 a.m.–8:20 a.m.

- Chairman's Introduction

CPP Task Force on Unsolicited Mid-Scale Research (MS)

Open Session 8:20 a.m.–9 a.m.

- Approval of the September 13, 2011 Task Force Meeting minutes
- Presentation and discussion of the NSF mid-scale award data analysis
- Discussion of the revised MS Task Force report outline
- Update on the MS Task Force customer satisfaction survey

CSB Subcommittee on Facilities (SCF)

Open Session: 9 a.m.–9:40 a.m.

- Chairman's Remarks
- Approval of Minutes from recent teleconferences: October 12, 2011, November 14, 2011
- Final Approval of the Mid-scale Instrumentation Report to Congress
- Planning discussion for upcoming SCF meetings in February and May 2012
- Chairman's Closing Remarks

CSB Subcommittee on Facilities (SCF)

Closed Session: 9:40 a.m.–9:45 a.m.

- Chairman's Remarks
- Approval of minutes from the July 29, 2011 closed meeting

Committee on Strategy and Budget (CSB)

Open Session: 9:45 a.m.–11:15 a.m.

- Committee Chairman's Remarks
- SCF Update and Report to Congress
- Update on FY 2012 Budget
- Strategic Planning
- Closing Remarks

Committee on Strategy and Budget (CSB)

Closed Session: 11:15 a.m.–12 p.m.

- Approval of the August 29, 2011 and September 6, 2011 Teleconference Minutes
- FY 2012 Transfer Authority
- Update on NSF FY 2013 Budget Development
- Policies and planning for budget processes for FY 2014 and beyond

Committee on Education and Human Resources (CEH)

Open Session: 1:15 p.m.–2:30 p.m.

- Approval of July 2011 minutes
- Update on the National Science and Technology Council Committee on STEM—Inventory of Federal STEM education activities and 5-year strategic Federal STEM education plan
- Discussion of the NSF STEM education research portfolio: getting from theory to scale

Task Force on Merit Review (MR)

Open Session: 2:30 p.m.–3:30 p.m.

- Approval of minutes from the July 28, 2011 meeting, August 24, 2011 teleconference, September 13, 2011 meeting
- Task Force Chairmen's Remarks
- Discussion of Final Report and Recommendations
- Task Force Chairmen's Closing Remarks

Committee on Audit and Oversight (A&O)

Open Session: 3:30 p.m.–4:45 p.m.

- Approval of Minutes of the July 28, 2011 Open Session
- Committee Chairman's Opening Remarks
- Inspector General's Update
- FY 2011 Financial Statement Audit Report
- Chief Financial Officer's Update
- Chief Information Officer's Report
- Human Capital Management Update
- OIG FY 2012 Audit Plan
- Update on Procedures re Personally Identifiable and Sensitive Information
- Committee Chairman's Closing Remarks

Committee on Audit and Oversight (A&O)

Closed Session: 4:45 p.m.–5 p.m.

- Approval of Minutes of the July 28, 2011 Meeting Closed Session
- Committee Chair's Opening Remarks
- Procurement activities
- Interim briefing of an ongoing OIG investigation regarding the process

for reviewing Board Member proposals.

Wednesday, December 14, 2011

Subcommittee on Polar Issues (SOPI)

Open Session: 8 a.m.–8:45 a.m.

- Approval of Open Session Minutes, July 2011
- Committee Chairman's Remarks
- Director's Remarks
  - Briefing on Blue Ribbon Panel
  - Other Committee Business
- Update on Icebreaker Support for this year
- Discussion on Long-term Plan for Icebreaker Support

CSB Task Force on Data Policies (DP)

Open Session: 8:45 a.m.–9:45 a.m.

- Chairman's Remarks
- Approval of September 13, 2011, meeting minutes
- Discussion and Comment on the Revised Recommendations
- Closing remarks from the Chairman

Committee on Science & Engineering Indicators (SEI)

Open Session: 9:45 a.m.–10:45 a.m.

- Approval of July minutes
- Committee Chairman's Remarks
- Progress Report on *Science and Engineering Indicators 2012*
- *Science and Engineering Indicators 2012* Companion Piece
- *Science and Engineering Indicators 2012* Rollout
- Chairman's Summary

Plenary Board Meeting

Executive Closed Session: 11 a.m.–11:15 a.m.

- Approval of Executive Closed Session Minutes, September 13, 2011
- Candidate Sites for 2012 Board Retreat and Off-Site Meeting
- Approval of Honorary Award Recommendations

Plenary Board Meeting

Closed Session: 11:15 a.m.–11:45 a.m.

- Approval of Closed Session Minutes, July 2011
- Approval of Closed Session Minutes, September 6, 2011
- Awards and Agreements (Resolutions)
- Closed Committee Reports

Plenary Open

Open Session: 11:45 a.m.–12:15 p.m.

- Presentation—''Data Driven Discovery in Science''

Plenary Open

Open Session: 1:15 p.m.–3 p.m.

- Approval of Open Session Minutes
- Chairman's Report
- Director's Report
- Open Committee Reports

Meeting Adjourns: 3 p.m.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2011–31943 Filed 12–8–11; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting; January 9, 2012, Arlington, VA

The U.S. Nuclear Waste Technical Review Board will meet to discuss integration efforts undertaken by DOE–NE and DOE–EM.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, the U.S. Nuclear Waste Technical Review Board will hold a public meeting in Arlington, Virginia, on Monday, January 9, 2012. The theme of the meeting is integration within the U.S. Department of Energy Office of Nuclear Energy (DOE–NE) and the Office of Environmental Management (DOE–EM). Speakers from DOE–NE will discuss a major study being undertaken by DOE–NE that is looking at a range of fuel-cycle alternatives. They also will present work being undertaken to ensure that spent nuclear fuel (SNF) currently in storage at reactor sites can be transported either to a centralized storage facility or to a geologic repository. Speakers from DOE–EM will describe efforts being made at four DOE facilities to prepare DOE-owned SNF and high-level radioactive waste (HLW) for disposition.

The meeting will begin at 8 a.m. and will be held at the Ritz-Carlton Hotel, 1250 South Hayes Street, Arlington, Virginia 22202; (Tel) (703) 415–5000; (Fax) (703) 415–5060. A block of rooms has been reserved at the hotel for meeting attendees. To ensure receiving the federal government rate of $183.00 per night, room reservations must be made in the ''NWTRB'' room block by Friday, December 16. The number to call for reservations is 1 (800) 241–3333. The electronic reservation link is *https://www.ritzcarlton.com/en/Properties/PentagonCity/Reservations/Default.htm?nr=l&ci=1:8:2012&ng=l&co=1:9:2012&up=false#top.*

A detailed agenda will be available on the Board's Web site at *www.nwtrb.gov* approximately one week before the meeting. The agenda also may be obtained by telephone request at that time.

The meeting will be open to the public, and an opportunity for public comment will be provided at the end of the day. Those wanting to speak are encouraged to sign the ''Public Comment Register'' at the check-in table. A time limit may need to be set for individual remarks, but written comments of any length may be submitted for the record.

A transcript of the meeting will be available on the Board's Web site, by email, on computer disk, and on library-loan in paper form from Davonya Barnes of the Board's staff after January 31, 2012.

The Board was established as an independent federal agency to provide ongoing objective expert advice to Congress and the Secretary of Energy on technical issues related to nuclear waste management and to review the technical validity of DOE activities related to implementing the Nuclear Waste Policy Act. Board members are experts in their fields and are appointed to the Board by the President from a list of candidates submitted by the National Academy of Sciences. The Board is required to report to Congress and the Secretary no fewer than two times each year. Board reports, correspondence, congressional testimony, and meeting transcripts and materials are posted on the Board's Web site.

For information on the meeting agenda, contact Karyn Severson. For information on lodging or logistics, contact Linda Coultry. They can be reached at 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; (tel) (703) 235–4473; (fax) (703) 235–4495.

December 1, 2011.

Nigel Mote,

Executive Director, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 2011–31351 Filed 12–9–11; 8:45 am]

BILLING CODE 6820–AM–M

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Annual Financial and Actuarial Information Reporting

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of its

collection of information for annual financial and actuarial information reporting under 29 CFR Part 4010 (OMB control number 1212–0049; expires March 31, 2012). This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments must be submitted by February 10, 2012.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Email: reg.comments@pbgc.gov.*
- *Fax:* (202) 326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

Comments received, including personal information provided, will be posted to *http://www.pbgc.gov.*

Copies of the collection of information and comments may be obtained without charge by writing to the Disclosure Division, Office of General Counsel, at the above address or by visiting the Disclosure Division or calling (202) 326–4040 during normal business hours. (TTY/TDD users may call the Federal relay service toll-free at 1–(800) 877–8339 and ask to be connected to (202) 326–4040.)

FOR FURTHER INFORMATION CONTACT: Grace H. Kraemer, Attorney, or Catherine B. Klion, Manager Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; (202) 326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–(800) 877–8339 and ask to be connected to (202) 326–4024.)

SUPPLEMENTARY INFORMATION: Section 4010 of the Employee Retirement Income Security Act of 1974 (ERISA) requires each member of a controlled group to submit financial and actuarial information to PBGC under certain circumstances. PBGC's regulation on Annual Financial and Actuarial Information (29 CFR part 4010) specifies the items of identifying, financial, and actuarial information that filers must submit. PBGC reviews the information that is filed and enters it into an electronic database for more detailed analysis. Computer-assisted analysis of this information helps PBGC to anticipate possible major demands on the/pension insurance system and to focus PBGC resources on situations that pose the greatest risk to the system. Because other sources of information are usually not as current as the 4010 information and do not reflect a plan's termination liability, 4010 filings play a major role in PBGC's ability to protect participant and premium-payer interests.

ERISA section 4010 and PBGC's 4010 regulation specify that each controlled group member must provide PBGC with certain financial information, including audited (if available) or (if not) unaudited financial statements. They also specify that the controlled group must provide PBGC with certain actuarial information necessary to determine the liabilities and assets for all PBGC-covered plans. All non-public information submitted is protected from disclosure. Reporting is accomplished through PBGC's secure e-4010 web-based application.

OMB has approved the 4010 collection of information under control number 1212–0049 through March 31, 2012. PBGC intends to request that OMB extend approval of this collection of information for three years, without change. 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.

PBGC estimates that approximately 300 controlled groups will be subject to 4010 reporting requirements. PBGC further estimates that the total annual burden of this collection of information will be 2,620 hours and $5,088,000.

PBGC is soliciting public comments to—

- 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 methodologies 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.

Issued in Washington, DC, this 7th day of December 2011.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. 2011–31859 Filed 12–9–11; 8:45 am]

BILLING CODE 7709–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2012–2; Order No. 997]

Competitive Product Postal Price Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request for a change in competitive products prices. The changes will take effect January 22, 2012. This notice addresses procedural steps associated with this filing.

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: On November 22, 2011, the Postal Service filed notice with the Commission concerning changes in rates of general applicability for competitive products.[1] The Filing also includes related mail classification changes. The Postal Service represents that, as required by the Commission's rules, 39 CFR 3015.2(b), the Filing includes an explanation and justification for the changes, the effective date, and a schedule of the changed rates. The price

[1] Notice of the United States Postal Service of Changes in Rates of General Applicability for Competitive Products Established in Governors' Decision No. 11–8, November 22, 2011 (Filing). The Filing is available on the Commission's Web site, www.prc.gov. Pursuant to 39 U.S.C. 3632(b)(2), the Postal Service is obligated to publish the Governors' Decision and record of proceedings in the **Federal Register** at least 30 days before the effective date of the new rates or classes.

changes are scheduled to become effective January 22, 2012.

Attached to the Filing is the Governors' Decision evaluating the new prices and classification changes in accordance with 39 U.S.C. 3632–33 and 39 CFR 3015.2. The Governors' Decision provides an analysis of the competitive products' price and classification changes intended to demonstrate that the changes comply with section 3633(a) of title 39 and the Commission's rules. *See* 39 CFR 3015.7(c).

The attachment to the Governors' Decision sets forth the price changes and includes a draft Mail Classification Schedule (MCS) for competitive products of general applicability. Selected highlights of the price and classification changes follow.

Express Mail. Overall, Express Mail prices increase by 3.3 percent. Retail prices increase, on average, by 4.4 percent. The existing structure of the price categories for zoned Retail, Commercial Base and Commercial Price categories does not change. The Commercial Base category, which offers lower prices to Customers who use online or other authorized postage payment methods, decreases by 5.0 percent. Commercial Plus prices, overall, receive a zero percent increase, but some individual prices will increase and some will decrease. A new Express Mail Flat Rate Box product is added and is priced the same across all channels ($39.95).

Priority Mail. Priority Mail prices increase by 3.1 percent overall, with average retail prices increasing by about 3.2 percent. Price increase varies by rate cell and price tier. Flat Rate Box prices are small ($5.35), Medium ($11.35), Large ($15.45) and Large APO/FPO/DPO ($13.45).

The existing structure of Retail, Commercial Base and Commercial Price categories does not change. The average increase for Commercial Base prices is 3.0 percent. Commercial Plus prices increase by 2.8 percent. The price category will continue to contain Critical Mail letters and flats, a half pound price, an assortment of Flat Rate packaging, and Commercial Plus Cubic pricing.

Changes to the price structure include the following: (1) Adding a larger-sized Regional Rate box tier; [2] (2) the parcel volume threshold in Commercial Price Cubic pricing is reduced from 250,000 to 150,000 pieces, and can use soft packaging; and (3) Open and Distribute pricing for specified trays and flat tubs is to be introduced in January.

[2] If deposited at retail a $0.75 fee will be added.

Parcel Select. Parcel Select service increases, on average, by 8.5 percent. For destination entry parcels, the average price increases 7.6 percent for dropshipping at destination delivery units (DDU), 7.8 percent for parcels entered at a destination plant (DSCF), and 6.8 percent for parcels entered at a destination Network Distribution Center (NDC).

For nondestination-entered parcels, the average increases are 1.5 percent for origin NDC presort, 0.9 percent for NDC presort, and 0.8 percent for nonpresort. The barcode discount is eliminated. Lightweight Parcel Select (formerly Standard Mail commercial parcels) increase by 8.9 percent. The maximum dimensions for Regional Ground increase to accommodate any machinable parcel in this price category. In January, the Intelligent Mail Package Barcode (IMpb) feature is added for free visibility.

Parcel Return. Parcel Return Service increases, on average, by 4.6 percent. Return NDC prices retrieved at a return NDC will increase by 0 percent, and the price for parcels picked up at a return delivery unit (RDU) will increase by 8.9 percent. The Postal Service's return product offerings will be branded as ''Return Service''.

Commercial First-Class Package Service. Commercial First-Class parcels, recently transferred to the competitive product list, are renamed Commercial First-Class Package Service. Commercial First-Class Package Service prices increase, overall, 3.7 percent, with no structural changes.

Domestic Extra Services. Premium Forwarding Service prices increase 3.4 percent. The weekly reshipment fee increases to $15.25. On average, Address Enhancement Service prices increase 7.3 percent. On January 2012, 6,800 Post Office Box locations join the existing 49 locations on the competitive product list. Additional fee ranges are added for boxes in Fee Groups 2 through 7. A Package Intercept service is introduced within the Competitive Ancillary Services product, priced at $10.95.

Global Express Guaranteed and Express Mail International. Global Express Guaranteed service increases, on average, by 6.0 percent. Express Mail International (EMI) service increases, on average, by 11.6 percent.

For both GXG and EMI, classification changes include changes to published discounts: rate cell-specific discounted schedules for both GXG and EMI replace across-the-board discounts for customers using approved postage payment methods. Commercial base discount schedules replace across the board discounts for eligible shipments using selected payment methods. Customers tendering at least $100,000 in revenue per year for GXG, EMI and Priority Mail International (PMI) can request authorization for new commercial plus discounts.

Two versions of a new Express Mail International Flat Rate Box product are added: for Canada ($59.95) and for all other countries accepting EMI ($74.95), both with a maximum weight of 20 pounds.

Classification changes also include A) country group assignments for the nation of Tonga, and B) changes to the dimensional limits for EMI.

Priority Mail International. Overall, Priority Mail International (PMI) prices increase by 8.7 percent. Classification changes include the simplification of dimensional criteria for flat rate envelopes and boxes, changes to the dimensional limits for PMI and the introduction of commercial base and commercial plus discounts similar to the changes for GXG and EMI.

International Priority Airmail. International Priority Airmail has a price increase of 1.0 percent.

International Surface Air Lift. International Surface Air Lift has a price increase of 13.7 percent.

Airmail M-Bags. The published prices for Airmail M-Bags increase by 3.5 percent.

International Ancillary Services. The overall increase for international ancillary services is 5.0 percent. Money Order prices increase by 4.7 percent.

Details of these changes may be found in the attachment to Governors' Decision No. 11–18.

The Filing also includes three additional attachments: a redacted table that shows FY 2012 projected volumes, revenues, attributable costs, contribution, and cost coverage for each product, assuming implementation of new prices on January 22, 2012, a similar table assuming a hypothetical implementation on October 3, 2011 (for comparative purposes only), and an application for non-public treatment of the unredacted version of that table. The table calculates and identifies a contribution from competitive products as a percentage (7.9%) of institutional cost associated with the January 22, 2012 implementation.

Notice. The establishment of rates of general applicability for competitive products and the associated MCS changes effect a change in the draft MCS. Pursuant to subpart E of part 3020 of its rules, 39 CFR 3020.90 *et seq.,* the Commission provides notice of the Postal Service's Filing. Interested persons may express views and offer

comments on whether the planned changes are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR 3020, subpart B. Comments are due no later than December 12, 2011.

Pursuant to 39 U.S.C. 505, Natalie R. Ward is appointed as Public Representative to represent the interests of the general public in the above-captioned docket.

Supplemental information. Pursuant to 39 CFR 3015.6, the Postal Service is requested to provide a written response to the questions below. To assist in the completion of the record, answers should be provided as soon as possible, but by no later than December 5, 2011.

1. Please refer to the redacted tables attached to the Filing, which present Competitive Product Contribution & Cost Coverage Analysis'' for FY 2012 ''January 22, 2011 Implementation'' and ''October 3, 2011 Implementation.''

a. Provide FY 2012 volumes, revenues, attributable costs, contribution, and cost coverage data similar to that provided in Docket No. CP2011–26 to support all data in both the redacted and unredacted tables.[3]

b. Provide a narrative explaining the method used to forecast data in the referenced tables.

c. Provide attributable costs, revenues, and volumes data for each product grouped in ''Competitive International (including Services)'' at the same level of detail provided for all other competitive products in this docket. For each of these international products, explain how the expected revenues and costs comply with 39 U.S.C. 3633(a).

d. Please explain how the price adjustments for Parcel Select are consistent with 3633(a) and Docket No. MC2011–22, Order No. 689.[4]

2. Please refer to Governors' Decision No. 11–8. The Postal Service provides overall price increases for the following products: Express Mail 3.3 percent, Priority Mail 3.1 percent, Parcel Select 8.5 percent, Parcel Return Service 4.6 percent, First-Class Package Services 3.7 percent, Premium Forwarding Service 3.4 percent, Address Enhancement Service 7.3 percent, Global Express Guaranteed 6.0 percent, Express Mail International 11.6 percent, Priority Mail International 8.7 percent, International Priority Airmail 1.0 percent, International Surface Airlift 13.7 percent, Airmail M–Bags 3.5 percent, International Ancillary Services 5.0 percent, and international money orders 4.7 percent. Please describe the weights used to derive the Before Rates and After Rates indices relied upon to calculate the overall (average) percentage price increase for each product and service referenced above similar to the supplemental data filed in Docket No. CP2011–26. *Id.* Please show all calculations in Excel, and explain any adjustments made due to classification changes.

3. Please provide the specific prices assigned to the competitive Semi-Annual Fees for each Box Size and Fee Group. (Attachment at 141.)

4. The following refers to Note 3 at 142. Please clarify what is meant regarding the portion of the fee that ''may serve as postage on packages delivered to competitive Post Office box service customers after being brought to the Post Office by a private carrier.''

It is ordered:

1. The Commission establishes Docket No. CP2012–2 to provide interested persons an opportunity to express views and offer comments on whether the planned changes are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR 3020, subpart B.

2. Comments on the Filing are due no later than December 12, 2011.

3. The Commission appoints Natalie R. Ward as Public Representative to represent the interests of the general public in this proceeding.

4. The Postal Service shall provide a written response to the supplemental information requested in this order no later than December 5, 2011.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2011–31814 Filed 12–9–11; 8:45 am]

BILLING CODE 7710–FW–P

[3] *See, e.g.,* Docket No. CP2011–26, Notice of the United States Postal Service of Filing Supplemental Information Under Seal in Response to Commission Order No. 575, November 12, 2010; Supplemental Information Provided by the United States Postal Service in Response to Commission Order No. 575, Question 2 and Notice of Filing Material Under Seal, November 16, 2010.

[4] Docket No. MC2011–22, Order Conditionally Granting Request to Transfer Commercial Standard Mail Parcels to the Competitive Product List, March 2, 2011 (Order No. 689).

POSTAL REGULATORY COMMISSION

[Docket No. A2012–79; Order No. 1022]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Burns, Colorado 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: December 6, 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), the Commission received two petitions for review of the Postal Service's determination to close the Burns post office in Burns, Colorado. The first petition for review received November 21, 2011, was filed by Jackie Schlegel. The second petition for review received November 23, 2011, was filed by Patricia Lee Strubi. The earliest postmark date is November 17, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–79 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than December 27, 2011.

Categories of issues apparently raised. Petitioners contend that (1) the Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); and (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)).

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 participants' 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 21, 2011	Filing of Appeal.
December 6, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
December 6, 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 27, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
January 17, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
February 1, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
February 8, 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 16, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–31696 Filed 12–9–11; 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 14, 2011 at 3 p.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 matter 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 matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Wednesday, December 14, 2011 will be:

A litigation matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: December 7, 2011.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31877 Filed 12–8–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65900; File No. SR–ISE–2011–82]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to Legging Orders

December 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add a new order type called ''legging orders.'' The text of the proposed rule change is as follows (additions are in *italics* and deletions are [bracketed]):

Rule 715. Types of Orders

(a) through (j) no change.

(k) [Reserved.] *Legging Orders. A legging order is a limit order on the regular limit order book that represents one side of a complex order that is to buy or sell an equal quantity of two options series resting on the Exchange's complex order book. Legging orders are firm orders that are included in the Exchange's displayed best bid or offer.*

(1) *A legging order may be automatically generated for one leg of a complex order at a price: (i) that matches or improves upon the best displayed bid or offer on the regular limit order book; and (ii) at which the net price can be achieved when the other leg is executed against the best displayed bid or offer on the regular limit order book. A legging order will not be created at a price that locks or crosses the best bid or offer of another exchange.*

(2) *A legging order is executed only after all other executable orders (including any non-displayed size) and quotes at the same price are executed in full. When a legging order is executed, the other portion of the complex order will be automatically executed against the displayed best bid or offer on the Exchange.*

(3) *A legging order is automatically removed from the regular limit order book if: (i) the price of the legging order is no longer at the displayed best bid or offer on the regular limit order book, (ii) execution of the legging order would no longer achieve the net price of the complex order when the other leg is executed against the best displayed bid or offer on the regular limit order book, (iii) the complex order is executed in full or in part against another complex order on the complex order book, or (iv) the complex order is cancelled or modified.*

(l) and (m) no change.

Supplementary Material to Rule 715

.01 through .02 no change.

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Rule 722. Complex Orders

(a) no change.

(b) *Applicability of Exchange Rules.* Except as otherwise provided in this Rule, complex orders shall be subject to all other Exchange Rules that pertain to orders generally.

(1) and (2) no change.

(3) *Execution of Orders.* Complex orders will be executed without consideration of any prices that might be available on other exchanges trading the same options contracts.

(i) no change.

(ii) Complex orders will be automatically executed against bids and offers on the Exchange for the individual legs of the complex order provided the complex order can be executed in full or in a permissible ratio by such bids and offers. *Legging orders may be automatically generated on behalf of complex orders so that they are represented at the best bid and/or offer on the Exchange for the individual legs as provided in Rule 715(k).*

(iii) no change.

(4) No change.

Supplementary Material to Rule 722

.01 through .05 no change.

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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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a new order type called ''legging orders'' to provide additional liquidity for complex orders resting on the complex order book. A complex order resting on the complex order book may be executed either by: (i) Trading against an incoming complex order that is marketable against the resting complex order, or (ii) legging into the market when the net price of the complex order can be satisfied by executing all of the legs against the best bids or offers on the Exchange for the individual options series. Legging orders are designed to increase the opportunity for complex orders to leg into the market.

Specifically, a legging order is an order on the regular order book in an individual series that represents a leg of a two-legged complex options order.[3] A legging order may be automatically generated for one leg of a complex order at a price: (i) That matches or improves upon the best displayed bid or offer on the regular limit order book; and (ii) at which the net price can be achieved when the other leg is executed against the best displayed bid or offer on the regular limit order book. For example:

A complex order to buy 10 series 1 (S1) and to buy 10 series 2 (S2) at a net price of $2.25 (buy S1/S2 10 @ $2.25) is entered into the complex order book and there is no off-setting complex order to sell.

The complex order cannot leg into the regular market because the BBO net price available for the complex order on the ISE's regular order book is $2.40 as follows:

ISE bid	ISE offer
S1 10 @ $1.00	20 @ $1.20
S2 10 @ $1.00	20 @ $1.20

(buy S1 @ $1.20 + buy S2 @ $1.20 = $2.40 net)

Legging orders to buy 10 S1 @ $1.05 and 10 S2 @ $1.05 may be automatically generated, improving the ISE's best bid for both S1 and S2 to $1.05:

ISE bid	ISE offer
S1 10 @ $1.05 (legging order)	20 @ $1.20
S2 10 @ $1.05 (legging order)	20 @ $1.20

If a marketable order to sell 10 S1 is received, it will execute against the legging order to buy S1 at $1.05, there will be an automatic execution of the other leg of the complex order against the displayed offer for S2 at $1.20, and the legging order to buy S2 at $1.05 will be automatically cancelled. As a result, the net price of $2.25 is achieved for the complex order (buy S1 @ $1.05 + buy S2 @ $1.20 = $2.25 net).[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Legging Orders will not be generated for market maker quotes on the complex order book, as such quotes cannot leg into the market. ISE Rule 722, Supplementary Material .03.

[4] If a marketable order to sell 10 S2 is received, it will execute against the legging order to buy S2 at $1.05, there will be an automatic execution of the

Continued

Following the execution of the complex order, the ISE BBO is:

ISE bid	ISE offer
S1 10 @ $1.00	20 @ $1.20
S2 10 @ $1.00	10 @ $1.20

In addition to enabling the execution of the complex order at a net price of $2.25, the legging order enhanced execution for orders in the regular order book as (i) The incoming marketable order to sell S1 received a better price ($1.05 instead of $1.00), and (ii) liquidity to execute resting interest to sell 10 S2 at $1.20 was provided by the complex order.

A legging order is executed only after all other executable orders (including any non-displayed size) and quotes at the same price are executed in full. Accordingly, the generation of a legging order will not affect the existing priority, or execution opportunities, currently provided to participants in the regular market in any way. For example:

A complex order to buy 50 S1 and to buy 50 S2 at a net price of $2.25 (buy S1/S2 50 @ $2.25) is entered into the complex order book and there is no off-setting complex order to sell.

The complex order cannot leg into the regular market because the BBO net price available for the complex order on the ISE's regular order book is $2.40 as follows:

ISE bid	ISE offer
S1 40 @ $1.05	60 @ $1.20
S2 20 @ $1.05	80 @ $1.20

(buy S1 @ $1.20 + buy S2 @ $1.20 = $2.40 net)

Legging orders to buy 50 S1 @ $1.05 and 50 S2 @ $1.05 may be automatically generated, increasing the size of the ISE's best bid for both S1 and S2 as follows:

ISE bid	ISE offer
S1 90 @ $1.05 (50 legging order)	60 @ $1.20
S2 70 @ $1.05 (50 legging order)	80 @ $1.20

If a marketable order to sell 30 S1 is received, it will execute against the orders and/or quotes at $1.05 other than the legging order pursuant to the Exchange's regular allocation algorithm,[5] and the size of the bid for S1 will be reduced to 60 contracts as follows:

ISE bid	ISE offer
S1 60 @ $1.05	60 @ $1.20
(50 legging order)	
S2 70 @ $1.05 (50 legging order)	80 @ $1.20

If a marketable order to sell 50 S1 were then received, it will first execute the remaining 10 S1 from the orders and/or quotes at $1.05 that are not the legging order, and then execute 40 S1 against the legging order.

At this time, the complex order will also execute 40 S2 at $1.20, and the legging order to buy 50 S2 will be reduced automatically to 10 contracts. As a result, the net price of $2.25 is achieved for a partial execution of the complex order (buy 40 S1 @ $1.05 + buy 40 S2 @ 1.20 = 40 @ $2.25 net).

Following the partial execution of the complex order, the ISE BBO is:

ISE bid	ISE offer
S1 10 @ $1.05 (legging order)	60 @ $1.20
S2 30 @ $1.05 (10 legging order)	40 @ $1.20

A legging order will be removed from the regular limit order book automatically if: (i) The price of the legging order is no longer at the displayed best bid or offer on the Exchange's regular limit order book, (ii) execution of the legging order would no longer achieve the net price of the complex order when the other leg is executed against the best displayed bid or offer on the regular limit order book, (iii) the complex order is executed in full or in part against another complex order on the complex order book, or (iv) the complex order is cancelled or modified. For example:

A complex order to buy 20 S1 and to buy 20 S2 at a net price of $2.25 (buy S1/S2 20 @ $2.25) is entered into the complex order book and there is no off-setting complex order to sell.

The complex order cannot leg into the regular market because the BBO net price available for the complex order on the ISE's regular order book is $2.40 as follows:

ISE bid	ISE offer
S1 10 @ $1.05	20 @ $1.20
S2 10 @ $1.05	50 @ $1.20

(buy S1 @ $1.20 + buy S2 @ $1.20 = $2.40 net)

Legging orders to buy 20 S1 @ $1.05 and 20 S2 @ $1.05 may be automatically generated, increasing the size of the ISE's best bid for both S1 and S2 as follows:

ISE bid	ISE offer
S1 30 @ $1.05 (20 legging order)	20 @ $1.20
S2 30 @ $1.05 (20 legging order)	50 @ $1.20

If a limit order to buy 10 S1 @ $1.10 is received, the legging order to buy 20 S1 at $1.05 will be cancelled because it is no longer at the ISE best bid.

ISE bid	ISE offer
S1 10 @ $1.10	20 @ $1.20
S2 30 @ $1.05 (20 legging order)	50 @ $1.20

If a marketable order to buy 20 S1 is received, the ISE best offer will move above $1.20, resulting in the cancellation of the legging order to buy S2 at $1.05 because the net price of $2.25 can no longer be achieved.

ISE bid	ISE offer
S1 10 @ $1.10	10 @ $1.25
S2 10 @ $1.05	50 @ $1.20

(buy S1 @ $1.25 + buy S2 at $1.05 = $2.30 net)

The proposed rule specifies when a legging order can be generated. Specifically, legging orders may be generated only for simple two-legged options orders with the same quantity on both legs, and there can be only one legging order to buy in a series. Moreover, legging orders will not be generated at a price that would lock or cross the price of an away market. In addition to these limitations, the Exchange will carefully manage and curtail the number of legging orders being generated so that they do not negatively impact system capacity and performance.[6] Accordingly, legging orders may not be generated for all eligible complex orders resting on the complex order book.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under requirement under [sic] Section 6(b),[7] in general, and Section 6(b)(5)[8] in particular, 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposal is reasonably designed to benefit investors by increasing the opportunity for

other leg of the complex order against the displayed offer for S1 at $1.20, and the legging order to buy S1 at $1.05 will be automatically cancelled. As a result, the net price of $2.25 is achieved for the complex order (buy S1 @ $1.20 + buy S2 @ $1.05 = $2.25 net).

[5] *See* ISE Rule 713.

[6] The ISE will curtail the number of legging orders on an objective basis, such as limiting the number of orders generated in a particular class. The Exchange will not limit the generation of legging orders on the basis of the entering participant or the participant category of the order (*i.e.,* professional, professional customer, or public customer).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

complex orders to receive an execution, while also enhancing execution quality for orders in the regular market.

In particular, the Exchange believes that automatically generating legging orders, which will only be executed after all other executable interest at the same price (including non-displayed interest) is executed in full, will provide additional execution opportunities for complex orders, without negatively impacting any investors in the regular market. In fact, the generation of legging orders may enhance execution quality for investors in the regular market by improving the price and/or size of the ISE BBO and by providing additional execution opportunity for resting orders on the regular order book.

The Exchange also believes that the generation of legging orders is fully compliant with all regulatory requirements. In particular, legging orders are firm orders that will be displayed at the ISE BBO. A legging order will be automatically removed if it is no longer displayable at the ISE BBO or if the net price of the complex order can no longer be achieved. Moreover, to assure compliance with intermarket rules, a legging order will not be generated at a price that would lock or cross another market. Finally, the generation of legging orders is limited in scope, as they may be generated only for complex options orders with two legs. Additionally, the Exchange will closely manage and curtail the generation of legging orders to assure that they do not negatively impact system capacity and performance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) As the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove 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–ISE–2011–82 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–82. 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–ISE–2011–82 and should be submitted on or before January 3, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31736 Filed 12–9–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65897; File No. SR–Phlx–2011–163]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Options Regulatory Fee

December 6, 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 23, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase its Options Regulatory Fee (''ORF'').

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative 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, 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

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the ORF to increase it from $0.0035 per contract to $0.004 per contract in order to recoup increased regulatory expenses while also ensuring that the ORF will not exceed costs.

The ORF is assessed to each member for all options transactions executed or cleared by the member that are cleared by The Options Clearing Corporation (''OCC'') in the customer range (i.e., that clear in the customer account of the member's clearing firm at OCC). The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The ORF is imposed upon all [sic] transactions executed by a member, even if such transactions do not take place on the Exchange.[3] The ORF also includes options transactions that are not executed by an Exchange member but are ultimately cleared by an Exchange member.[4] The ORF is not charged for member options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to non-members. The dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange.

The ORF is designed to recover a portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, do not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission.

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[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the fee change is reasonable because the Exchange desires to recoup its regulatory expenses while also ensuring that the revenue collected from the ORF does not exceed regulatory costs.

The Exchange believes that the ORF is equitable and not unfairly discriminatory because it is objectively allocated to Exchange members in that it would continue to be charged to all members on all of their transactions that clear as customer at OCC. The Exchange is assessing higher fees to those member firms that require more Exchange regulatory services based on the amount of customer options business they conduct. In addition, the ORF seeks to recover the costs of supervising and regulating members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The ORF is not charged for member options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to non-members. Additionally, the dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation.

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.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

[3] The ORF applies to all ''C'' account origin code orders executed by a member on the Exchange. Exchange rules require each member to record the appropriate account origin code on all orders at the time of entry in order to allow the Exchange to properly prioritize and route orders and assess transaction fees pursuant to the rules of the Exchange and report resulting transactions to the OCC. *See* Exchange Rule 1063, Responsibilities of Floor Brokers, and Options Floor Procedure Advice F–4, Orders Executed as Spreads, Straddles, Combinations or Synthetics and Other Order Ticket Marking Requirements. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

[4] In the case where one member both executes a transaction and clears the transaction, the ORF is assessed to the member only once on the execution. In the case where one member executes a transaction and a different member clears the transaction, the ORF is assessed only to the member who executes the transaction and is not assessed to the member who clears the transaction. In the case where a non-member executes a transaction and a member clears the transaction, the ORF is assessed to the member who clears the transaction.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–163 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-2011–163. 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–2011–163 and should be submitted on or before January 3, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31734 Filed 12–9–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65898; File No. SR–ISE–2011–78]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Threshold Levels for Tier-Based Rebates for Qualified Contingent Cross Orders and Solicitation Orders Executed on the Exchange

December 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 22, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend the threshold levels for tier-based rebates for Qualified Contingent Cross (''QCC'') orders and Solicitation orders. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[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 this proposed rule change is to amend the threshold contract levels to encourage members to submit greater numbers of QCC orders and Solicitation orders to the Exchange. The Exchange currently provides a rebate to Members who reach a certain volume threshold in QCC orders and/or Solicitation orders during a month.[3] Once a Member reaches the volume threshold, the Exchange provides a rebate to that Member for all of its QCC and Solicitation traded contracts for that month. The rebate is paid to the Member entering a qualifying order, *i.e.,* a QCC order and/or a Solicitation order. The rebate applies to QCC orders and Solicitation orders in all symbols traded on the Exchange. Additionally, the threshold levels are based on the originating side so if, for example, a Member submits a Solicitation order for 1,000 contracts, all 1,000 contracts are counted to reach the established threshold even if the order is broken up and executed with multiple counter parties.

The current volume threshold and corresponding rebate per contract is:

Originating contract sides	Rebate per contract
0–99,999	$0.00
100,000–1,699,999	0.01
1,700,000–2,499,999	0.03
2,500,000–3,499,999	0.05
3,500,000+	0.07

The Exchange now proposes to amend the current tiers by: (1) Increasing the threshold for Members to qualify for a rebate, from a minimum of 100,000 qualifying contracts to 200,000 qualifying contracts. While the Exchange proposes to increase the minimum threshold level, the Exchange also proposes to increase the rebate payable for this tier, from $0.01 per contract to $0.02 per contract; (2) lowering the contract threshold level for the middle tier while maintaining the rebate at $0.03 per contract; (3) lowering the contract threshold and the per contract rebate for the fourth tier; and (4) lowering the amount of qualifying contracts a Member must trade to qualify for the maximum per contract

[3] *See* Exchange Act Release Nos. 65087 (August 10, 2011), 76 FR 50783 (August 16, 2011) (SR–ISE–2011–47); 65583 (October 18, 2011), 76 FR 65555 (October 21, 2011) (SR–ISE–2011–68); and 65705 (November 8, 2011), 76 FR 70789 (November 15, 2011) (SR–ISE–2011–70).

rebate, from 3,500,000 qualifying contracts to 2,000,000 qualifying contracts. To accommodate the proposed lower threshold, the Exchange also proposes to lower the rebate payable for this tier, from $0.07 per contract to $0.05 per contract. With the proposed changes to the tiers, the Exchange is attempting to strike the right balance between the number of qualifying contracts and its corresponding rebate to ensure that the incentive program achieves its intended purpose of attracting greater order flow from its Members.

With the proposed amended tiers, the volume threshold and corresponding rebate per contract will be as follows:

Originating contract sides	Rebate per contract
0–199,999	$0.00
200,000–999,999	0.02
1,000,000–1,699,999	0.03
1,700,000–1,999,999	0.04
2,000,000+	0.05

Further, the Exchange currently assesses per contract transaction charges and credits to market participants that add or remove liquidity from the Exchange (''maker/taker fees'') in a select number of options classes (the ''Select Symbols'').[4] For Solicitation orders in the Select Symbols, the Exchange currently provides a rebate of $0.15 to contracts that do not trade with the contra order in the Solicited Order Mechanism. The Exchange does not propose any change to that rebate and that rebate will continue to apply.

The Exchange has designated this proposal to be operative on December 1, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Exchange Act'')[5] in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act[6] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange Members. The Exchange believes that the proposed fee change will generally allow the Exchange and its Members to better compete for order flow and thus enhance competition. Specifically, the Exchange believes that its proposal, which among other things, lowers the threshold level for Members to qualify for the highest per contract rebate payable, is reasonable as it will encourage Members who direct their QCC and Solicitation orders to the Exchange to continue to do so instead of sending this order flow to a competing exchange. The Exchange believes that with the proposed amended tiers, more Members are now likely to qualify for higher rebates for sending their QCC and Solicitation orders to the Exchange.

The Exchange notes that it currently has other incentive programs to promote and encourage growth in specific business areas. For example, the Exchange has lower fees (or no fees) for customer orders;[7] and tiered pricing that reduces rates for market makers based on the level of business they bring to the Exchange.[8] This proposed rule change targets a particular segment in which the Exchange seeks to garnish greater order flow. The Exchange further believes that the rebate currently in place for QCC and Solicitation orders is reasonable because it is designed to give Members who trade a minimum of 200,000 qualifying contracts in QCC and Solicitation orders on the Exchange a benefit by way of a lower transaction fee. As noted above, once a Member reaches an established volume threshold, all of the trading activity in the specified order type by that Member will be subject to the corresponding rebate.

The Exchange also believes that its rebate program for QCC and Solicitation orders is equitable because it would uniformly apply to all Members engaged in QCC and Solicitation trading in all option classes traded on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2011–78 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–78. 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

[4] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] For example, the customer fee is $0.00 per contract for products other than Singly Listed Indexes, Singly Listed ETFs and FX Options. For Singly Listed Options, Singly Listed ETFs and FX Options, the customer fee is $0.18 per contract. The Exchange also currently has an incentive plan in place for certain specific FX Options which has its own pricing. *See* ISE Schedule of Fees.

[8] The Exchange currently has a sliding scale fee structure that ranges from $0.01 per contract to $0.18 per contract depending on the level of volume a Member trades on the Exchange in a month.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

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–ISE–2011–78 and should be submitted on or before January 3, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31735 Filed 12–9–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65901; File No. SR–DTC–2011–10]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules Relating to Existing Operational Arrangements Involving Eligibility of Securities

December 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 25, 2011, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which items have been prepared primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) and Rule 19b–4(f)(4) thereunder so that the proposed rule change was effective upon filing with the Commission.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The purpose of this proposed rule change is to update the existing contractual operational arrangements necessary for a securities issue to become and remain eligible for the services at DTC.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

DTC's operational arrangement (''Operational Arrangement'' or ''OA'') was first published in June 1987 and subsequently updated in June 1988, February 1992, December 1994, January 1998, May 2002, and most recently in January 2009.[5] The OA is designed to maximize the number of issues of securities that may be made eligible for DTC services and to provide for the orderly processing of such securities and the timely payments to DTC participants. DTC's experience demonstrates that when participants, issuers, underwriters, agents (as such terms are defined in the DTC rules or in the OA), and their counsel are aware of DTC's requirements, those requirements may be more readily met. DTC is now proposing to update the OA to clarify DTC's processes and to mitigate certain risk associated with those processes. Additionally, DTC is proposing to make several ministerial changes, including changes related to methods of notification, and to add clarifying language to provide a more concise description of OA procedures.

The primary differences between the proposed amended OA and the OA as filed with the Commission in 2009 are as follows:

1. Matters that were previously the subject of proposed rule change filings with the Commission but were never incorporated into the OA:

a. In March 2010, DTC filed with the Commission a proposed rule change modifying the required notification method for the assumption or termination of transfer agent services.[6] DTC is now proposing to update the OA to reflect those methods for notifying DTC of transfer agency changes.

b. In May 2010, DTC filed with the Commission a proposed rule change updating DTC procedures regarding the Participant Tender Offer Program in order to provide DTC participants with a more efficient process for making elections regarding corporate action events which DTC deemed appropriate for processing.[7] DTC is now proposing to update the OA to reflect that process.

c. In November 2010, DTC filed with the Commission a proposed rule change to automate the approval process relating to providing trustee access to the Security Position Report Service at the point of eligibility.[8] DTC is now proposing to update the OA to reflect that process.

d. In April 2011, the Commission approved a DTC proposed rule change amending the requirements for transfer agents to maintain a balance certificate in the Fast Automated Securities Transfer Program (''FAST'').[9] DTC is now proposing to update the OA to specify that transfer agents participating in FAST that act for issues participating in the Direct Registration System no

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii) and 17 CFR 240.19b–4(f)(4).

[3] The text of the proposed rule change is attached as Exhibit 5 to DTC's filing, which is available at *http://www.dtcc.com/downloads/legal/rule_filings/2011/dtc/2011-10.pdf.*

[4] The Commission has modified the text of the summaries prepared by NSCC.

[5] Securities Exchange Act Release 24818 (August 19, 1987), 52 FR 31833 (August 24, 1987) (File No. SR–DTC–87–10); 25948 (July 27, 1988), 53 FR 29294 (August 3, 1988) (File No. SR–DTC–88–13); 30625 (April 30, 1992), 57 FR 18534 (April 30, 1992) (File No. SR–DTC–92–06); 35342 (February 8, 1995), 60 FR 8434 (February 14, 1995) (File No. SR–DTC–94–19); 39894 (April 21, 1998), 63 FR 23310 (April 28, 1998) (File No. SR–DTC–97–23); 45994 (May 29, 2002), 68 FR 35037 (June 11, 2003) (File No. SR–DTC–2002–02); 59199 (January 6, 2009), 74 FR 1266 (January 12, 2009) (File No. SR–DTC–2008–14).

[6] Securities Exchange Release Act No. 61620 (March 1, 2010) 75 FR 10539 (March 8, 2010) (File No. SR–DTC–2010–04).

[7] For Securities Exchange Act Release No. 62119 (May 18, 2010) 75 FR 29374 (May 25, 2010) (File No. SR–DTC–2010–08).

[8] Securities Exchange Release Act No. 63245 (November 4, 2010) 75 FR 69150 (November 10, 2010) (File No. SR–DTC–2010–10).

[9] Securities Exchange Act Release No. 64191 (April 5, 2011), 76 FR 20061 (April 11, 2011) (File No. SR–DTC–2010–15).

longer need to maintain a balance certificate.

e. In August 2011, the Commission approved a DTC proposed rule change relating to processing early redemptions of certain certificates of deposit.[10] DTC is now proposing to update the OA to reflect those changes.

2. In January 2011, DTC published an Important Notice to provide issuers and their transfer agents guidance on key criteria and processes applicable to eligibility for book-entry delivery and depository services.[11] DTC is now proposing to update the OA in order to be consistent with the Important Notice and to clarify DTC's eligibility process.

3. For purposes of consistency, DTC is proposing to include an Important Legal Information Section in the OA, which adopts language from current DTC's Rules and Procedures.

4. The following processes in order to mitigate risk associated with processing:

a. DTC is proposing to require an issuer or its transfer agent obtain a new CUSIP number from Standard & Poor's CUSIP Service Bureau in order to facilitate the adequate processing of a corporate action event, such as an interest payment. This change should reduce the number of processing problems associated with corporate.

b. DTC is proposing to add language to the OA to establish that the record date for equity securities must coincide with the established ex-date announced by the applicable stock exchange on which the security is listed. Additionally, DTC is proposing to require that if a security is listed on an exchange or trading in the secondary market, the issuer must distribute a shareholder notice to the respective exchange that announces the issuer's intent to effect a corporate action. These changes are consistent with current practice and should help mitigate risk associated with corporate actions.

c. DTC is proposing to update the OA to require that agents send payments of less than $1 billion in same-day funds no later than 1 p.m. eastern time and to send payments of $1 billion or more in same day funds no later than 12 p.m. eastern time in order to facilitate the timely processing of payments. This change reflects the current industry practice relating to reorganization payments.

d. DTC is proposing to require issuer and their agents to annually certify that their bank account numbers on DTC's records are accurate.

e. DTC is proposing to codify established practice of requiring the issuer or agent to provide DTC a notice of reduction in the stock distribution or dividend amount due DTC as a result of the reduction of treasury or repurchased shares (*i.e.,* an issuer ''buy back'') held on deposit by DTC on record date. As proposed, the issuer or agent will be required to provide specified information together with the participant or participants' confirmation letters preferable five business days but no fewer than three business days prior to the payable date for that security. Failure of a participant to comply with notification to DTC to effect timely adjustments to the participant's accounts could jeopardize the same-day distribution of payments to the participant and beneficial owners holding through it. DTC is also proposing to add a disincentive fee for participants that submit instructions to DTC outside of the established timeframes.

5. DTC is proposing to include corrections and clarifications in the OA relating to corporate action notification and processing requirements. These changes reflect current practice with agents and include requirements for what needs to be provided to DTC in the event that the terms of an offer are amended.

(2) Statutory Basis

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC because it should facilitate the prompt and accurate clearance and settlement of securities transactions by clarifying provisions in the DTC's OA pertaining to existing eligibility requirements and processes. In so doing, these clarifications should in turn expedite the process of making securities eligible for DTC services and reduce risk associated with processing corporate reorganization events.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(4)[13] thereunder because it is a change in an existing service that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission 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–DTC–2011–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submission should refer to File Number SR–DTC–2011–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[10] Securities Exchange Act Release Numbers 64864 (July 12, 2011) 76 FR 42149 (July 18, 2011) (File No. SR–DTC–11–06).

[11] DTC Important Notice B#0006–11 available at *http://www.dtcc.com/downloads/legal/imp_notices/2011/dtc/set/0006-11.pdf.*

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(4).

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 Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2011/dtc/2011-10.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2011–10 and should be submitted on or before January 3, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31737 Filed 12–9–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65896; File No. SR–FINRA–2011–067]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Whistleblower Claims in Arbitration

December 6, 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 21, 2011, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 13201 of the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') to align the rule with statutes that invalidate predispute arbitration agreements for whistleblower claims. The proposed rule change also would make a conforming amendment to FINRA Rule 2263.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend FINRA Rule 13201 (Statutory Employment Discrimination Claims) of the Industry Code, and FINRA Rule 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4), to align the rules with statutes that invalidate predispute arbitration agreements for whistleblower claims.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'')[3] amended the Sarbanes-Oxley Act of 2002 (''SOX'') by adding a new paragraph (e) to 18 U.S.C. 1514A[4] to provide that:

(1) WAIVER OF RIGHTS AND REMEDIES—The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

(2) PREDISPUTE ARBITRATION AGREEMENTS—No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.

Prior to the Dodd-Frank Act, it was FINRA staff's articulated position that parties were required to arbitrate SOX whistleblower claims under the Industry Code.[5]

In light of the changes set forth in the Dodd-Frank Act that invalidate predispute arbitration agreements in the case of SOX whistleblower claims, the proposed rule change would amend FINRA Rule 13201 of the Industry Code to make clear that parties are *not* required to arbitrate SOX whistleblower claims, superseding the existing guidance to the contrary. While the main impetus for the proposed rule change is the need to update FINRA staff's stated position on SOX whistleblower claims, FINRA proposes to make the rule text broad enough to cover any statutes that prohibit predispute arbitration agreements for whistleblower claims.[6]

Rule 13201 of the Industry Code currently provides that a claim alleging employment discrimination, including sexual harassment, in violation of a statute, is not required to be arbitrated under the Industry Code. Such a claim may be arbitrated only if the parties have agreed to arbitrate it, either before or after the dispute arose. The proposed rule change would amend Rule 13201 to add a new provision to provide that a dispute arising under a whistleblower statute that prohibits the use of predispute arbitration agreements is not required to be arbitrated under the Industry Code. The rule would state that such a dispute may be arbitrated only if the parties have agreed to arbitrate it after the dispute arose.

FINRA also would amend the title of Rule 13201 to reflect the addition of the new provision relating to whistleblower claims. FINRA structured the proposed rule change to separate the provision relating to statutory employment discrimination claims from the provision relating to whistleblower claims. While parties may agree to arbitrate a statutory employment discrimination claim either before or after a dispute arises, the Dodd-Frank Act invalidates predispute agreements to arbitrate certain whistleblower claims.

The proposed rule change also would make a conforming amendment to FINRA Rule 2263, which requires firms

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, § 919 (2010).

[4] *See* Dodd-Frank Section 922(c)(2), adding 18 U.S.C. 1514A(e) (Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration of Disputes).

[5] *See Arbitrability of Sarbanes-Oxley Whistleblower Claims* by Laurence S. Moy, Pearl Zuchlewski, Linda A. Neilan and Katherine Blostein, *The Neutral Corner* (Volume 1—2008).

[6] The Dodd-Frank Act also invalidated predispute arbitration agreements in other whistleblower statutes, including, for example, 7 USCA § 26(n) relating to Commodity Exchange Whistleblower Incentives and Protections.

to provide each associated person with certain written disclosures regarding the nature and process of arbitration proceedings whenever the firm asks an associated person, pursuant to FINRA Rule 1010 (Electronic Filing Requirements for Uniform Forms), to manually sign a new or amended Form U4, or to otherwise provide written acknowledgment of an amendment to the form. The proposed rule change would amend FINRA Rule 2263 to add a disclosure provision stating that a dispute arising under a whistleblower statute that prohibits the use of predispute arbitration agreements is not required to be arbitrated under FINRA rules, and that such a dispute may be arbitrated at FINRA only if the parties have agreed to arbitrate it after the dispute arose.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed amendments are consistent with the provisions of the Act noted above because they serve to align FINRA rules with those provisions in the Dodd-Frank Act that invalidate predispute arbitration agreements in the context of certain whistleblower claims.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–067 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–067. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–FINRA–2011–067 and should be submitted on or before January 3, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31761 Filed 12–9–11; 8:45 a.m.]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78o–3(b)(6).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65903; File No. SR–EDGX–2011–37]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule To Amend EDGX Rule 11.9

December 6, 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 December 2, 2011, the EDGX Exchange, Inc. (''Exchange'' or ''EDGX'') 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 introduce an additional routing option to Rule 11.9 and amend existing routing options. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 self-regulatory organization has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's current list of routing options are codified in Rule 11.9(b)(3). In this filing, the Exchange proposes to amend several routing options contained in Rule 11.9(b)(3)(c) to allow Users more discretion if shares remain unexecuted after routing. In particular, Rules 11.9(b)(3)(c)(i)–(iii) are proposed to be amended to provide Users with the added option of posting any remainder of an order to another destination on the System routing table.

Currently, Rules 11.9(b)(3)(c)(i)–(iii) provide that the ROUE, ROUT and ROUX routing strategies check the System for available shares and then are sent to destinations on the System routing table. If shares remain unexecuted after routing, they are posted on the Exchange's book, unless otherwise instructed by the User. The Exchange proposes to modify this strategy to add the option that any remainder of an order can be posted to another destination on the System routing table or the Exchange's book. This User instruction would consequently allow the User added discretion to post the remainder to a destination other than the EDGX book.

The Exchange believes the proposed modification of the routing options described above will provide market participants with greater flexibility in routing orders without having to develop their own complicated routing strategies.

The Exchange will notify its Members in an information circular of the exact implementation date of this rule change, which will be no later than March 31, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[3] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed change to introduce the routing options described above will provide market participants with greater flexibility in routing orders without having to develop their own order routing strategies.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder.[5]

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 No. SR–EDGX–2011–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2011–37. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal 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–EDGX–2011–37 and should be submitted on or before January 3, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31764 Filed 12–9–11; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78f(b)(5).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 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.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65902; File No. SR–EDGA–2011–39]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule To Amend EDGA Rule 11.9

December 6, 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 December 2, 2011, the EDGA Exchange, Inc. (''Exchange'' or ''EDGA'') 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 introduce an additional routing option to Rule 11.9 and amend existing routing options. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at *www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's current list of routing options are codified in Rule 11.9(b)(3). In this filing, the Exchange proposes to amend several routing options contained in Rule 11.9(b)(3)(c) to allow Users more discretion if shares remain unexecuted after routing. In particular, Rules 11.9(b)(3)(c)(i)–(iii) are proposed to be amended to provide Users with the added option of posting any remainder of an order to another destination on the System routing table.

Currently, Rules 11.9(b)(3)(c)(i)–(iii) provide that the ROUE, ROUT and ROUX routing strategies check the System for available shares and then are sent to destinations on the System routing table. If shares remain unexecuted after routing, they are posted on the Exchange's book, unless otherwise instructed by the User. The Exchange proposes to modify this strategy to add the option that any remainder of an order can be posted to another destination on the System routing table or the Exchange's book. This User instruction would consequently allow the User added discretion to post the remainder to a destination other than the EDGA book.

The Exchange believes the proposed modification of the routing options described above will provide market participants with greater flexibility in routing orders without having to develop their own complicated routing strategies.

The Exchange will notify its Members in an information circular of the exact implementation date of this rule change, which will be no later than March 31, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[3] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed change to introduce the routing options described above will provide market participants with greater flexibility in routing orders without having to develop their own order routing strategies.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder.[5]

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 No. SR–EDGA–2011–39 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b)(5).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 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.

All submissions should refer to File Number SR–EDGA–2011–39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal 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–EDGA–2011–39 and should be submitted on or before January 3, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31763 Filed 12–9–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65899; File No. SR–FICC–2008–01]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Allow the Mortgage-Backed Securities Division To Provide Guaranteed Settlement and Central Counterparty Services

December 6, 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 March 12, 2008, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission''), and on November 21, 2011, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule changes consist of modifications to the rules of FICC's MBSD to allow MBSD to provide guaranteed settlement and central counterparty (''CCP'') services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of this rule filing is to introduce CCP and guaranteed settlement services for the MBSD. Establishment of these processes for the MBSD has necessitated the drafting of a new MBSD rulebook. Therefore, the existing MBSD clearing rulebook will be replaced, in its entirety, by a new rulebook.[3] Certain provisions in the current MBSD rules which reflect processes that will continue upon the introduction of the CCP services have been retained in the proposed MBSD rulebook, where applicable. In order to promote uniformity between FICC's two Divisions and to create transparency for common members, the new MBSD rulebook follows the structure of the Government Securities Division (the ''GSD'') rulebook. In addition, where possible and/or applicable, the new MBSD provisions mirror the equivalent GSD provisions. It should be noted that under the current MBSD Clearing Rules, member firms are referred to as ''Participants.'' In the new MBSD CCP rulebook, which is proposed by this filing, member firms shall be referred to as ''Clearing Members.''

I. Overview

With the introduction of CCP services and guaranteed settlement for transactions submitted to the MBSD, FICC will provide a trade guarantee for all existing types of trades upon comparison of trade details submitted by members.[4] Additionally, a new pool netting system will perform a daily net of pool allocations for those TBA trades that according to the MBSD rules and procedures are eligible for pool netting.[5] It should be noted that not all guaranteed trades will be included in the pool netting system. A determination of which trades are included will be determined by netting percentages. FICC will become CCP to those obligations, and settlement will occur versus FICC. For all other obligations, settlement will occur outside of FICC, with original settlement counterparties.

A. Current Processing

At no time during the current MBSD processing does FICC guarantee settlement, or act as a CCP for submitted transactions. Under the current MBSD processing model, the majority of the trading activity submitted to the MBSD for processing, is submitted as Settlement Balance Order Destined (''SBOD''). SBOD trades are eligible for comparison, risk management services and the TBA Netting cycle. Firms can submit TBA trades as Trade-For-Trade (''TFTD'') transactions, which are TBA trades that are eligible for comparison and risk management services but ineligible for the TBA Netting cycle. SPTs are not considered TBAs because the actual pool number is part of the trade terms; SPTs are eligible for comparison and risk management services but ineligible for the TBA Netting cycle.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The MBSD's Electronic Pool Notification Service rulebook will remain unchanged.

[4] Currently, the MBSD recognizes two types of trades. Those are ''to be announced'' (''TBA'') trades and specified pool trades (''SPTs''). TBA trades may proceed through the Settlement Balance Order engine for netting or may settle on a trade-for-trade basis. A TBA is a contract for the purchase or sale of agency mortgage-backed securities to be delivered at a future agreed-upon date; however, the actual pool identities or the number of pools that will be delivered to fulfill the trade obligation or terms of the contract are unknown at the time of the trade. The difference between TBAs and SPTs is that for an SPT all required pool data, including the pool number to be delivered on settlement date, are agreed upon by Clearing Members at the time of execution.

[5] SPTs are not eligible for pool netting under this proposal.

Each of the transactions mentioned above is compared by FICC's RTTM™ system. Settlement obligations for SPTs and TBA TFTD transactions are generally established when a report indicating the trade as compared is made available by the MBSD to the Participants on both sides of the transaction.[6] Settlement obligations for TBA SBOD transactions are not established in this way. Instead, SBOD transactions proceed to the MBSD's settlement balance order (''SBO'') engine for TBA netting. The TBA Netting process establishes the settlement obligations for the SBOD transactions.

The SBO netting system produces settlement obligations between MBSD Participants. Once Participants' settlement obligations are established, Participants use FICC's electronic pool notification service (the ''EPN Service'') to inform each other with respect to the specific pools that will be delivered for settlement purposes. Thereafter, members transmit notifications of settlement to FICC when they have ultimately settled their obligations with applicable counterparties.

B. Proposed Processing—Overview

Under the proposed MBSD rules, each Clearing Member will be required to submit to the MBSD for processing transactions with other Clearing Members in all securities that are netting-eligible according to MBSD rules and procedures. Certain MBSD processes will continue to operate as they do today. Specifically, eligible transactions will continue to be submitted to the RTTM™ system for matching purposes.[7] FICC will provide output of the trade as compared, uncompared and/or deleted. The SBO netting process for TBA trades will also continue to generate settlement obligations between Clearing Members. However, the MBSD will now provide a trade guarantee at the point of comparison of all submitted transactions (*i.e.,* SBOD trades, TFTD trades, SPT trades and Option Contracts (collectively, ''MBSD Eligible Trades'') will be guaranteed by the MBSD), as is currently done in the GSD. The timing of comparison of MBSD Eligible Trades is the point at which the MBSD will make available to the Clearing Members on both sides of the transaction an output indicating that such trade data has been compared. In the event of a member default, FICC will settle the guaranteed trade.

The MBSD proposes to introduce ''pool comparison'' and ''pool netting,'' and interpose itself as settlement counterparty to certain settlement obligations. Specifically, after the netting of TBA trades occurs through the SBO engine, settlement obligations will be issued between members and members will allocate pools for settlement via the EPN Service (just as is done today). Additionally, however, members will be required to submit pool details for those netted TBA Settlement obligations via the RTTM™ system for pool comparison and for consideration for pool netting. Pools allocated to obligations associated with Settlement Balance Order Non-Original Counterparty trades, Settlement Balance Order Original Counterparty trades and with TFTD trades will be eligible for pool netting which establishes settlement obligations.[8]

Compared pools will be evaluated for eligibility for pool netting. The MBSD's system will determine which pools will receive maximum benefit from pool netting by considering such factors as trading velocity and projected netting factor. It is important to note that not every compared pool will proceed to the pool netting system.

Upon FICC's issuance of pool netting results to members, those pools that are eligible for netting will be novated, *i.e.,* settlement obligations between the Clearing Members will be replaced with obligations to settle with FICC. Certain outstanding obligations will still require the Notification of Settlement (''NOS'') process. These will include (1) SPTs, because they are not eligible for pool netting; (2) transactions for which Clearing Members chose not to submit allocation information into pool netting [9]; and (3) certain transactions with an incomplete master file on a pool record or number. When a pool is matched, in order for it to be considered for pool netting, FICC must have the required pool information on its Security Masterfile. This data for example would include the pool itself, factor information and data to map it back to a TBA.[10] With respect to any obligations that fail to settle, these obligations will not be re-netted, as they are in the GSD.[11]

II. Proposed MBSD Rulebook

As noted above, the current MBSD rulebook will be replaced in its entirety by a new proposed rulebook. Set forth below is an overview of the significant substantive and structural changes to the rules.

A. Definitions

The MBSD rules will have a revised Rule 1, ''Definitions,'' which will include terminology applicable to new MBSD processing and procedures. For example, terms relevant to pool netting have been included (such as ''pool deliver obligation'' and ''pool receive obligation''). Where practical and/or applicable, the MBSD rulebook uses terms from the current GSD rules, in order to harmonize language between the Divisions.

B. Membership

Rule 2, ''Members'', Rule 2A, ''Initial Membership Requirements,'' Rule 3, ''Ongoing Membership Requirements,'' and Rule 3A, ''Cash Settling Bank Members,'' will govern membership types, member application requirements and ongoing reporting requirements.

1. Initial Membership Requirements

The new MBSD rules will provide for two membership types (as set forth in Rule 2): Clearing Members and Cash Settling Bank Members. Those entities qualifying for clearing membership will be guaranteed service members of the MBSD—trades submitted by these Members will be guaranteed at the point

[6] Participants use FICC's Interactive Submission Method, Multiple Batch Submission Method or Single Batch Submission Method to submit trade data to the MBSD. Contemporaneous with successful compassion of the trade data in FICC's RTTM system, FICC generates output indicating that such trade data is compared, is uncompared and/or has been deleted. FICC makes available to the Participants, the RTTM Compare Report, which establishes the settlement obligation for TBA TFTD transactions and for SPTs between the counterparties since these trades do not enter the TBA netting process.

[7] Trade data submitted to the MBSD must include such identifying information as the MBSD may require and must be submitted in the form and manner and in accordance with the time schedules prescribed by the MBSD rules or otherwise set forth by FICC from time to time. The symbol corresponding to the name of a Clearing Member that is printed, stamped or written on any form, document or other item issued by the Clearing Member pursuant to Rule 5 Section 2 shall be deemed to have been adopted by the Clearing Member as its signature and shall be valid and binding upon the Clearing Member in all respects as though it had manually affixed its signature to such form document or other item.

[8] SPTs will not be considered an eligible transaction type for pool netting at this time.

[9] For example, if a Clearing Member has a trade that was matched with stipulations, the Clearing Member would not submit it for pool netting. Pool netting creates delivery obligations based off the net position of Members without regard to the original counterparty relationship. With a trade matched with stipulations, the buyer/seller will want to ensure receipt/delivery is maintained between themselves to ensure the stipulated terms are adhered to.

[10] For example, if FICC has not received current month factor on the pool number.

[11] The MBSD will retain the discretion to re-net fails or to conduct pair-offs if it believes that such actions are necessary to protect itself and its Clearing Members due to market conditions or events.

of comparison, and eligible, as applicable, for pool comparison, netting and settlement. Categories of clearing membership will include: (i) Registered brokers or dealers; (ii) other registered clearing agencies; (iii) registered investment companies; (iv) banks [12]; (v) government securities issuers/government sponsored enterprises; (vi) insurance companies; [13] and (vii) unregistered investment pools.[14] In addition, the MBSD will have the discretion to make its services available to other entity types which it deems appropriate subject to the approval of the Commission. Membership requirements for Cash Settling Bank Members are set forth in Rule 3A, ''Cash Settling Bank Members''. These requirements remain unchanged from the current MBSD rulebook and they mirror the requirements of the GSD-equivalent members, known as funds-only settling banks.

With respect to initial membership requirements as set forth in Rule 2A, ''Initial Membership Requirements,'' the MBSD has mirrored the current requirements for the GSD netting membership, where there is an existing membership type in the GSD rules. The two membership categories where there are no GSD equivalents are the unregistered investment pools (the ''UIPs'') and the registered investment companies. In addition to standard requirements regarding financial and operational responsibility applicable to all Clearing Members, registered investment companies must be registered under the Investment Company Act of 1940, and have minimum net assets of $100 million. With respect to the UIPs, membership standards that were adopted for these entities via a 2006 rule filing [15] will be revised in the new MBSD rulebook, in consideration of their new status as guaranteed service members. Revised requirements will be as follows:

- The UIP applicant must have an investment advisor domiciled in the United States.
- The UIP's investment advisor must be registered with the SEC under the Investment Advisors Act of 1940, the UIP must have (i) $250 million in net assets, or (ii) have $100 million in net assets and the UIP's investment advisor must advise an existing UIP Clearing Member that has assets under management of $1.5 billion.

Additional requirements for UIPs will appear in Rule 3, ''Ongoing Membership Requirements,'' discussed further below. As is the case with all MBSD Clearing Member applicants, UIPs must meet all applicable financial requirements set forth in the proposed MBSD rules in order to be admitted into membership. The required levels must be maintained as a condition of membership on an ongoing basis.[16] With respect to all MBSD Clearing Member categories, as is currently the case under the MBSD rules, applicants whose financial statements are not prepared in accordance with U.S. generally accepted accounting principles (''GAAP'') will be subject to increased minimum financial requirements.[17]

The MBSD will continue to require non-domestic membership applicants to submit, with their membership application, legal opinions on the laws of the applicants' home jurisdictions. Updates to such legal opinions will be required from direct foreign members on an annual basis. Any additional legal risk [18] posed by such applicants due to their home country law may result in additional risk mitigation measures, including, for example, the posting of letters of credit as collateral. Members that are U.S. branches or agencies of non-U.S. banks (''U.S. Branches'') will be classified as U.S. members, based particularly on the rationale that such U.S. Branches are regulated by the U.S. and/or state regulators.[19]

2. Ongoing Membership Requirements

Pursuant to Rule 3, ''Ongoing Membership Requirements,'' current provisions applicable to the GSD netting membership under the GSD rules have been carried over to the MBSD rules to apply to certain member types. For example, the GSD currently assesses a premium against any member whose Clearing Fund requirement exceeds its specified regulatory capital figure.[20] The MBSD will also apply this premium to members. Also, bank, broker-dealer and UIP members of the MBSD will be rated. Among other things, financial measures relevant to these types of entities will be assessed. Any member that receives a poor rating may be monitored more closely and/or placed on FICC's internal watch list.

As set forth in Rule 3, the MBSD will take additional risk management measures with respect to UIP members. Specifically, the ''value at risk'' (''VaR'') confidence level for UIP members will be set at 99.5%, half a percentage higher than the standard assumption set forth in the procedures of the Corporation (currently set to 99%).[21] As set forth in Rule 2A, UIP members will also be required to achieve a qualitative assessment rating of at least ''medium'' as part of the initial membership requirement. Qualitative assessments will be based on such factors as

[12] The term ''Banks'' shall include Federal Savings Associations.

[13] The MBSD does not currently have any insurance company Clearing Members. Financial and other membership requirements for this category will be established in a future rule filing.

[14] Currently there are two members who do not fit the listed membership types. As a result, these entities will be grandfathered in and subject to ongoing membership requirements.

[15] *See* Securities Exchange Release Act Release No. 34–55037 (Jan. 3, 2007), 72 FR 1252 (Jan. 10, 2007) [SR–FICC–2006–10].

[16] Required membership levels must be maintained by all members on an ongoing basis as a condition of membership.

[17] These higher GAAP-based requirements remain unchanged from the current GSD and MBSD rules. Specifically, firms whose financial statements are prepared in accordance with International Financial Reporting Standards, Canadian GAAP or UK GAAP will have a minimum financial requirement that is 1.5 times the U.S. GAAP requirement, firms whose financial statements are prepared in accordance with the GAAP principles of a European Union country other than the United Kingdom will have a minimum financial requirement that is 5 times the U.S. GAAP requirement, and firms whose financial statements are prepared in accordance with any other type of GAAP will have a minimum financial requirement that is 7 times the U.S. GAAP requirement.

[18] ''Legal risk'' is currently defined in the rules as the risk that, as a result of a law applicable to a Clearing Member's insolvency or bankruptcy, FICC may be delayed or prohibited from: (i) Accessing any portion of the Member's Clearing Fund, (ii) netting, closing out or liquidating transactions, or setting off obligations, or taking any other action contemplated by the rules regarding clearing fund, cease to act, insolvency of a member or (iii) otherwise exercising its rights pursuant to the rules.

[19] As in the current version of MBSD rule Article III Rule 15 ''Special Provisions Applicable to Non-Domestic Participants'', U.S. Branches will not be required to submit annual updates to their foreign legal opinions unless FICC deems it necessary to address legal risk; applicants in this category will, however, continue to be required to submit an initial foreign legal opinion on their home country law with their membership application. *See* Securities Exchange Release Act Release No. 34–62828 (Sep. 2, 2010), 75 FR 54929 (Sep. 9, 2010) [SR–FICC–2010–02].

[20] By way of example, under the current GSD rules, if a member has a Clearing Fund requirement of $11.4 million and excess net capital of $10 million, its ''ratio'' is 1.14 (or 114 percent), and the applicable collateral premium would be 114 percent of $1.4 million (which is equal to the amount by which the member's Clearing Fund requirement exceeds its excess net capital), or $1,596,000. The current GSD rules provide that FICC has the right to: (i) Apply a lesser collateral premium (including no premium) based on specific circumstances (such as a member being subject to an unexpected haircut or capital charge that does not fundamentally change its risk profile), and (ii) return all or a portion of the collateral premium amount if it believes that the member's risk profile does not require the maintenance of that amount. These rights will be carried over to the proposed MBSD rules.

[21] The MBSD rules will provide FICC with the discretion to increase the confidence level if it determines that it is appropriate to do so with respect to a particular Clearing Member or Members generally. As an initial matter, UIPs will begin the service with a confidence level of 99.5%.

management, capital, strategy/risk and profile, valuation procedures and internal risk management controls. Any UIP member rated less than ''medium'' may be subject to an increased Required Fund Deposits that may be achieved via higher confidence levels and may also become subject to revocation of membership as set forth in Rule 3, Section 6. Also, pursuant to Rule 4, the Clearing Fund requirement of UIPs shall be no less than $1 million, whereas the current minimum is $100,000.[22]

C. Clearing Fund and Loss Allocation

MBSD Rule 4, ''Clearing Fund and Loss Allocation'' will set forth requirements with respect to Clearing Fund [23] deposited by Clearing Members.

The MBSD has already standardized the clearing and settlement processes. The objective in offering CCP services is to leverage potential means by which risks can be curbed, efficiency increased, and operational risk within the marketplace can be reduced.

The conversion of the MBSD to a CCP increases the amount of risk for the clearing agency. The purpose of a CCP is to ensure settlement can continue in the face of a member firm failure, and to reduce the risk of loss due to that member failure. A CCP interposes itself as a legal counterparty to both sides of a transaction. The CCP assumes the counterparty credit risk of the other Clearing Members which primarily includes (1) The market risk associated with liquidating the defaulted Member's portfolio, and (2) the liquidity risk associated with maintaining sufficient liquid resources to finance the defaulted Member's scheduled settlement obligations.

The MBSD has established a robust risk management framework to manage the credit risks from its Clearing Members and the credit risks involved with its payment, clearing and settlement process.

The MBSD relies on five different controls to manage its counterparty risk: Member standards, initial/variation margins, back/stress testing, position/risk monitoring and non-margin collateral. The first set of controls aims to prevent the CCP from dealing with or reducing activity of counterparties that have unacceptably high probabilities of default. As noted above in section B, concurrent with the introduction of CCP services the MBSD will increase its minimum financial standard for clearing membership eligibility to mirror GSD eligibility standards and enhance its risk monitoring for UIPs.

The second line of defense is the margins collected from counterparties in the form of cash and highly liquid government securities in the Clearing Fund. The dual purpose of the Clearing Fund is to provide readily accessible liquidity to facilitate settlement and reduce loss-related costs which may be incurred in the event of a Clearing Member's insolvency or failure to fulfil its contractual obligations to the MBSD. Margins are intended to cover possible losses between the time of default of a counterparty, at which point the CCP would inherit its positions, and the close-out of these positions through selling or hedging. For this purpose, the MBSD marks member portfolios to the market on a daily basis and charges variation margins accordingly, and establishes initial margins to cover a minimum 99th percentile of expected possible losses that could arise over a 3-day settlement period utilizing a VaR-based approach.[24] In order to enhance the MBSD's risk framework and concurrent with the introduction of CCP services, the MBSD will add two new components—the margin requirement differential and the coverage charge—to the Clearing Fund, as well as additional MBSD mark-to-market items related to the new pool netting services. The MBSD also has the ability to collect charges above the systemically generated Clearing Fund charges when deemed appropriate in order to protect the corporation and its members. If any loss were incurred in the liquidation of a Member that was not covered by the Member's Clearing Fund deposit or amounts available under the cross guaranty arrangement to which FICC is a party, the MBSD would invoke its loss allocation process.

The MBSD uses regular back and stress testing to monitor the sufficiency of collected margin levels vis-a-vis the risk represented by the 99th percentile of expected possible losses from member portfolios and to monitor its tail risk exposure that is beyond the 99th percentile. If a member portfolio does not pass the back test, additional margin will be collected via the coverage charge. Stress tests are also used to evaluate margin adequacy. The MBSD's framework reflects stress events from the last 10 years as well as special stress events that were not within the past 10 years and takes the form of swap rate shifts and credit spread shocks that reflect market conditions for the instruments that the MBSD clears or holds as collateral. As described in the Clearing Fund section below, the MBSD analyzes and reviews on an intraday basis certain components of the Clearing Fund that are recalculated using updated positions and prices if there is increased exposure in a member's portfolio intraday. In addition, the MBSD may at its discretion call for additional collateral on an intraday basis if exposures are in excess of predefined thresholds.

Finally, aside from the risk of loss that could be encountered from a Clearing Member failure, a central counterparty could also face liquidity risk, defined as the risk that the central counterparty has insufficient financial resources to cover a default by a Clearing Member to which it has the largest exposure. To that end, the MBSD maintains sufficient resources to meet its observed liquidity risk. The Clearing Fund would be the primary source to fulfil the liquidity need incurred if MBSD had to complete settlement on behalf of the defaulting Clearing Member. Other conventional funding tools such as loans secured via the MBSD clearing banks and/or tri-party repo transactions would also be used to fulfil the liquidity need, but if those were unavailable or insufficient, the MBSD would invoke the ''Capped Contingency Liquidity Facility,'' described in section G below to provide additional financing in the event of a member default.

Tail risk is one of the risks the MBSD has to manage. The MBSD addresses this through a continuous process of (1) Reviewing margining methodologies with stakeholders; (2) analysis and monitoring of margin/collateral requirements; (3) actively reviewing and timely/appropriate action on market conditions and credit events; (4) reviews of back/stress tests, and (5) identifying, assessing and managing risks associated with the products and services provided by the MBSD and FICC.

1. Clearing Fund

The underlying Clearing Fund methodology is designed primarily to account for market risks associated with a Clearing Member's unsettled portfolio. The Clearing Fund model is back tested on a monthly basis and periodically validated by outside experts. Additional charges and premiums may be considered to address additional risks (*i.e.,* credit, reputation, legal, etc.) or non-compliance with MBSD rules. The Clearing Fund is calculated every business day for each MBSD Clearing Member.

[22] The MBSD rules will provide FICC with the discretion to increase the minimum charge if it determines that it is appropriate to do so with respect to a particular member or members generally. As an initial matter, UIPs will begin the service with the higher minimum of $1 million.

[23] The MBSD is adopting the term ''Clearing Fund'' to replace ''Participants Fund.''

[24] An index-based haircut methodology will be used for securities with insufficient pricing data.

Clearing Fund requirements will be calculated in accordance with the VaR model. The Clearing Fund components will consist of the VaR charge,[25] the coverage charge, the margin requirement differential charge and the deterministic components charge (which will include the mark-to-market charges, cash obligation items and accrued principal and interest). The VaR methodology will utilize the prior 252 days of historical information for cash positions, including prices, spreads, and market variables to simulate the market environments in the forthcoming three days. Projected portfolio losses are then calculated assuming these simulated environments actually will be realized. The coverage charge is an additional charge to bring the Clearing Member's coverage to a targeted confidence level. The margin requirement differential considers intra-day portfolio variations and estimates the potential increased risk intra-day and the risk that the next margin call will not be satisfied. The deterministic risk component combines the mark-to-market of the portfolio, gain or loss for the difference between the original contract value and the internally generated netting price derived from the TBA netting process, principal and interest adjustments on failed positions, and other miscellaneous cash items. The deterministic risk component can result in an increase or decrease to a member's total clearing fund requirement.

Requirements as to acceptable forms of collateral will remain unchanged in the new MBSD rulebook.

In order to further mitigate risk, and as part of FICC's efforts to enhance its intraday monitoring capabilities, FICC has determined to expand its intraday monitoring [26] to recalculate the mark-to-market elements of the deterministic risk component. This component of the risk calculations will be updated at least hourly using intraday pricing and position feeds for FICC members and compared against the amounts that were previously collected in the Clearing Fund. If the exposures increase above certain defined thresholds Risk Management staff will be alerted to consider additional intraday margin calls, outside of the formal Clearing Fund collection process. The proposed rule change provides that such calls would need to be satisfied by the affected members within one hour of FICC's notice. The initial thresholds will be based on changes to a Clearing Member's position size, composition and price changes on the constituent securities. Qualitative factors including, but not limited to, Watch List status and internal rating will also be considered in the application of intraday mark-to-market.

2. Other Changes—Clearing Fund Use of Payments and Deposits

FICC is proposing to revise Rule 4 ''Clearing Fund and Loss Allocation'', Section 5 ''Use of Payments'' to include additional disclosure relating to the Corporation's use of a Clearing Member's deposits and payments for temporary financing needs. The proposed revisions also clarify that whenever the Clearing Fund is charged for any reason, other than to satisfy a clearing loss attributable to a Clearing Member solely from that Clearing Member's Clearing Fund deposit, the Corporation will provide the reasons therefore to each Clearing Member. This would apply when the Clearing Fund is charged, meaning the Corporation has applied the Clearing Fund for more than 30 days and is allocating the amount as a loss or for other loss allocation purposes.

3. Loss Allocation

In this CCP proposal, FICC is also introducing a new loss allocation methodology for the MBSD. If a defaulting Clearing Member's Clearing Fund and any amounts of the Defaulting Member available under a cross-guaranty agreement are not sufficient to cover losses incurred in the liquidation of the defaulting Clearing Member's positions (the ''Remaining Losses''), the MBSD's loss allocation methodology will be invoked. Under this proposed loss allocation methodology, Remaining Losses will first be allocated to the retained earnings of FICC attributable to the MBSD, in the amount of up to 25 percent of the retained earnings or such higher amount as may be approved by the Board of Directors of FICC. If a loss still remains, MBSD Clearing Members are placed into one of two tiers for loss allocation purposes: Tier One members are subject to loss mutualization, whereas Tier Two members are not subject to loss mutualization.[27] FICC will divide the Remaining Losses between the Tier One members and Tier Two members. The division of Remaining Losses is based on the amount each solvent Clearing Member would have lost or gained if it had closed out its original outstanding trades with the defaulting Clearing Member on a bilateral basis.[28] FICC then will determine the relevant share of each Tier One member's bilateral losses (members with a bilateral liquidation profit are ignored) in the total of all members' bilateral losses and sum these shares to determine the Tier One Remaining Loss. Similarly, FICC will determine the relative share of each Tier Two member's bilateral loss in the total of all members' bilateral losses and sum these shares to determine the Tier Two Remaining Loss.

Tier One Remaining Losses will be allocated to Tier One members first by assessing the Required Fund Deposit of each such Member in the amount of up to $50,000, equally. If a loss remains, Tier One members will be assessed ratably, in accordance with the respective amounts of their Required Fund Deposits, based on the average daily amount of the Clearing Member's Required Fund Deposit over the prior twelve months. Tier Two Remaining Loss will be allocated to Tier Two Clearing Members based on each Tier Two member's original trading activity with the Defaulting Member that resulted in a loss. Tier Two members will only be subject to loss to the extent they originally traded with the Defaulting Member consistent with regulatory requirements applicable to the Tier Two members. FICC shall assess such loss against the Tier Two members ratably based upon their loss as a percentage of the entire amount of the Tier Two Remaining Loss. This ensures that Tier Two members are not subject to loss mutualization. Tier Two counterparties will be liable for losses related to both direct and brokered trades [29] including partially-matched

[25] The definition of ''VaR Charge'' (which is referred to as ''VaR Component'' in the current rules) is being amended to remove the reference to the application of ''minimum amounts'' to such VaR Charge. The MBSD is currently applying a minimum 5-basis point charge which will not be applicable when the MBSD CCP becomes a CCP because of the addition of the other components to the overall Clearing Fund calculation. Minimum Clearing Fund deposit amounts per Rule 4 remain applicable.

[26] This proposal is different from the intra-day margining that was approved by the Commission to implement the single-pot margining with New York Portfolio Clearing, LLC (''NYPC''). See Securities Exchange Act Release No. 63986 (Feb. 28, 2011), 76 FR 12144 (Mar. 4, 2011). In the FICC–NYPC rule filing, established second scheduled calls were approved. In the present proposal, FICC is seeking the authority to require additional margin outside of the formal calls.

[27] Tier Two members are those that are legally prohibited from participating in loss mutualization. Currently, only investment companies registered under the Investment Company Act of 1940, as amended, qualify as Tier Two members.

[28] With respect to brokered trades, in the MBSD such trades are done on a ''give-up basis,'' and brokers are thus not considered parties to fully-matched trades. However, for purposes of loss allocation, broker members will be subject to loss allocation for certain partially-matched trades. Brokers are considered Tier One members, and as such will be subject to loss mutualization.

[29] Brokered trades involve a broker intermediary between two dealers. Each dealer and broker must

Continued

trades for which the Tier Two member did not submit a statement to FICC denying the existence of the trade.[30]

D. TBA Trade Processing

Rule 5, ''Trade Comparison'' and Rule 6, ''TBA Netting'' of the proposed MBSD rulebook mirror current MBSD rules as these processes will remain unchanged from an operational perspective. Members will continue to submit TBA transactions and SPTs to the MBSD through the RTTM™ system to bilaterally match their trade data with trade data submitted by their counterparties. The significant change to the comparison rule is the introduction of FICC's guarantee. Transactions will be guaranteed for settlement at the point of comparison.[31] SBOD TBA trades will proceed through the TBA/SBO netting process as they do today. After netting, members will use the EPN Service to allocate pools in satisfaction of open TBA obligations (both trade-for-trade and SBO transactions). In addition, members will now be required to submit pool allocation information to the MBSD's RTTM™ system [32]—pool allocation processing will proceed as described below.

E. Pool Allocation Processing

Pool allocation processing refers to the Clearing Member's submission via a RTTM™ message of an allocated pool for matching and pool netting services.

On the allocation date,[33] Clearing Members will also be required to submit pool allocation information (called ''Pool Instructs'') via the RTTM system for pool comparison (which is a pre-requisite for pool netting). As with EPN allocation, Pool Instructs are to be submitted against all TBA obligations, whether stemming from Trade-for-Trade activity or TBA Netting. As noted previously, allocations are not performed for SPTs and they are not eligible for pool netting services and Clearing Members may choose not to submit Pool Instructs against trades matched with stipulations.[34]

Pool data information on Pool Instructs must be bilaterally compared (*i.e.,* the mandatory comparison pool data submitted by the seller must match the mandatory comparison pool data submitted by the buyer) in order for the Pool Instructs to be eligible for consideration for pool netting. Pool Instructs must further be ''assigned'' by the MBSD to a valid, open TBA position, meaning that the trade terms submitted on the Pool Instruct must match the trade terms of a TBA CUSIP that has sufficient open position. Only compared and assigned Pool Instructs are evaluated for inclusion in pool netting.

Pool allocation processing will be governed by Rule 7, ''Pool Comparison,'' Rule 8, ''Pool Netting,'' and Rule 9, ''Pool Settlement''. Once netting eligible pools are defined by the MBSD, each allocation will be netted into a single net position per pool CUSIP. Pool netting results will be novated, meaning that open TBA obligations will be terminated and replaced with resultant pool receive, deliver and associated payment obligations which will settle versus FICC as central counterparty.

F. Settlement

1. Settlement With FICC as Counterparty

As stated above, obligations generated by the pool netting system will settle versus FICC—this settlement process will be governed by Rule 9, ''Pool Settlement with the Corporation.'' Clearing Members will be required to designate a clearing bank for purposes of delivering securities to, and receiving securities from, the MBSD in satisfaction of settlement obligations. All deliveries and receipts of securities in satisfaction of pool deliver obligations and pool receive obligations will be required to be made against simultaneous payment. These securities settlement procedures mirror the current GSD securities settlement rule.[35]

2. Settlement Outside of FICC

For those allocated pools (or pools matched as trade terms on SPT trades) which are not processed through the pool netting system, Clearing Members will be required to settle such transactions bilaterally with applicable settlement counterparties, outside of FICC. Please refer to ''Processing Overview'' referenced above, for a description of the trades that would be required to settle outside of FICC. It should be noted that such trades remain guaranteed for settlement by FICC; such

submit the trade details to the MBSD for trade comparison. This means that each dealer submits against the broker and the broker submits against each dealer. A fully matched trade will be achieved when both dealers match against the broker (*i.e.* all submissions discussed above match). With a fully matched trade, both dealers assume principle status which results in the broker having no settlement obligations with respect to the trade; the broker cannot be subject to any loss with respect to such trade. A partially matched trade results when only one of the two submissions achieves a bilateral match versus the broker. The dealer who has matched with the broker will have a settlement guarantee and is subject to Clearing Fund requirements with respect to such trade. If the unmatched dealer submits a statement to FICC denying the existence of the trade, the broker becomes the other side of the trade which means that the broker is responsible for such trade from a risk management perspective and loss allocation. If the unmatched dealer does not submit a statement to FICC denying the existence of the trade, the dealer becomes responsible for the settlement and risk management and the broker is released from these responsibilities.

[30] To illustrate the proposed MBSD Tier One (''T1'')/Tier 2 (''T2'') loss allocation rules, consider an example where the $20 million Clearing Fund requirement of an insolvent MBSD member X turns out to be insufficient to cover the $30 million liquidation loss that the MBSD incurred as a result of closing out all of X's open positions. If X doesn't have any excess collateral, MBSD would need to allocate a $10 million remaining loss.

Assume that X has unsettled trades with three Tier One original counterparties (T1A, T1B and T1C) and three Tier Two original counterparties (T2A, T2B and T2C), all executed directly.

Further assume that the bilateral liquidation results of X's solvent original counterparties are as follows:

T1A: $5 million; T1B: ($5 million); T1C: ($15 million); T2A: ($20 million); T2B: ($10 million); T2C: $15 million; Total: ($30 million).

Also assume that there are no secondary defaults and no off-the-market trades.

Based on these assumptions, the bilateral Tier One liquidation losses amount to $20 million ($5 million attributable to T1B and $15 million attributable to T1C), while the bilateral Tier Two liquidation losses amount to $30 million ($20 million attributable to T2A and $10 million attributable to T2B). This means that out of a total of $50 million bilateral liquidation losses, 40% or $20 million can be attributed to Tier One counterparties and 60% or $30 million to Tier Two counterparties. As a result, the Tier One remaining loss would be $4 million (*i.e.,* 40% of the MBSD's $10 million overall remaining loss) and the Tier Two remaining loss would be $6 million (*i.e.,* 60% of the MBSD's $10 million overall remaining loss).

Given that T2A's and T2B's bilateral losses represent ⅔ and ⅓ respectively of the Tier Two Remaining Loss, T2A's loss allocation will be $4 million and T2B's loss allocation will be $2 million.

The $4 million Tier One Remaining Loss would first be assessed equally to each Tier One member's clearing fund, up to an amount of $50,000 per Tier One member. If a loss still remains, the amount is allocated among Tier One members, pro-rata based on each Tier One member's average daily level of clearing fund over the prior twelve months (or shorter period if a member did not maintain a clearing fund deposit over the full twelve month period).

Note that the loss allocation results are not impacted by whether the defaulting Clearing Member is a Tier One or a Tier Two member.

[31] While SPTs will be guaranteed at the point of comparison, they will not be eligible for processing through the pool comparison or pool netting systems. All SPTs will settle outside of FICC with original counterparties.

[32] Because Clearing Members will be required to allocate pools via EPN and RTTM™ in order for pool allocations to proceed to pool comparison and netting, all MBSD Clearing Members will be required to be EPN members.

[33] Pool allocation information (also known as ''Pool instructs'') may be submitted up to the point that Pool Netting is executed.

[34] Trades with stipulations are those where certain trade terms are agreed to at point of match (*e.g.,* one pool per million); under the proposal, Clearing Members will be provided with the option to hold out stipulation allocations from the pool netting process so that they can preserve their ability to obtain the pools that satisfy the stipulations of the trade.

[35] GSD Rule 12, ''Securities Settlement.''

trades were guaranteed at the time of comparison. Pursuant to Rule 10, ''Notification of Settlement'', Clearing Members must continue to submit to FICC Notifications of Settlement (''NOS''). NOS will be required to be received on the applicable clearance date for each transaction. When the MBSD receives NOS from each counterparty to a transaction, the MBSD will report clearance of the applicable transaction back to each Clearing Member, as is done today. At this point, the MBSD will stop collecting margin on the transaction, and will no longer be responsible for principal and interest payments.

3. Cash Settlement

Rule 11, ''Cash Settlement with the Corporation'' provides that cash settlement processing will continue to be done via the Federal Reserve's National Settlement Service and through the use of cash settling banks appointed by Clearing Members. Several items have been added to the calculation of each Clearing Member's cash settlement obligation, including: (a) A ''net pool transaction adjustment payment'' (to reflect the difference between the pool net price [36] and a settlement price established at the TBA level); (b) principal and interest payment amounts related to fails, and (c) a ''clearance difference amount'' [37] (to take into account the delivery to FICC of mispriced securities by a member).

G. Additional Rule Changes

1. Capped Contingency Liquidity Facility

FICC is proposing to add a provision to the proposed MBSD rules that introduces a ''Capped Contingency Liquidity Facility,'' which is a procedure designed to ensure that the MBSD has sufficient liquidity resources to cover the largest failure of a family of accounts. This facility will only be invoked if FICC declares a default or a cease to act against a Clearing Member, *i.e.,* a defaulting Clearing Member and FICC does not have the ability to obtain sufficient liquidity through its Clearing Fund cash deposits and its established repurchase agreement arrangements (''CCLF Event''). FICC believes that the Capped Contingency Liquidity Facility provides Clearing Members with finality of settlement and allows firms to prepare for and manage their potential financing requirements in the event of a Member's default. Once a CCLF Event has been declared, FICC will contact Clearing Members that are due to deliver obligations to FICC that are owed to a defaulting Clearing Member. FICC will either cancel the Clearing Member's obligations or instruct the Clearing Member to hold the obligations (or a portion thereof) and await instructions as to when to make these deliveries. With respect to the obligations subject to financing (the ''Financing Amount'') up to the Clearing Member's defined liquidity contribution cap (the ''Defined Capped Liquidity Amount''),[38] FICC as counterparty, will enter into repurchase agreements with the Clearing Member equal to the Financing Amount pursuant to the terms of the deemed 1996 SIFMA Master Repurchase Agreement (without referenced annexes). If a liquidity need still exists (the ''Remaining Financing Amount''), FICC will inform Clearing Members that are below the Defined Capped Liquidity Amount and also inform Clearing Members that do not have a delivery obligation to defaulting Clearing Member.[39] After these Clearing Members have been notified, FICC will distribute the remaining financing need to such Clearing Members on a pro rata basis and enter into repurchase agreements pursuant to the terms of the deemed 1996 SIFMA Master Repurchase Agreement (without referenced annexes). These transactions would remain open until FICC completes the liquidation of the underlying obligations and a haircut based on market conditions will be applied to the transactions.

Once FICC completes the liquidation of the underlying obligation, FICC will instruct the Clearing Member to deliver the securities back to FICC. FICC will then close the repurchase transaction and deliver the securities to complete settlement on the contractual settlement date of the liquidating trade. Because FICC would be receiving and delivering securities on the same day, FICC would not have a liquidity need resulting from the transaction of a defaulting Clearing Member.

The applicable provisions of Rule 17 outline detailed procedures of the mechanism that will be followed should FICC declare a Capped Contingency Liquidity Facility event.

2. Corporation Default

FICC has been approached by some of its dealer Clearing Members who have requested that FICC add provisions to the rules of the MBSD CCP [40] to make explicit the close-out netting of obligations running between FICC and its Clearing Members in the unlikely event that FICC becomes insolvent or defaults in its obligations to its Clearing Members which are included in the proposed rule change. The firms have stated that the proposed rule changes will provide clarity in their application of balance sheet netting to their positions with FICC under U.S. GAAP in accordance with the criteria specified

[36] ''Pool Net Price'' is defined in the proposed rules as the uniform price for a pool (expressed in dollars per unit of par value), not including accrued interest, established by the Corporation on each business day, based on current market information for each eligible security.

[37] ''Clearance Difference Amount'' is defined in the proposed rules as the absolute value of the dollar difference between the settlement value of a pool deliver obligation or a pool receive obligation and the actual value at which such pool deliver obligation or pool receive obligation was settled.

[38] The ''Defined Capped Liquidity Amount'' is the maximum amount that a Clearing Member shall be required to fund during a CCLF Event. The Defined Capped Liquidity Amount will be established as follows:

(a) For those Clearing Members that are eligible for and that have established borrowing privileges at the Federal Reserve Discount Window or for those Clearing Members who have an affiliate that is eligible for and has established borrowing privileges at the Federal Reserve Discount Window, FICC will conduct a study every six months, or such other time period as FICC shall determine from time to time as specified in Important Notices to Clearing Members, to determine each Clearing Member's largest liquidity requirement for the applicable time period based on a Clearing Member's sell positions versus other Clearing Members at the family level on a bilateral net basis within a TBA CUSIP. Based on the overall study, FICC will define an adjustable percentage (the initial percentage will be set at 60%), as determined by FICC from time to time, and multiply that percentage amount against the maximum amount to establish each Clearing Member's Defined Capped Liquidity Amount; and

(b) For those Clearing Members that are ineligible for or have not established borrowing privileges at the Federal Reserve Discount Window and for those Clearing Members that do not have an affiliate that is eligible for or has established borrowing privileges at the Federal Reserve Discount Window, FICC will conduct a study every month or such other time period as FICC shall determine from time to time as specified in Important Notices to Clearing Members, to determine each Clearing Member's largest liquidity requirement for the applicable time period based on a Clearing Member's sell positions versus other Clearing Members at the family level on a bilateral net basis within a TBA CUSIP. The Clearing Member's largest liquidity requirement for the past month, adjusted in each case of a CCLF Event to be no greater than the actual Pool Delivery Obligation to the defaulting Clearing Member, will represent the Clearing Member's Defined Capped Liquidity Amount. Firms in this category will have a defined non-adjustable percentage amount set to 100%. Clearing Members in this category will not be required to finance any Remaining Financing Amount.

(c)

[39] Applicable to those Clearing Members that are eligible for and that have established borrowing privileges at the Federal Reserve Discount Window or to those Clearing Members who have an affiliate that is eligible for and has established borrowing privileges at the Federal Reserve Discount Window.

[40] The firms have also requested the filing with respect to the GSD and this change was submitted as a rule filing and approved by the Commission. See Securities Exchange Act Release No. 63038 (Oct. 5, 2010), 75 FR 62899 (Oct. 13, 2010) [SR–FICC–2010–04].

in the Financial Accounting Standards Board's Interpretation No. 39, Offsetting of Amounts Related to Certain Contracts (FIN 39). The firms have stated further that the provisions would allow them to comply with Basel Accord Standards relating to netting. Specifically, firms are able to calculate their capital requirements on the basis of their net credit exposure where they have legally enforceable netting arrangements with their counterparties, which includes a close-out netting provision in the event of the default of the counterparty (in this case, the division of the clearing corporation acting as a central counterparty).

H. Fails Charge

The Treasury Markets Practices Group (the ''TMPG''), a group of market participants active in the Treasury securities market sponsored by the Federal Reserve Bank of New York (the ''FRBNY''), has been addressing the persistent settlement fails in Agency debt and mortgage-backed securities transactions that have arisen, in part, due to low interest rates.

To encourage market participants to resolve fails promptly, the TMPG recommends expanding the applicability of the fails charge (which currently applies to Treasury securities transactions) to the Agency debt and MBS markets with the objective of reducing the incidence of delivery failures and supporting liquidity in these markets.

The fails charge will apply to certain trades settled in the MBSD, *i.e.,* settlement of pools versus FICC involving failing agency MBS issued or guaranteed by Fannie Mae, Freddie Mac and Ginnie Mae. Pursuant to the TMPG recommendations, a fails charge will not apply to TBA and pool level ''round robins.'' [41]

The proposed charge will be equal to the greater of (a) 0 percent and (b) 2 percent per annum minus the Federal funds target rate. The charge accrues each calendar day a fail is outstanding. The MBSD will not impose a fails charge if delivery occurs on either of the two business days following the contractual settlement date. The MBSD will not employ a minimum fail charge amount, but, instead, will apply the fails charge to any pool for which delivery has not occurred within the two business day grace period.[42] Each business day, the MBSD will provide reports reflecting fail charge amounts to Clearing Members and will generate a consolidated monthly report at month end. Failing parties with a net debit (*i.e.,* the fails charge amounts such party owes exceed the fails charge amounts it is owed) will be required to pay such net amount in respect of those pools that have settled the previous month and which are reflected in the previous month's consolidated month end report by the Class ''B'' payable date (as established by SIFMA guidelines) of the month following settlement in conjunction with other cash movements. The fails charge funds received by the MBSD then will be used to pay Clearing Members with fail net credits.

The MBSD will implement a rate change procedure so that if fails accrue at one rate and the rate changes, the fail will keep the original accrual and new fails calculations will be subject to the new rate. When there is a substitution of the underlying pool, the fails charge will be calculated pursuant to the above formula, using (in the formula) the Fed funds target rate for each day of the substitution period beginning on the contractual settlement date.

In the event that the MBSD is the failing party because (i) The MBSD received agency MBS issued or guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae too near the close of Fedwire for redelivery or for any other reason or (ii) MBSD received a substitution of a pool deliver obligation of agency MBS issued or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae too near the specified time in the SIFMA 48-hour rule for same day redelivery of securities or for any other reason, the fails charge will be distributed pro-rata to the Clearing Members based upon usage of the MBSD's services.

The MBSD will not guaranty fails charge proceeds in the event of a default (*i.e.,* if a defaulting Clearing Member does not pay its fail charge, Clearing Members due to receive fails charge proceeds will have those proceeds reduced pro-rata by the defaulting Clearing Member's unpaid amount).

Example 1: A delivery is contracted to occur on settlement date (S), a Tuesday, but does not occur until the second business day following contractual settlement, Thursday (S+2). The Clearing Member would not be subject to a fails charge because delivery occurs within the two business days following the contractual settlement date.

Example 2: A delivery is contracted to occur on settlement date (S), a Tuesday, but does not occur until the third business day following contractual settlement, Friday (S+3). The Clearing Member would be subject to a three-day fails charge.

Example 3: A delivery is contracted to occur on settlement date (S), a Wednesday, but does not occur until the third business day following contractual settlement, Monday *(S+3).* The Clearing Member would be subject to a five-day fails charge, as the charge accrues on each calendar day in the fail period.

Example 4: A delivery is contracted to occur on settlement date (S), May 10th, but does not occur until the month following the contractual settlement date; it settles on June 8th. The Clearing Member will not be subject to collection of the fails charge in June (the month following the contractual settlement date) because delivery did not occur in May. The participant will be subject to the collection of the fails charge in July (on the Class ''B'' payable date) because delivery occurred in June. The charge will be recalculated for 29 days.

The implementation of a fails charge trading practice in the mortgage-backed securities market requires that the current MBSD rules be amended to add a new rule (*i.e.,* Rule 12—Fails Charge). This new rule specifies the charges levied on any Clearing Member who does not satisfy a delivery obligation of securities issued or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae and outlines the exceptions to this rule, including a two-day grace period.

Revocation of Charges

The proposed rule changes provide that FICC's Board of Directors (or appropriate Committee thereof) will retain the right to revoke application of the charges if industry events or practices warrant such revocation.

Timing of Implementation

Only as it applies to the proposed fails charge, FICC is proposing that such fails charges will apply to transactions in agency debentures and agency MBS entered into on or after the later of the approval of this rule proposal or February 1, 2012, as well as to

[41] ''Round robins'' are a circular series of transactions between multiple parties where there is no ultimate long and short position to be settled. For example, if A sells to B and B sells to C and C sells to A, this group of transactions would constitute a ''round robin''. In a round robin, there is no settlement of securities, but there is satisfaction of money across all interested parties. There can be a fail in a round robin transaction when a deliver obligation arises because the trade submission of certain members of the round robin do not match. The MBSD will not apply the fails charge to a round robin if each affected Clearing Member in the round robin provides the MBSD with the required information to resolve the trade.

[42] Fails charges are calculated between legal entities that are counterparties to one another in an MBS transaction. Because the MBSD is acting as a counterparty in multiple transactions, the MBSD may owe a net credit to one counterparty which is financed by the net debits owed to the MBSD by multiple counterparties (some of which may be below the minimum $500 threshold identified in the TMPG recommendations.) To ensure that the MBSD will be in a position to deliver the net credits it owes, the MBSD is proposing to its Clearing Members that it will not employ a minimum fails charge for either debits or credits. Current Participants were informed of this deviation from the TMPG recommendations via Important Notice (MBS 119.11) and have not objected.

transactions that were entered into, but remain unsettled as of the later of the approval of this rule proposal or February 1, 2012. For transactions entered into prior to, and unsettled as of, the later of the approval of this rule proposal or February 1, 2012, the fails charge will begin accruing on the latest of the approval of this rule proposal, February 1, 2012, or the contractual settlement date.

I. Suspension of Rules in Emergency Circumstances

Rule 33, ''Suspension of Rules in Emergency Circumstances'' in the proposed MBSD rules has been revised from the equivalent rule in the current MBSD rulebook to specify that (1) In the title of the Rule, that the rule applies to emergency circumstances, (2) an emergency shall exist in the judgement of the FICC Board or Officer, which causes the Board or the Officer, as applicable, to believe that an extension, waiver or suspension of the MBSD rules is necessary for the Corporation to continue to facilitate the prompt and accurate clearance and settlement of securities transactions, (3) the Corporation shall notify the Commission of such extension, waiver or suspension of the MBSD rules within 2 hours of such determination,[43] (4) the written report of such extension shall include the nature of the emergency, along with the other requirements listed in the current rules and (5) such written report shall be submitted to the Commission no later than three (3) calendar days after the implementation of the extension, waiver or suspension of the MBSD rules.

J. Ceasing To Act, Wind-Down Members and Insolvency

Rule 14, ''Restrictions on Access to Services'', Rule 15, ''Wind Down of a Member,'' Rule 16, ''Insolvency of a Member,'' and Rule 17, ''Procedures for When the Corporation Ceases to Act,'' mirror the current GSD rules, but have been conformed to apply to the specifics of MBSD processing as applicable. For example, upon the MBSD ceasing to act for a Clearing Member, Members will be required to submit immediate NOS so that the MBSD has all necessary settlement information with respect to a defaulting Member to effect a close-out of such Member. In addition, the MBSD will have the right, with respect to specified pool trades, to substitute alternate pools as necessary.[44]

K. Other[45]

a. It should be noted that certain current MBSD rules will not be included in the proposed MBSD rules. These are as follows:

- With respect to Article III (Participants), in the current MBSD rules: Rule 1, ''Requirements Applicable to Participants and Limited Purpose Participants''; Section 5, ''Supplemental Agreement of Participants and Limited Purpose Participants''; and Section 14 ''Special Provisions Applicable to Partnerships'' are not included in the proposed MBSD rules because each of these rules is no longer necessary. Proposed Rule 2A serves to harmonize the attached proposed MBSD rules with the GSD rules on this subject. Rule 1, ''Requirements Applicable to Participants and Limited Purpose Participants'' Section 15 ''Special Provisions Applicable to Non-Domestic Participants'' is not included in the proposed MBSD rules because as with the GSD, the MBSD will be using the Netting Agreement for foreign members and not the master agreement format. Proposed Rule 2A, ''Initial Membership Requirements'', Section 5, ''Member Agreement'' covers the provisions of the membership agreement generally and thereby serves to harmonize the proposed MBSD rules with the GSD rules with respect to this subject.
- Rule 3, ''Corporation Declines to Act for a Participant or Limited Purpose Participant'' Section 2 ''Other Grounds for Ceasing to Act for a Participant or Limited Purpose'' is not included in the proposed MBSD rules because it is being replaced by proposed MBSD Rule 14 ''Restrictions on Access to Services'' and Rule 16 ''Insolvency of a Member'' which cover the same matters and harmonize these provisions with those in the GSD rules.
- In an effort to harmonize with the GSD rules, Rule 3, ''Corporation Declines to Act for a Participant or Limited Purpose Participant'' Section 3 is not reflected in the proposed MBSD Rules. We do not believe it is necessary to state the current MBSD concept in the proposed MBSD rules because it would apply regardless of whether it is stated in the rules. Rule 3, ''Corporation Declines to Act for a Participant or Limited Purpose Participant'' Sections 5(a) ''Disposition of Open Commitments'' is not included in the proposed MBSD rules because FICC does not accept Letters of Credit as a permissible form of Clearing Fund collateral as a routine matter; however, FICC reserves the right to accept this type of collateral, if needed. In addition, the current MBSD rule addresses the liquidation of other types of collateral posted by the defaulting Member. Under the proposed MBSD rule, close out processes, in general, are covered by Rule 17, which has been drafted to be harmonized with the equivalent GSD Rule to the extent possible. Section 5(c) of the current MBSD Rule 3 in Article III has not been carried into the proposed rulebook because these current provisions speak to non-defaulting Members engaging in the close-out of the defaulting Member's positions, which will be undertaken by the MBSD as CCP under the proposed rules.
- Under the section titled ''Schedule of Charges Broker Account Group'' in the appendix to the proposed MBSD rules, FICC no longer provides hardcopy output from microfiche. As a result, the reference to this charge is being removed.

b. The following rules do not appear in the current MBSD rules and have been added to the proposed MBSD rules in connection with this filing:

- Rule 3, Section 6 ''General Continuance Standard'' of the proposed MBSD rules includes additional language which states that FICC may require that increased or modified Required Fund Deposits be deposited by the Clearing Member on the same Business Day on which the FICC requests additional assurances from such Member. FICC has always interpreted that the current rules permit such action, however, this additional language makes it explicit.
- Rule 5, ''Trade Comparison'' Section 1 ''General'' and Section 3 ''Trade Submission Communication Methods'' includes disclosure relating to the means by which data may be entered and submitted to the Corporation. Section 10 ''Modification of Trade Data'' of this rule allows the Corporation to unilaterally modify trade data submitted by Clearing Members if the Corporation becomes aware of any changes to the transaction which invalidates the original terms upon which it was submitted or compared and Rule 12 ''Obligations'' of this Section discusses the point at which trade data becomes a settlement obligation.

[43] But no later than one (1) hour before the close of the Federal Reserve Banks' Fedwire Funds Service if such determination relates to the extension of time for settlement and is made on a settlement day.

[44] As is the case under Rule 4, ''Clearing Fund and Loss Allocation'', in the event of a close out of a defaulting Member, broker members will be responsible for partially-matched trades for which FICC has received a statement denying the existence of the trade.

[45] It should be noted that DTCC has an Audit Committee and such Committee would not be dismantled without prior notification to the Commission.

• With respect to the computation of cash balances under Rule 11, ''Cash Settlement'', FICC has included a new process with respect to fail tracking. Fail tracking is an automated process that takes place when the actual settlement date of a transaction is beyond the contract date. An adjustment is made when one or more beneficiary dates fall between the contract date and the settlement date. The adjustment results in the payment of funds from the message originator to the message receiver through the Federal Reserve's National Settlement Service (''NSS''). This eliminates a cumbersome manual process for tracking and clearing adjustments from securities transaction counter-parties and it impacts all Fed-eligible mortgage-backed securities, including Freddie Mac, Fannie Mae and Ginnie Mae.

• With respect to Rule 26, ''Financial Reports and Internal Accounting Control Reports'', Section 1 ''Financial Reports'' has been revised to state that the Corporation will (1) Prepare its financial statements in accordance with Generally Accepted Accounting Principles, (2) make unaudited financial statements for the fourth quarter available to its Clearing Members within 60 days following the close the Corporation's calendar year, and (3) provide a certain level of minimum disclosures in its quarterly financial statements. This rule has also been revised to include Section 2 ''Internal Accounting Control Reports'', which requires the Corporation to make internal accounting control reports available to its Clearing Members.

• The proposed MBSD rules also introduce pool netting fees. Below is a description of each fee:

1. Matched Pool Instruct (''PID'') (per side): When a pool instruct is matched resulting from either an instruct or an affirmation (with our without pending status) a matched fee is charged to both sides.

2. Customer Delivery Request (''CDR'') Pool Instruct Fee: When a pool instruct in a matched status is included in the net (vs. FICC) a CDR fee is charged at the instruct PID level to the Clearing Member that submitted the CDR.

3. Cancel of Matched Pool Instruct: This fee is assessed to the Clearing Member submitting a unilateral cancel on a matched pool instruct.

4. Pool Obligation: This fee is charged to the net long and short Clearing Member when a Pool Obligation (''POID'') is created vs. FICC.

5. Post Net Subs: Charged to the Clearing Member that submits a substitution (the net seller) on a POID vs. FICC.

6. Clearance of Pool vs. FICC: Fee associated with clearing a POID vs. FICC.

7. Financing Charges (Financing costs are the costs of carrying positions overnight): For each other Clearing Member, a pass-through charge calculated on a percentage of the total of all such costs incurred by the Corporation, allocated by agency product.

c. The provisions listed below are in the current GSD rules and have been further revised in the proposed MBSD rules in an effort to harmonize the two rulebooks:

- Rule 3 Section 12 (Excess Capital Premium)
- Rule 5 Section 10 (Modification of Trade Data by the Corporation)
- Rule 14 (Restrictions on Access to Services)
- Rule 15 (Wind-Down of a Member)
- Rule 16 (Insolvency of a Member)
- Rule 17 (Procedures For When the Corporation Ceases to Act)
- Rule 17A (Corporation Default)
- Rule 18 (Charges for Services Rendered)
- Rule 19 (Bills Rendered)
- Rule 20 (Admission to Premises of the Corporation, Powers of Attorney, etc.)
- Rule 21 (Forms)
- Rule 22 (Release of Clearing Data)
- Rule 23 (Lists to be Maintained)
- Rule 24 (Signatures)
- Rule 25 (Insurance)
- Rule 26 (Financial Reports and Internal Accounting Control Reports)
- Rule 27 (Rule Changes)
- Rule 28 (Hearing Procedures)
- Rule 29 (Governing Law and Captions)
- Rule 30 (Limitations of Liability)
- Rule 31 (General Provisions)
- Rule 32 (Cross-Guaranty Agreements)
- Rule 33 (Suspension of Rules in Emergency Circumstances)
- Rule 34 (Action by the Corporation)
- Rule 35 (Notices)
- Rule 36 (Interpretation of Terms)
- Rule 37 (Interpretation of Rules)
- Rule 38 (Disciplinary Proceedings)
- Rule 39 (DTCC Shareholders Agreement)

(b) By establishing guaranteed settlement and CCP services for the MBSD, FICC is promoting efficiencies in the mortgage-backed securities marketplace, and for its membership. The MBSD guarantee of settlement upon comparison of submitted trades will reduce risks associated with defaults among counterparties. The introduction of pool comparison, netting, and settlement services will reduce, for MBSD Clearing Members, the number of pool settlements and the associated risks and costs. In addition, providing CCP services will protect Clearing Members from undue risks by allowing FICC to ''step in'' as settlement counterparty on eligible trades. The proposed changes are therefore consistent with the Securities and Exchange Act of 1934 and the rules and regulations promulgated there under, in that they will further the abilities of FICC to support the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (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–FICC–2008–01 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FICC–2008–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., 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 FICC and on FICC's Web site at *http://dtcc.com/downloads/legal/rule_filings/2008/ficc/2008-01_Amendment_No_1.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number File Number SR–FICC–2008–01 and should be submitted on or before January 3, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31762 Filed 12–9–11; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

AGENCY: Small Business Administration.

ACTION: 60 Day Notice and request for comments. 8(a) Business Development Program.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before February 10, 2012.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Joan Elliston, Program Analyst, Office of Business Development, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Joan Elliston, Program Analyst, (202) 205–7190 *joan.elliston@sba.gov* Curtis B. Rich, Management Analyst, (202) 205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 13 of the Code of Federal Regulations, Section 124.403, each 8(a) participant must annually review its business plan with its assigned business development specialist and modify the plan, as appropriate within 30 days after the close of each program year. The participant must also submit a statement describing its current contract performance capabilities as part of its updated business plan. SBA uses the information collected to access the participants financial condition and continued eligibility.

Title: ''8(a) Annual Update''.

Description of Respondents: 8(a) Program Participants.

Form Number: 1450.

Annual Responses: 6,763.

Annual Burden: 13,526.

SUPPLEMENTARY INFORMATION: All 8(a) participants are required to provide semiannual information on any agents, representatives, attorneys, and accounts receiving compensation to assist in obtaining a Federal contract for the participant. The information addresses the amount of compensation received and description of the activities performed in return for such compensation. The information is used to ensure that participants do not engage in any improper or illegal activity in connection with obtaining a contract.

Title: ''Representatives Used and Compensation Paid for Services in Connection with obtaining Federal Contracts''.

Description of Respondents: 8(a) Program Participants.

Form Number: 1790.

Annual Responses: 15,810.

Annual Burden: 3,953.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Edsel Brown, Assistant Administrator, Office of Technology, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Edsel Brown, Assistant Administrator, (202) 205–7343 *edsel.brown@sba.gov* Curtis B. Rich, Management Analyst, (202) 205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The SBA needs this data to satisfy program requirements in the Small Business Act including new requirements established in the reauthorization legislation's, Public Law 106–554 and Public Law 107–50. This data will be used by SBA to maintain information about the SBIR and STTR awards issued through the two programs. The data will be provided by each SBIR/STTR participating agency based on information collected from program awardees. The data will be used to report annually to the Congress on awards issued. Further, the data will be used by Congress, GAO, SBA and participating agencies.

Title: ''Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) TechNet Database''.

Description of Respondents: All Firms or Individuals applying for a Phase I or Phase II award from the SBIR or STTR programs.

Form Number: N/A.

Annual Responses: 37,000.

Annual Burden: 20,000.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Donald Romek, Division Manager, Denver Finance Center, Small Business Administration, 721 19th Street, 3rd Floor, Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT: Donald Romek, Division Manager, (303) 844–3603 *donald.romek@sba.gov* Curtis B. Rich, Management Analyst, (202) 205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA Form 172 is used by Lenders to report loan

[46] 17 CFR 200.30–3(a)(12).

payment data to SBA on a monthly basis. the purpose of this reporting is to (1) Show the remittance due SBA on a loan serviced by participating lending institutions; (2) update the loan receivable balances.

Title: ''Transaction Report on Loans Serviced by Lenders''.

Description of Respondents: Small Business Administration Participating Lenders.

Form Number: 172.

Annual Responses: 24,779.

Annual Burden: 4,130.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Rachel Newman-Karton, Program Analyst, Office of Small Business Development Centers, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Rachel Newman-Karton, Program Analyst, (202) 619–1816 *Rachel.newman@sba.gov* Curtis B. Rich, Management Analyst, (202) 205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Each form is used to notify recipients of grant awards and cooperative agreement awards. Form 1222 is used also to document logistical and budgetary information gathered from the awardees application and proposal. Awardees/Respondents are universities, colleges, state and local government, for-profit and non-profit organizations. Form 1224 is used to certify the cost sharing by the recipient.

Title: ''Notice of Award & Grant/Cooperative Agreement Cost Sharing Proposal''.

Description of Respondents: SBA Grant Applicants and Recipients.

Form Numbers: 1222, 1224.

Annual Responses: 477.

Annual Burden: 34,191.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Carol Fendler, System Accountant, Office of Investment, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, System Accountant, (202) 205–7559 *carol.fendler@sba.gov* Curtis B. Rich, Management Analyst, (202) 205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA Forms 856 and 856A are used by SBA examiners as part of their examination of licensed small business investment companies (SBICs). This information collection obtains representations from an SBIC's management regarding certain obligations, transactions and relationships of the SBIC and helps SBA to evaluate the SBIC's financial condition and compliance with applicable laws and regulations.

Title: ''Disclosure Statement, Leveraged Licensees & Disclosure Statement, Non-Leveraged Licensees''.

Description of Respondents: Small Business Investment Companies.

Form Numbers: 856, 856A.

Annual Responses: 400.

Annual Burden: 400.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2011–31804 Filed 12–9–11; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12815 and #12816]

Texas Disaster Number TX–00381

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 8.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–4029–DR), dated 09/09/2011.

Incident: Wildfires.

Incident Period: 08/30/2011 and continuing.

Effective Date: 12/05/2011.

Physical Loan Application Deadline Date: 01/06/2012.

EIDL Loan Application Deadline Date: 06/06/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Texas, dated 09/09/2011 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 01/06/2012.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–31810 Filed 12–9–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0454]

Emergence Capital Partners SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Ironwood Mezzanine Fund II, L.P., 55 Nod Rd., Avon, CT 06001, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Ironwood Mezzanine Fund II, L.P. proposes to provide debt financing to Action Environmental Group, Inc., 451 Frelinghuysen Avenue, Newark, NJ 07114 (''Action Carting''). The proceeds will be used to finance a single-stream material recovery facility.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Ironwood Equity Fund L.P., an Associate of Ironwood Mezzanine Fund II, L.P., owns more than ten percent of Action Carting. Therefore, Action Carting is considered an Associate of the Licensee and this transaction is considered *Financing an Associate,* requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction within 15 days of the date of this publication to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: November 25, 2011.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2011–31825 Filed 12–9–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 7722]

Culturally Significant Objects Imported for Exhibition Determinations: ''Civic Pride: Group Portraits from Amsterdam''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Civic Pride: Group Portraits from Amsterdam,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about January 22, 2012, until on or about January 2, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: November 29, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–31835 Filed 12–9–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7723]

Culturally Significant Objects Imported for Exhibition Determinations: ''Van Gogh. Up Close''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Van Gogh. Up Close.,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Philadelphia Museum of Art, Philadelphia, PA, from on or about January 26, 2012, until on or about May 6, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* (202) 632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: December 2, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–31834 Filed 12–9–11; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice of Review of Certain Pending Country Practice Petitions

AGENCY: Office of the United States Trade Representative.

ACTION: Request for submissions and notice of public hearing.

SUMMARY: As part of past GSP annual reviews, the Office of the United States Trade Representative (USTR) accepted for review petitions to modify the GSP status of certain GSP beneficiary developing countries because of country practices. This notice announces the schedule for submissions and a public hearing on the ongoing reviews of outstanding country practice petitions related to concerns about internationally recognized worker rights and/or child labor in Bangladesh, Niger, Philippines, Sri Lanka, and Uzbekistan. In addition, the hearing will include testimony on a country practice petition related to the Republic of Georgia. (See 76 FR 67530.)

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 1724 F Street NW., Room F–214, Washington, DC 20508. The telephone number is (202) 395–6971, the fax number is (202) 395–2961, and the e-mail address is *Tameka_Cooper@ustr.eop.gov*.

DATES: The GSP regulations (15 CFR Part 2007) provide the schedule of dates for conducting an annual review unless otherwise specified in a notice published in the **Federal Register**. The schedule for the review of the country practice petitions cited above follows.

January 10, 2012: Due date for submission of pre-hearing briefs and requests to appear at the GSP Subcommittee Public Hearing; must be submitted by 5 p.m.

January 24, 2012: GSP Subcommittee Public Hearing on the the subject country practice petitions, to be held at 1724 F Street NW., Washington, DC 20508, beginning at 9:30 a.m.

February 14, 2012: Due date for submission of post-hearing briefs and comments from the public.

SUPPLEMENTARY INFORMATION: The GSP program provides for the duty-free importation of eligible articles when imported from designated beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended, and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

Notice of Public Hearing

A hearing will be held by the GSP Subcommittee of the TPSC on Tuesday, January 24, 2012, for the country practice petitions described above beginning at 9:30 a.m. at 1724 F Street NW., Washington, DC 20508. The hearing will be open to the public, and a transcript of the hearing will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage or recording devices will be allowed.

All interested parties wishing to make an oral presentation at the hearing must submit, following the ''Requirements for Submissions'' set out below, the name, address, telephone number, facsimile number, and email address, if available, of the witness(es) representing their

organization to William D. Jackson, Deputy Assistant U.S. Trade Representative for GSP, by 5 p.m., January 10, 2012. Requests to present oral testimony must be accompanied by a written brief or statement, in English. Oral testimony before the GSP Subcommittee will be limited to five-minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if they conform with the regulations cited below and are submitted, in English, by 5 p.m., February 14, 2012. Parties not wishing to appear at the public hearing may submit pre-hearing briefs or comments, in English, by 5 p.m., January 10, 2012, and post-hearing written briefs or comments, in English, by 5 p.m., February 14, 2012.

Requirements for Submissions

All submissions for the GSP Annual Review must conform to the GSP regulations set forth at 15 CFR part 2007, except as modified below. These regulations are available on the USTR Web site at *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/gsp-program-inf*. Any person or party making a submission is strongly advised to review the GSP regulations and the GSP Guidebook, available at: *http://www.ustr.gov/webfm_send/2880*.

To ensure their timely and expeditious receipt and consideration, submissions in response to this notice must be submitted online at *http://www.regulations.gov*. Hand-delivered submissions will not be accepted. Submissions must be submitted in English by the applicable deadlines set forth in this notice.

To make a submission using *http://www.regulations.gov,* enter docket number USTR–2011–0015 in the ''Enter Keyword or ID'' field on the home page and click ''Search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' in the top-middle section of the search-results page, and click on the link entitled ''Submit a Comment.'' The *http://www.regulations.gov* Web site offers the option of providing comments by filling in a ''Type Comment'' field or by attaching a document using the ''Upload file(s)'' field. Given the detailed nature of the information sought by the GSP Subcommittee, it is preferred that submissions be provided in an attached document. When attaching a document, type (1) 2011 GSP Annual Review; (2) the country and case number of the subject petition; (3) ''See attached'' in the ''Type Comment'' field on the online submission form, and indicate on the attachment whether the document is, as appropriate, ''Written Comments,'' ''Notice of Intent to Testify,'' ''Pre-hearing brief,'' or a ''Post-hearing brief.'' The case number and country name can be found in the document ''2011 Annual Review List of Country Practice Petitions under Review,'' which can be found on the USTR Web site at *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/current-review-4*. Submissions should not exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Each submitter will receive a submission tracking number upon completion of the submissions procedure at *http://www.regulations.gov*. The tracking number will be the submitter's confirmation that the submission was received into *http://www.regulations.gov*. The confirmation should be kept for the submitter's records. USTR is not able to provide technical assistance for the Web site. Documents not submitted in accordance with these instructions may not be considered in this review. If unable to provide submissions as requested, please contact the GSP Program at USTR to arrange for an alternative method of transmission.

Business Confidential Submissions

A person seeking to request that information contained in a submission from that person be treated as business confidential information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such. The submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential. Additionally, ''Business Confidential'' must be included in the ''Type Comment'' field. Any submission containing business confidential information must be accompanied by a separate non-confidential version of the confidential submission, indicating where confidential information has been redacted. The non-confidential version will be placed in the docket and open to public inspection.

Public Viewing of Review Submissions

Submissions in response to this notice, except for information granted ''business confidential'' status under 15 CFR § 2003.6, will be available for public viewing pursuant to 15 CFR 2007.6 at *http://www.regulations.gov* upon completion of processing and no later than approximately two weeks after the relevant due date. Such submissions may be viewed by entering the docket number USTR–2011–0015 in the search field at: *http://www.regulations.gov*.

William D. Jackson,

Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences and Chair of the GSP Subcommittee of the Trade Policy Staff Committee, Office of the U.S. Trade Representative.

[FR Doc. 2011–31829 Filed 12–9–11; 8:45 am]

BILLING CODE 3190–W9–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Alaska Federal Lands Long Range Transportation Plan

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Highway Administration, along with the Bureau of Land Management, Fish and Wildlife Service, Forest Service and National Park Service, announce the availability of the draft Alaska Federal Lands Long Range Transportation Plans (LRTP) for public review and comment. The draft plans outline a strategy for a multi-agency approach to improving and maintaining transportation assets that provide access to Federal Lands in the Alaska region over the next 20 years.

DATES: Please provide your comments by March 12, 2012.

ADDRESSES: See Supplementary Information section for address to obtain copies or make comments.

FOR FURTHER INFORMATION CONTACT:

Federal Highway Administration (FHWA), DOT: Roxanne Bash, (360) 619–7558.

Bureau of Land Management (BLM), DOI: Randy Goodwin, (907) 474–2369.

Fish and Wildlife Service (FWS), DOI: Helen Clough, (907) 786–3353.

Forest Service (FS) USDA: Marie Messing, (907) 586–8834.

National Park Service (NPS), DOI: Paul Schrooten, (907) 644–3388.

SUPPLEMENTARY INFORMATION: Title 23 United States Code Section 204 requires all Federal land management agencies to conduct long range transportation planning in a manner that is consistent with metropolitan planning organizations and state departments of transportation.

With this notice the multi-agency Federal Lands draft LRTP and the agency specific drop-down draft LRTPs are now available for public review and comment.

Alaska Federal Lands draft LRTP—This draft plan describes the benefits of and actions for coordinated planning and decision making among federal land management agencies (FLMA) involved in this Alaska Federal Lands Long Range Transportation Plan (Alaska Federal Lands LRTP). This draft plan results from a partnership among the National Park Service (NPS); U.S. Fish and Wildlife Service (FWS); U.S. Department of Agriculture, Forest Service (FS); Bureau of Land Management (BLM); Alaska Department of Transportation and Public Facilities (ADOT&PF); and the Federal Highway Administration (FHWA), Western Federal Lands Highway Division (WFLHD). The final LRTP will assist FLMAs to consolidate efforts through long-term coordination in transportation planning and decision-making processes. Such cooperation is accomplished through developing common goals and objectives; setting priorities for implementing projects; facilitating objective decision making for the transportation system; and developing common actions that benefit each FLMA in furthering the common goals and objectives. The key objective of such a planning process is to develop and maintain a coordinated, ''seamless'' transportation system for public and administrative access to Federal lands.

Agency Specific Drop-down draft LRTPs—To provide information for the multi-agency plan, each federal agency has also prepared it's own draft long range transportation plan, called a drop-down draft LRTP, for the portions of the state's transportation system within that agency's jurisdiction. The drop-down final LRTPs enable each agency to outline the transportation facilities within their jurisdiction as well as the existing and future needs for those facilities. Drop-down draft LRTPs will elaborate upon topics discussed in the Alaska Federal Lands final LRTP with agency-specific details including baseline conditions, transportation needs and gaps, project selection processes, funding opportunities, performance measures, and recommended future actions. All agencies are coordinating with the Alaska Department of Transportation and Public Facilities (ADOT&PF) during the development of these plans, and the information resulting from these planning efforts will inform the Alaska Federal Lands LRTP.

Draft LRTPs are available on our project *Web site: http://www.akfedlandslrtp.org/.* Submit comments for any or all plans electronically through the NPS Planning, Environment and Public Comment system (PEPC) at *http://parkplanning.nps.gov*.

We also have a limited number of printed and CD–ROM copies of the draft plans. You may request a copy or submit written comments at the following *address:*

Steve Hoover; *Attn:* Alaska LRTP; 4601 DTC Blvd., Suite 700; Denver, CO 80237.

Next Steps—After this comment period ends, we will analyze the comments and address them in the form of final LRTPs.

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.

Authority: 23 U.S.C. 204

Dated: November 28, 2011.

Clara H. Conner,

Division Engineer, Western Federal Lands Highway Division, FHWA, Vancouver, Washington.

[FR Doc. 2011–31338 Filed 12–9–11; 8:45 am]

BILLING CODE 4910–36–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway Project in Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, US 18/151 (Verona Road) CTH PD to US 12/14 and US 12/14 (Beltline) Whitney Way to Todd Drive in Dane County, Wisconsin. Those actions grant approvals for the project. The project will be constructed in three stages. Stage 1 entails reconstructing the current US 18/151 and US 12/14 diamond interchange to a single-point urban interchange and extending the six-lane US 12/14 section west through the Whitney Way interchange. The Beltline reconstruction will extend from west of Whitney Way to east of Seminole Highway and will include reconstruction of the Seminole Highway overpass. The US 12/14 modifications will include expanding the Whitney Way westbound off-ramp and the Whitney Way eastbound on-ramp to two lanes and add a parallel lane to the Whitney Way westbound on-ramp. US 18/151 (Verona Road) will be reconstructed from Raymond Road to US 12/14 and include capacity expansion. Midvale Boulevard will be reconstructed between US 12/14 and Nakoma Road. A jug-handle grade-separated intersection will be constructed at the current Summit Road at-grade intersection with US 18/151. Four lanes southbound and three lanes northbound will be provided on US 18/151 from Nakoma Road on Midvale Boulevard to Summit Road. Stage 1 is currently scheduled for construction from approximately 2013 to 2015.

Stage 2 will convert the CTH PD and US 18/151 at-grade intersection to a diamond interchange. Stage 2 will also include a third lane in both directions on US 18/151 from the CTH PD interchange to the Raymond Road intersection and upgrade the Williamsburg Way at-grade intersection. CTH PD will be reconstructed from west of Nesbitt Road to Commerce Park Drive. Stage 2 is currently scheduled for construction from approximately 2017 to 2018.

Stage 3 will be constructed when operations and safety needs become a statewide priority and funding is available. This is currently predicted for around 2030. Stage 3 will separate local and regional traffic by constructing a depressed freeway down the center of Verona Road. A US 151/18 system interchange with depressed US 18/151 ramps will be constructed east of the Verona Road Single-point interchange. A one-way pair local road system will front the depressed US 18/151 freeway. Raymond Road and Williamsburg Way will be grade-separated over US 18/151 freeway. The environmental document will be re-evaluated in coordination

with federal, state and local agencies prior to the implementation of Stage 3. Therefore, this notice of limitations does not apply to Stage 3.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed within 180 days of publication of this **Federal Register** notice. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Tracey Blankenship, Major Projects Program Manager, Federal Highway Administration, 525 Junction Road Suite 8000, Madison, Wisconsin 53717; *telephone:* (608) 829–7510 or *email: Tracey.Blankenship@dot.gov.* The FHWA Wisconsin Division's normal office hours are 7 a.m. to 4 p.m. central time. For the Wisconsin Department of Transportation (WisDOT): Larry Barta. P.E., Wisconsin Department of Transportation, Southwest Region Office, 2101 Wright Street, Madison, Wisconsin 54303; *telephone:* (608) 246–3884; *email: Larry.Barta@dot.wi.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing approvals for the following highway project: US 18/151 (Verona Road) CTH PD to US 12/14 (Beltline) and US 12/14 (Beltline) Whitney Way to Todd Drive, Dane County, Wisconsin, Project ID 1206–07–03. The actions taken by FHWA, and laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on June 28, 2011 (FHWA–WI–EIS–03–02–F), in the Record of Decision (ROD) issued on November 2, 2011, and in other documents in the FHWA/WisDOT administrative record for the project. The FEIS, ROD, and other project records are available by contacting FHWA or WisDOT at the addresses provided above.

The FEIS can also be viewed on the project Web site: *http://www.dot.wisconsin.gov/projects/d1/verona/environment.htm#feis*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128].
2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)].
3. Land: Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303], Section 6(f) of the Land and Water Conservation Act as amended [16 U.S.C 4601], and National Trails System Act [16 U.S.C. 1241–1249].
4. Wildlife: Endangered Species Act of 1973 [16 U.S.C. 1531–1543 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–666(c)]; Migratory Bird Treaty Act [16 U.S.C. 760c–760g].
5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.]; Archaeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(ll)]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001 et seq.].
6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d) et seq.]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Americans With Disabilities Act [42 U.S.C. 12101]; Uniform Relocation Assistance and Real Property Acquisition Act of 1970 [42 U.S.C. 4601 et seq. as amended by the Uniform Relocation Act Amendments of 1987 [P.L. 100–17].
7. Wetlands and Water Resources: Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1376]; Land and Water Conservation Fund [16 U.S.C. 460l–4 to 460l–11]; Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act, [42 U.S.C. 4001–4128]; Emergency Wetlands Resources Act, [16 U.S.C. 3921, 3931].
8. Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended [42 U.S.C. 9601–9657]; Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499]; Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.].
9. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management as amended by E.O. 12148; E.O. 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination With Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: December 5, 2011.

Tracey Blankenship,

Major Projects Program Manager, FHWA Wisconsin Division, Madison, Wisconsin.

[FR Doc. 2011–31815 Filed 12–9–11; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FY 2011 Discretionary Sustainability Funding Opportunity; Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER) and Clean Fuels Grant Program, Augmented With Discretionary Bus and Bus Facilities Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: FTA Sustainability Program Funds: Announcement of Project Selections.

SUMMARY: The U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) announces the selection of Fiscal Year (FY) 2011 projects funded under two discretionary programs: The Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER) program and the Clean Fuels Grant program enhanced with Section 5309 Bus and Bus Facilities program funds. Both programs support the U.S. Department of Transportation's environmental sustainability efforts and were announced in FTA's Notice of Funding Availability (NOFA) on June 24, 2011. The TIGGER program makes funds available for capital investments that will reduce the energy consumption or greenhouse gas emissions of public transportation systems. The Clean Fuels Grant program makes funds available to assist nonattainment and maintenance areas in achieving or maintaining the National Ambient Air Quality Standards for ozone and carbon monoxide and supports emerging clean fuel and advanced propulsion technologies for transit buses and markets for those technologies.

FOR FURTHER INFORMATION CONTACT: Successful applicants should contact the appropriate FTA Regional office (Appendix) for specific information regarding applying for these funds or specific questions. For general program information on TIGGER, contact Matthew Lesh, Office of Mobility Innovation, (202) 366–0953, *email: matthew.lesh@dot.gov.* For general program information on the Clean Fuels Grant program, contact Vanessa Williams, Office of Program

Management, at (202) 366–4818, *email: vanessa.williams@dot.gov.*

SUPPLEMENTARY INFORMATION: *Clean Fuels:* A total of $51.5 million was available for FTA's Clean Fuels Grant program in FY 2011. A total of 111 applicants requested approximately $450.5 million indicating significant demand for available funds. Of the proposals submitted, 20 were from attainment areas requesting $80.8 million and were only considered for Bus and Bus Facilities program funds. The project proposals were evaluated based on the criteria detailed in the June 24, 2011 NOFA. The projects selected and shown in Table 1 will provide a reduction in transportation-related pollutants and improve air quality. Table 1 also includes the five projects selected from attainment areas that will be funded for a total of $11.3 million with FY 2011 Section 5309 Bus and Bus Facilities funding. Clean Fuels and Bus projects can be funded at up to 83 percent Federal share for eligible vehicle purchases. The 83 percent share is a blended figure representing 80 percent of the vehicle and 90 percent of the vehicle-related equipment to be acquired in compliance with the Clean Air Act. The 83 percent share does not apply to facilities, for which the costs are more variable. The eligibility of facility-related cost element at the 90 percent share will be reviewed for eligibility of the higher Federal share on a case-by-case basis as part of the grant application process. The FY 2011 Consolidated Appropriations Act (Department of Defense and Full-Year Continuing Appropriations Act, 2011, Pub L. 112–10) allows a 90 percent Federal share for total cost of a biodiesel bus and 90 percent Federal share for the net capital cost of factory installed hybrid electric propulsion systems and any equipment related to such a system. The Clean Fuels Grant and Bus program funds allocated in this announcement must be obligated in a grant by September 30, 2014.

TIGGER: A total of $49.9 million was available for FTA's TIGGER program in FY 2011. A total of 155 applicants requested approximately $616 million, indicating significant demand for available funds. Project proposals were evaluated based on the criteria detailed in the June 24, 2011 NOFA. Projects selected for implementation with the TIGGER program funds are included in Table 2. TIGGER projects can be funded at up to 100 percent Federal share; however, the local share ratio described in the project proposal must be maintained in the grant application. Recipients of TIGGER funds must report on an annual basis: (1) Actual annual energy consumed within the project scope attributable to the investment for the energy consumption projects; (2) actual greenhouse gas emissions within the project scope attributable to the investment for greenhouse gas reduction projects; and, (3) actual annual reductions or increase in operating costs to the investment for all projects. The TIGGER funds allocated in this announcement must be obligated by September 30, 2013.

Project Implementation: Grantees selected for competitive discretionary funding should work with their FTA regional office to finalize the application in FTA's Transportation Electronic Award Management (TEAM) system, so that funds can be obligated expeditiously. Funds must be used for the purposes specified in the competitive proposal and developed within the grant application. A discretionary project identification number has been assigned to each project for tracking purposes and must be used in the TEAM application. Selected projects have pre-award authority as of November 17, 2011. Post-award reporting requirements include submission of the Financial Federal Report and Milestone reports in TEAM as appropriate (see FTA.C.5010.1D).

The grantee must comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out the project supported by the FTA grant. FTA emphasizes that grantees must follow all third-party procurement guidance, as described in FTA.C.4220.1F.

Issued in Washington, DC, this 6th day of December, 2011.

Peter Rogoff,

Administrator.

Appendix A

FTA Regional and Metropolitan Offices

Mary Beth Mello, Regional Administrator, Region 1—Boston, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Tel. 617–494–2055.

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Anthony Carr, Acting Regional Administrator, Region 2—New York, One Bowling Green, Room 429, New York, NY 10004–1415, Tel. 212–668–2170.

States served: New Jersey, New York.

New York Metropolitan Office, Region 2—New York, One Bowling Green, Room 428, New York, NY 10004–1415, Tel. 212–668–2202.

Brigid Hynes-Cherin, Regional Administrator, Region 3—Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7100.

States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia.

Washington, DC Metropolitan Office, 1990 K Street, NW., Room 510, Washington, DC 20006, Tel. 202–219–3562.

Yvette Taylor, Regional Administrator, Region 4—Atlanta, 230 Peachtree Street NW., Suite 800, Atlanta, GA 30303, Tel. 404–865–5600.

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands.

Robert C. Patrick,Regional Administrator, Region 6—Ft. Worth, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Tel. 817–978–0550.

States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas.

Mokhtee Ahmad, Regional Administrator, Region 7—Kansas City, MO, 901 Locust Street, Room 404, Kansas City, MO 64106, Tel. 816–329–3920.

States served: Iowa, Kansas, Missouri, and Nebraska.

Terry Rosapep, Regional Administrator, Region 8—Denver, 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228–2583, Tel. 720–963–3300.

States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Leslie T. Rogers, Regional Administrator, Region 9—San Francisco, 201 Mission Street, Room 1650, San Francisco, CA 94105–1926, Tel. 415–744–3133.

States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands.

Los Angeles Metropolitan Office, Region 9—Los Angeles, 888 S. Figueroa Street, Suite 1850, Los Angeles, CA 90017–1850, Tel. 213–202–3952.

FTA REGIONAL AND METROPOLITAN OFFICES—Continued

Marisol Simon, Regional Administrator, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789. States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. Chicago Metropolitan Office, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789.	Rick Krochalis, Regional Administrator, Region 10—Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Tel. 206–220–7954. States served: Alaska, Idaho, Oregon, and Washington.

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Table 1
CLEAN FUELS AND BUS AND BUS FACILITIES PROJECT SELECTIONS

State	Project ID	Recipient	Project Description	Allocation
CA	D2011-CLNF-10001 ($107,145) and D2011-CLNF-001 ($1,892,855)	Long Beach Public Transportation Company	Replace diesel buses with alternatively fueled Gasoline/Electric Hybrid coaches	$2,000,000
CA	D2011-CLNF-002	Monterey-Salinas Transit	Replace gas mini-buses with new diesel hybrid electric mini-buses	$788,308
FL	D2011-CLNF-003	City of Gainesville	Procure HE Biodiesel buses and electric cooling system conversions for existing biodiesel buses	$3,000,000
FL	D2011-CLNF-004	Hillsborough Area Regional Transit Authority	Compressed Natural Gas (CNG) Fueling Station and Maintenance Facility Modifications	$2,320,000
GA	D2011-BUSP-194	Columbus Consolidated Government	Purchase of Hybrid Electric Buses	$1,677,312
IA	D2011-BUSP-195	Des Moines Area Regional Transit Authority	Hybrid Buses Upgrade	$1,125,000
IL	D2011-CLNF-005	Illinois Department of Transportation	Purchase of replacement hybrid-electric vehicles	$5,000,000
IL	D2011-CLNF-006	Springfield Mass Transit District	Replace the Compressed Natural Gas (CNG) Fueling Station	$1,000,000
IN	D2011-CLNF-007	City of Evansville -- Metropolitan Evansville Transit System	Purchase Mini- Hybrid electric cooling fan system	$175,186
MA	D2011-CLNF-008	Montachusett Regional Transit Authority	Purchase Hybrid-Electric Buses	$979,400
MD	D2011-CLNF-009	Maryland Department of Transportation	Purchase Hybrid and Compressed Natural Gas (CNG) buses	$3,066,286
MI	D2011-CLNF-010	Ann Arbor Transportation Authority	Hybrid-electric drive replacement for buses	$2,079,000
ND	D2011-CLNF-011	City of Fargo	Replace 35-foot buses	$1,029,200
NJ	D2011-CLNF-012	New Jersey Transit Corporation	Efficiency Upgrade of Compressed Natural Gas Fill Station	$1,500,000
NY	D2011-CLNF-013	Capital District Transportation Authority	Purchase Hybrid Electric Vehicles	$2,500,000
OH	D2011-CLNF-014	Central Ohio Transit Authority	McKinley Avenue CNG Fueling Station	$4,368,000
OH	D2011-CLNF-015	Southwest Ohio Regional Transit Authority	Replace 40 -foot diesel buses with innovative EMP "Mini Hybrid" Buses	$1,934,400
OR	D2011-CLNF-016	Tri-County Metropolitan Transportation District of Oregon	Purchase Hybrid Buses	$2,500,000
PA	D2011-BUSP-196	Erie Metropolitan Transit Authority	Replace Diesel Vehicles with CNG Vehicles	$2,000,000
PA	D2011-CLNF-017	Lehigh and Northampton Transportation Authority	Purchase Hybrid Buses	$3,000,000
PA	D2011-CLNF-018	Port Authority of Allegheny County	Port Authority of Allegheny County (PAAC) CNG Fueling Station Public-Private Partnership	$3,070,000
PA	D2011-BUSP-197	River Valley Transit (RVT)	Construction of RVT's CNG Fueling Facility and Purchase CNG Replacement Transit Vehicles	$3,500,000
PA	D2011-CLNF-019	Southeastern Pennsylvania Transportation Authority	SEPTA's Hybrid Bus Purchase Project: Incremental cost to replace 40-foot diesel buses with hybrid buses	$5,000,000

Table 1
CLEAN FUELS AND BUS AND BUS FACILITIES PROJECT SELECTIONS

State	Project ID	Recipient	Project Description	Allocation
TX	D2011-CLNF-020	City of El Paso	Replacement of CNG Paratransit Unleaded Fuel Vehicles	$1,500,000
TX	D2011-CLNF-021	City of Lubbock/Citibus	Replacement of 35' Citibus' 1996 Novabuses	$2,000,000
TX	D2011-BUSP-198	VIA Metropolitan Transit	Purchase Compressed Natural Gas, 60-ft, Bus Rapid Transit Buses	$3,000,000
WA	D2011-CLNF-022	City of Longview	Purchase 35-foot clean fuel biodiesel buses	$1,120,500
WA	D2011-CLNF-023	Intercity Transit	Purchase Hybrid BioDiesel-Electric Replacement Buses	$1,500,000
WA	D2011-CLNF-024	Stillaguamish Tribe of Indians	Purchase additional hybrid sedans	$69,720
			TOTAL	**$62,802,312**

Table II
TIGGER III PROJECT SELECTIONS

State	Project ID	Recipient	Project Description	Allocation
AZ	D2011-GGER-001	Regional Public Transportation Authority (Phoenix)	Electric Fan Retrofit ($1,349,715); Solar and Shade Canopy Project ($2,715,000)	$4,064,715
CA	D2011-GGER-002	Long Beach Public Transportation Company	Long Beach Transit Zero Emission/All Electric Bus Pilot Project	$6,700,000
CA	D2011-GGER-003	SunLine Transit Agency (Thousand Palms)	American Fuel Cell Hybrid Buses for SunLine Transit	$4,917,876
CT	D2011-GGER-004	Connecticut Department of Transportation	Acquire Stationary Fuel Cell for CTTransit New Haven Division Bus Maintenance Facility	$5,702,298
FL	D2011-GGER-005	South Florida Regional Transportation Authority	Tri-Rail's Pompano Beach Green Station Demonstration Project	$5,713,549
IL	D2011-GGER-006	Commuter Rail Division of the RTA d/b/a Metra (Chicago)	Locomotive Energy Efficiency Project in Northeast Illinois - A Non-Attainment Region	$2,208,000
MD	D2011-GGER-007	Maryland Department of Transportation	Bus Electric Radiator Retrofit	$1,544,580
NY	D2011-GGER-008	Rochester-Genesee Regional Transportation Authority	Boiler Replacement, Unit Heater Efficiency, HVAC Controls and Pavement Ice Control	$352,140
PA	D2011-GGER-009	Southeastern Pennsylvania Transportation Authority (Philadelphia)	Energy Storage Device at High-Demand Substations	$1,440,000
SC	D2011-GGER-010	South Carolina Department of Transportation	Seneca Energy & GHG Reduction Through Bus Electrification	$4,118,000
TN	D2011-GGER-011	Chattanooga Area Regional Transportation Authority	CARTA Wayside Inductive Power Transfer System Applied to 30-foot Electric Transit Buses	$2,502,400
TX	D2011-GGER-012	City of McAllen	On-line Electric Vehicle Bus Project	$1,906,908
UT	D2011-GGER-013	Utah Transit Authority	University of Utah Campus Shuttle Electrification	$2,692,000
VA	D2011-GGER-014	Town of Blacksburg\ Blacksburg Transit	Blacksburg Transit Dynamic Bus Routing and Scheduling Study	$1,858,680
VT	D2011-GGER-015	Vermont Agency of Transportation	STSI Transit Facility Energy-Efficient Improvements.	$95,769
WA	D2011-GGER-016	Chelan - Douglas Public Transportation Benefit Area	Link Transit- Five 100% Battery Electric Transit Vehicles and Associated Charging Stations	$2,500,000
WA	D2011-GGER-017	Sound Transit (Seattle)	Central Link Light Rail On-board energy storage	$1,583,085
			TOTAL	**$49,900,000**

[FR Doc. 2011–31694 Filed 12–9–11; 8:45 am]
BILLING CODE C

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011–0162]

Assistance to Small Shipyard Grant Program

AGENCY: Maritime Administration, DOT.

ACTION: Notice of Small Shipyard Grant Program.

SUMMARY: This notice announces the intention of the Maritime Administration to provide grants for small shipyards. Catalog of Federal Domestic Assistance Number: 20.814.

DATES: The period for submitting grant applications, as mandated by statute, commenced on November 18, 2011. The applications must be received by the Maritime Administration by 5 p.m. EST on January 17, 2012. Applications received later than this time will not be considered. The Maritime Administration intends to award grants no later than March 18, 2012.

FOR FURTHER INFORMATION CONTACT: Director, Office of Shipyards and Marine Engineering, Maritime Administration, Room W21–318, 1200 New Jersey Ave. SE., Washington, DC 20590; *phone:* (202) 366–5737; or *fax:* (202) 366–6988.

SUPPLEMENTARY INFORMATION: In accordance with Section 54101 of Title 46, United States Code, and the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2012, Public Law 112–55, this notice announces the intention of the Maritime Administration to provide grants for small shipyards. Catalog of Federal Domestic Assistance Number: 20.814.

Under the Small Shipyard Grant program, there is currently $9,980,000 available for grants for capital and related improvements for qualified shipyard facilities that will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration. Grant funds may also be used for maritime training programs to foster technical skills and operational productivity in communities whose economies are related to or dependent upon the maritime industry. Grants for such training programs may only be awarded to ''Eligible Applicants'' as described below, but training programs can be established through vendors to such applicants. Grant funds may not be used to construct buildings or other physical facilities or to acquire land unless such use is specifically approved by the Maritime Administration as being consistent with and supplemental to capital and related infrastructure improvements.

Award Information: The Maritime Administration intends to award the full amount of the available funding through grants to the extent that there are worthy applications. No more than 25 percent of the funds available will be awarded to shipyard facilities in one geographic location that have more than 600 production employees. The Maritime Administration will seek to obtain the maximum benefit from the available funding by awarding grants for as many of the most worthy projects as possible. The Maritime Administration may partially fund applications by selecting parts of the total project. The start date and period of performance for each award will depend on the specific project and must be agreed to by the Maritime Administration.

Eligibility Information: 1. Eligible Applicants—the statutes referenced above provide that shipyards can apply for grants. The shipyard facility for which a grant is sought must be in a single geographical location, located in or near a maritime community, and may not have more than 1200 production employees. The applicant must be the operating company of the shipyard facility. The shipyard facility must construct, repair, or reconfigure vessels 40 ft. in length or greater, for commercial or government use. 2. Eligible Projects—capital and related improvement projects that will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration; and training projects that will be effective in fostering employee skills and enhancing productivity. For capital improvement projects, all items proposed for funding must be new and to be owned by the applicant. For both capital improvement and training projects, all project costs, including the recipient's share, must be incurred after the date of the grant agreement.

Matching Requirements: The Federal funds for any eligible project will not exceed 75 percent of the total cost of such project. The remaining portion of the cost shall be paid in funds from or on behalf of the recipient. The applicant is required to submit detailed financial statements and supporting documentation demonstrating how and when such matching requirement is proposed to be funded as described below. The recipient's entire matching requirement must be paid prior to payment of any federal funds for the project. However, for good cause shown, the Maritime Administrator may waive the matching requirement in whole or in part, if the Administrator determines that a proposed project merits support and cannot be undertaken without a higher percentage of Federal financial assistance.

Application: An application should be filed on standard Form SF–424 which can be found on the Internet at *Marad.dot.gov.* Although the form is available electronically, the application must be filed in hard copy as indicated below due to the amount of information requested. A shipyard facility in a single geographic location applying for multiple projects must do so in a single application. The application for a grant must include all of the following information as an addendum to Form SF–424. The information should be organized in sections as described below:

Section 1: A description of the shipyard including (a) location of the shipyard; (b) a description of the shipyard facilities; (c) years in operation; (d) ownership; (e) customer base; (f) current order book including type of work; (g) vessels delivered (or major projects) over last 5 years; and (h) Web site address, if any.

Section 2: For each project proposed for funding the following:

(a) A comprehensive detailed description of the project including a statement of whether the project will replace existing equipment, and if so the disposition of the replaced equipment.

(b) A description of the need for the project in relation to shipyard operations and business plan and an explanation of how the project will fulfill this need.

(c) A quantitative analysis demonstrating how the project will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, or reconfiguration (for capital improvement projects) or how the project will be effective in fostering employee skills and enhancing productivity (for training projects). The analysis should quantify the benefits of the projects in terms of staff-hours saved, dollars saved, percentages, or other meaningful metrics. The methodology of the analysis should be explained with assumptions used identified and justified.

(d) A detailed methodology and timeline for implementing the project.

(e) A detailed itemization of the cost of the project together with supporting documentation, including current

vendor quotes and estimates of installation costs.

(f) A statement explaining if any elements of the project require action under the National Environmental Policy Act (42 U.S.C. sec. 4321, *et seq.*) or require any licenses or permits.

Items 2(a) thru 2(f) should be repeated, in order, for each separate project included in the application.

Section 3: A table with a prioritized list of projects and total cost and Government portion (in dollars) for each.

Section 4: A description of any existing programs or arrangements, if any, which will be used to supplement or leverage the federal grant assistance.

Section 5: Special economic circumstances and conditions, if any, of the maritime community in which the shipyard is located (beyond that which is reflected in the unemployment rate of the county in which the shipyard is located and whether that county is in an economically distressed area, as defined by 42 U.S.C. 3161).

Section 6: Shipyard company officer's certification of each of the following requirements:

(a) That the shipyard facility for which a grant is sought is located in a single geographical location in or near a maritime community and (i) the shipyard facility has no more than 600 production employees, or (ii) the shipyard facility has more than 600 production employees, but less than 1200 production employees (the shipyard officer must certify to one or the other of (i) or (ii));

(b) That the applicant has the authority to carry out the proposed project; and

(c) Certification in accordance with the Department of Transportation's regulation restricting lobbying, 49 CFR Part 20, that the applicant has not, and will not, make any prohibited payments out of the requested grant. Certifications are not required to be notarized.

Section 7: Unique identifier of shipyard's parent company (when applicable): Data Universal Numbering System (DUNS + 4 number) (when applicable).

Section 8: 2009 or 2010 (if available) year-end audited, reviewed or compiled financial statements, prepared by a certified public accountant, according to U.S. generally accepted accounting principles, not on an income tax basis. September 30, 2010, financial statements prepared by the company if December 31, 2010, CPA-prepared statements are not available. Do not provide tax returns.

Section 9: Statement regarding the relationship between applicants and any parents, subsidiaries or affiliates, if any such entity is going to provide a portion of the match.

Section 10: Evidence documenting applicant's ability to make proposed matching requirement (loan agreement, commitment from investors, cash on balance sheet, etc.) and in the times outlined in 2(d) above.

Section 11: Pro-forma financial statements reflecting (a) September 30, or December 31, 2010, financial condition; (b) effect on balance sheet of grant and matching funds (*i.e.* a decrease in cash or increase in debt, additional equity and an increase in fixed assets); and (c) impact on company's projected financial condition (balance sheet) of completion of project, showing that company will have sufficient financial resources to remain in business.

Section 12: Statement whether during the past five years, the applicant or any predecessor or related company has been in bankruptcy or in reorganization under Chapter 11 of the Bankruptcy Code, or in any insolvency or reorganization proceedings, and whether any substantial property of the applicant or any predecessor or related company has been acquired in any such proceeding or has been subject to foreclosure or receivership during such period. If so, give details.

Additional information may be requested as deemed necessary by the Maritime Administration in order to facilitate and complete its review of the application. If such information is not provided, the Maritime Administration may deem the application incomplete and cease processing it.

Where to File Application: Submit an original copy and one additional paper copy of the application and two CDs each containing a complete electronic version of the paper copy, no additional information of the application in PDF format to: Associate Administrator for Business and Finance Development, Room W21–318, Maritime Administration, 1200 New Jersey Ave. SE., Washington, DC 20590.

Evaluation of Applications: The Maritime Administration will evaluate the applications on the basis of how well the project for which a grant is requested would be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration (for capital improvement projects) or how well the project for which a grant is requested would be effective in fostering employee skills and enhancing productivity (for training projects) and the economic circumstances and conditions of the surrounding community. The Maritime Administration will also evaluate applications on the basis of how well they advance—consistent with achieving the program's statutory objectives—the Department's strategic goals of economic competitiveness, safety, livability, environmental sustainability, and state of good repair. The economic circumstances and conditions will be based upon the unemployment rate of the county in which the shipyard is located and whether that county is an economically distressed area, supplemented by any special economic circumstances and conditions identified by the applicant. The Maritime Administration will award grants in its sole discretion in such amounts and under such conditions it determines will best further the statutory purposes of the small shipyard grant program. Projects that may require additional environmental assessments such as those including waterside improvements (dredging, bulkheading, pier work, pilings, *etc.*) will not be considered for funding. Preference will be given to funding applications: (1) That propose matching funds greater than a 25% share of the project; (2) that impact existing operations and/or product lines rather than expand the capabilities of the shipyard into new product lines or capabilities; and (3) that result in a geographic diversity of grant recipients.

Potential applicants are advised that it is expected, based on past experience, that applications will far exceed the funds available and that only a small percentage of applications will be funded. It is anticipated that about 10 applications will be selected for funding with an average grant amount of about $1 million.

Conditions Attached to Awards: The grant agreement will set out the records to be maintained by the recipient that must be available for review and audit by the Maritime Administration, as well as any other conditions and requirements.

Dated: December 7, 2011.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–31830 Filed 12–9–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety; Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permits Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117n, PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application
M—Modification request
R—Renewal Request
P—Party To Exemption Request

Issued in Washington, DC, on November 30, 2011.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Applicant	Reason for delay	Estimated date of completion
Modification to Special Permits			
13736–M	ConocoPhillips, Anchorage, AK	4	03–31–2012
8826–M	Phoenix Air Group, Inc., Cartersville, GA	4	03–31–2012
12561–M	Rhodia, Inc., Cranbury, NJ	4	03–31–2012
8815–M	Florex Explosives, Inc., Crystal River, FL	4	03–31–2012
14763–M	Weatherford International, Fort Worth, TX	4	03–31–2012
14860–M	Alaska Airlines, Seattle, WA	4	03–31–2012
14909–M	Lake Clark Air, Inc., Port Alsworth, AK	4	03–31–2012
10656–M	Conference of Radiation Control Program Directors, Inc., Frankfort, KY	4	03–31–2012
12629–M	TEA Technologies, Inc., Amarillo, TX	4	03–31–2012
11406–M	Conference of Radiation Control Program Directors, Inc., Frankfort, KY	4	03–31–2012
10898–M	Hydac Corporation, Bethlehem, PA	3	03–31–2012
11670–M	Schlumberger Oilfield UK Plc Dyce, Aberdeen Scotland, Ab	3	03–31–2012
14193–M	Honeywell International, Inc., Morristown, NJ	4	03–31–2012
13336–M	Renaissance Industries, Inc., Sharpsville Operations M–1102, Sharpsville, PA	4	03–31–2012
8723–M	Maine Drilling & Blasting, Auburn, NH	4	03–31–2012
14584–M	WavesinSolids LLC, State College, PA	4	03–31–2012
10646–M	Schlumberger Technologies Corporation, Sugar Land, TX	4	03–31–2012
14921–M	ERA Helicopters LLC, Lake Charles, LA	4	03–31–2012
14457–M	Amtrol Alfa Metalomecanica SA, Portugal	4	03–31–2012
12065–M	Rust-Oleum Corp., Pleasant Prairie, WI	4	03–31–2012
11281–M	E.I. du Pont de Nemours & Company, Wilmington, DE	4	03–31–2012
15132–M	National Aeronautics and Space Administration (NASA), Washington, DC	4	03–31–2012
14741–M	Weatherford International, Fort Worth, TX	4	03–31–2012
New Special Permit Applications			
14813–N	Organ Recovery Systems, Des Plaines, IL	4	03–31–2012
14929–N	Alaska Island Air, Inc., Togiak, AK	4	03–31–2012
14951–N	Lincoln Composites, Lincoln, NE	1	03–31–2012
15053–N	Department of Defense, Scott Air Force Base, IL	4	03–31–2012
15080–N	Alaska Airlines, Seattle, WA	1	03–31–2012
15233–N	ExpressJet Airlines, Inc., Houston, TX	4	03–31–2012
15229–N	Linde Gas North America LLC, New Providence, NJ	4	03–31–2012
15243–N	Katmai Air, LLC, Anchorage, AK	4	03–31–2012
15283–N	KwikBond Polymers, LLC, Benicia, CA	4	03–31–2012
15334–N	Floating Pipeline Company Incorporated, Halifax, Nova Scotia	4	03–31–2012
15322–N	Digital Wave Corporation, Englewood, CO	4	03–31–2012
15317–N	The Dow Chemical Company, Philadelphia, PA	4	03–31–2012
15338–N	Middle Fork Aviation, Challis, ID	4	03–31–2012
15360–N	FMC Corporation, Tonawanda, NY	4	03–31–2012
15384–N	TEA Technologies, Inc., Amarillo, TX	4	03–31–2012
15373–N	Flinn Scientific Inc., Batavia, IL	4	03–31–2012
15510–N	TEMSCO Helicopters, Inc., Ketchikan, AK	4	03–31–2012
14872–N	Arkema, Inc., King of Prussia, PA	4	03–31–2012
Party to Special Permits Application			
10880–P	Southwest Energy LLC, Tucson, AZ	4	03–31–2012
9623–P	Austin Star Detonator Company (ASD), Brownsville, TX	4	03–31–2012
10880–P	Austin Star Detonator Company (ASD), Brownsville, TX	4	03–31–2012

Application No.	Applicant	Reason for delay	Estimated date of completion
11984–P	GEM of Rancho Cordova, LLC dba PSC, Environmental Services, Cordova, CA	4	03–31–2012
8445–P	GEM of Rancho Cordova, LLC dba PSC, Environmental Services, Cordova, CA	4	03–31–2012
8723–P	Maxam US, LLC, Salt Lake City, UT	4	03–31–2012
12134–P	Riceland Foods, Inc., Stuttgart, AR	4	03–31–2012
10048–P	Chemical Analytics, Inc., Romulus, MI	4	03–31–2012
11055–P	Stericycle Specialty Waste Solutions Inc., Blaine, MN	4	03–31–2012
8196–P	International Equipment Leasing, Avenel, NJ	4	03–31–2012
12412–P	ChemStation of Kansas City, Grain Valley, MO	4	03–31–2012
7616–P	Iowa Northern Railway, Greene, IA	4	03–31–2012
10880–P	WESCO, Midvale, UT	4	03–31–2012
8723–P	SLT Express Way Inc., Glendale, AZ	4	03–31–2012
11296–P	Waste Management National Services, Inc., Oak Park, IL	4	03–31–2012
8445–P	PSC Industrial Outsourcing LP dba Philip, West Industrial Services, Long Beach, CA	4	03–31–2012
8445–P	Burlington Environmental, LLC, Tacoma, WA	4	03–31–2012
11984–P	Burlington Environmental, LLC, Tacoma, WA	4	03–31–2012
8445–P	Rho Chem, LLC, Inglewood, CA	4	03–31–2012
14173–P	Union Carbide Corporation, Hahnville, LA	4	03–31–2012
8445–P	Babcock & Wilcox Technical Services, Pantex, LLC, Amarillo, TX	4	03–31–2012
8156–P	Airgas Southwest, The Woodlands, TX	4	03–31–2012
11296–P	Environmental Management Technologies, Inc., San Bernardino, CA	4	03–31–2012
11624–P	Environmental Management Technologies, Inc., San Bernardino, CA	4	03–31–2012
8445–P	Amberwick Corp., Long Beach, CA	4	03–31–2012
12325–P	United Oil Recovery D/B/A United Industrial Services, Meriden, CT	4	03–31–2012
	Renewal Special Permits Applications		
12325–R	Air Liquide America L.P., Houston, TX	4	03–31–2012
12412–R	FMC Corporation, Philadelphia, PA	4	03–31–2012
5022–R	Custom Analytical Engineering Systems, Inc., Flintstone, MD	4	03–31–2012
8915–R	Linde Gas North America LLC, Murray Hill, NJ	4	03–31–2012
11759–R	3M, Saint Paul, MN	4	03–31–2012
11966–R	FMC Corporation, Philadelphia, PA	4	03–31–2012
2709–R	Aerojet Corporation, Culpeper, VA	4	03–31–2012
3004–R	Air Liquide America Specialty Gases LLC, Plumsteadville, PA	4	03–31–2012
8156–R	Air Liquide America Specialty Gases LLC, Plumsteadville, PA	4	03–31–2012
8723–R	Western Explosive Systems Company DBA WESCO, Midvale, UT	4	03–31–2012
14828–R	Croman Corporation, White City, OR	4	03–31–2012
6805–R	Air Liquide America Specialty Gases LLC, Plumsteadville, PA	4	03–31–2012
8445–R	Effective Environmental, Inc., Mesquite, TX	4	03–31–2012
8445–R	PSC Recovery Systems, LLC, Dallas, TX	4	03–31–2012
11984–R	PSC Recovery Systems, LLC, Dallas, TX	4	03–31–2012
8156–R	Airgas, Inc., Cheyenne, WY	4	03–31–2012
12325–R	Kraton Polymers, U.S. LLC, Belpre, OH	4	03–31–2012
8915–R	Air Liquide America Specialty Gases LLC, Plumsteadville, PA	4	03–31–2012
6670–R	Linde Gas North America LLC, Murray Hill, NJ	4	03–31–2012
6691–R	Industrial Gas Distributors (Show Cause Letter), Billings, MT	4	03–31–2012
12858–R	Union Carbide, North Seadrift, TX	4	03–31–2012
10043–R	Texas Instruments Incorporated (“IT”), Dallas, TX	4	03–31–2012
10880–R	Austin Powder Company, Cleveland, OH	4	03–31–2012
12858–R	The Dow Chemical Company, Philadelphia, PA	4	03–31–2012
8445–R	EQ Industrial Services, Inc., Ypsilanti, MI	4	03–31–2012
12325–R	SNF Holding Company, Riceboro, GA	4	03–31–2012
7648–R	American Aviation, Inc., Salt Lake City, UT	4	03–31–2012
8445–R	HazChem Environmental Corporation, Addison, IL	4	03–31–2012
11043–R	HazChem Environmental Corporation, Addison, IL	4	03–31–2012
13192–R	HazChem Environmental Corporation, Addison, IL	4	03–31–2012
10880–R	Alaska Pacific Powder Company, Watkins, CO	4	03–31–2012
14466–R	Alaska Pacific Powder Company, Watkins, CO	4	03–31–2012
12744–R	AFL Network Services, Inc., Duncan, SC	4	03–31–2012
10457–R	Thatcher Transportation, Inc., Salt Lake City, UT	4	03–31–2012
9623–R	Alaska Pacific Powder Company, Anchorage, AK	4	03–31–2012
8445–R	Heritage Transport, LLC, Indianapolis, IN	4	03–31–2012
4850–R	Accurate Energetic Systems, LLC, McEwen, TN	4	03–31–2012
10048–R	Maine LabPack, South Portland, ME	4	03–31–2012
8445–R	Stericycle Specialty Waste Solutions Inc., Blaine, MN	4	03–31–2012
7954–R	Matheson Tri Gas, Inc., Basking Ridge, NJ	4	03–31–2012
8445–R	SET Environmental, Inc., Wheeling, IL	4	03–31–2012
8445–R	Clean Harbors Environmental Services, Inc., Norwell, MA	4	03–31–2012
9623–R	Austin Powder Company, Cleveland, OH	4	03–31–2012
13161–R	Honeywell International Inc., Morristown, NJ	4	03–31–2012
11043–R	AET Environmental, Inc., Denver, CO	4	03–31–2012
6691–R	Matheson Tri-Gas, Inc., 9 (Show Cause Letters), Basking Ridge, NJ	4	03–31–2012
7594–R	Bromine Compounds, Ltd., Beer Sheva, UT	4	03–31–2012

Application No.	Applicant	Reason for delay	Estimated date of completion
9623–R	Buckley Powder Company, Englewood, CO	4	03–31–2012
11296–R	Environmental Waste Services, Inc., Elburn, IL	4	03–31–2012
11296–R	Bay West, Inc., St. Paul, MN	4	03–31–2012
12283–R	AT&T Alascom, Anchorage, AK	4	03–31–2012
7887–R	21st Century Environmental Management, LLC of RI, Providence, RI	4	03–31–2012
970–R	BASF Corporation, Florham, NJ	4	03–31–2012
7073–R	Afton Chemical Corporation, Richmond, VA	4	03–31–2012
7073–R	Ethyl Corporation, Richmond, VA	4	03–31–2012
8445–R	University of Vermont, Burlington, VT	4	03–31–2012
6805–R	Praxair Distribution Southeast, LLC, Tequesta, FL	4	03–31–2012
6691–R	Praxair Distribution Southeast, LLC, Tequesta, FL	4	03–31–2012
8445–R	Chemical Analytics, Inc., Romulus, MI	4	03–31–2012
12412–R	American Development Corporation, Fayetteville, TN	4	03–31–2012
7616–R	B&H Rail Corporation (BH), The, Lakeville, NY	4	03–31–2012
11984–R	American Eagle Airlines, Inc., DFW Airport, TX	4	03–31–2012
970–R	U.S. Department of Defense, Scott AFB, IL	4	03–31–2012
6805–R	Air Liquide America LP, Houston, TX	4	03–31–2012
8445–R	Chemical Pollution Control of FL, LLC, Deerfield Beach, FL	4	03–31–2012
7954–R	Solvay Fluorides, LLC, Houston, TX	4	03–31–2012
7954–R	Solvay Fluor Korea Co., Ltd., Uliju-Kun, Ulsan, Korea	4	03–31–2012
8445–R	Northland Environmental, LLC, Providence, RI	4	03–31–2012
8445–R	21st Century Environmental Management, LLC of RI, Providence, RI	4	03–31–2012
10880–R	Buckley Powder Company, Englewood, CO	4	03–31–2012
11984–R	21st Century Environmental Management, LLC of RI, Providence, RI	4	03–31–2012
11984–R	Northland Environmental, LLC (Northland), Providence, RI	4	03–31–2012
11984–R	Chemical Pollution Control of FL, LLC, Deerfield Beach, FL	4	03–31–2012
12095–R	Lyondell Basell Industeries (former Grantee Lyondell Chemical), Houston, TX	4	03–31–2012
6691–R	Linde Gas Puerto Rico Inc, New Providence, NJ	4	03–31–2012
6691–R	Linde Gas North America LLC, New Providence, NJ	4	03–31–2012
5022–R	U.S. Department of Defense, Scott AFB, IL	4	03–31–2012
5022–R	Aerojet Corporation, Culpeper, VA	4	03–31–2012
5022–R	ATK Launch Systems Inc., Brigham City, UT	4	03–31–2012
10458–R	Chemtrade Logistics Inc., Toronto, ON	4	03–31–2012
10650–R	Loveland Products, Inc., Billings, MT	4	03–31–2012
10880–R	Hilltop Energy, Inc., Mineral City, OH	4	03–31–2012
15073–R	Utility Aviation, Inc., Loveland, CO	4	03–31–2012
8445–R	Philip Reclamation Services, Houston, LLC, Houston, TX	4	03–31–2012
8995–R	Flexible Products Company of Marietta, GA a wholly owned subsidiary of The Dow Chemical Company, Philadelphia, PA.	4	03–31–2012
10880–R	Dyno Nobel, Inc., Salt Lake City, UT	4	03–31–2012
11043–R	Republic Environmental Systems, Pa. LLC, Hatfield, PA	4	03–31–2012
11043–R	A & D Environmental Services (SC), LLC, Lexington, SC	4	03–31–2012
11984–R	Allworth, LLC, Birmingham, AL	4	03–31–2012
11984–R	Republic Environmental Systems (Pennsylvania) LLC, Hatfield, PA	4	03–31–2012
11373–R	A & D Environmental Services (SC), LLC, Lexington, SC	4	03–31–2012
13020–R	Bristol Bay Contractors, Inc., King Salmon, AK	4	03–31–2012
13192–R	A & D Environmental Services (SC), LLC, Lexington, SC	4	03–31–2012
5022–R	ATK ABL, Rocket Center, WV	4	03–31–2012
8995–R	BASF Corporation, Florham Park, NJ	4	03–31–2012
8445–R	Advanced Waste Carriers, Inc., West Allis, WI	4	03–31–2012
11215–R	Orbital Sciences Corporation, Mojave, CA	4	03–31–2012
14823–R	FedEx Ground Package System, Inc., Moon Township, PA	4	03–31–2012
8445–R	Environmental Products & Services, Inc., Syracuse, NY	4	03–31–2012
6691–R	Praxair, Inc., Danbury, CT	4	03–31–2012
12443–R	Thatcher Company of Nevada, Henderson, NV	4	03–31–2012
14482–R	Classic Helicopters Limited, L.C., Woods Cross, UT	4	03–31–2012
11759–R	E.I. duPont de Neumours & Company, Inc., Wilmington, DE	4	03–31–2012
14550–R	Air Liquide Electronics Materials F–71106, Chalon-sur-Saone Cedex, France	4	03–31–2012
8723–R	Nelson Brothers Mining Services, LLC, Birmingham, AL	4	03–31–2012
8445–R	Thunderbird Trucking, LLC, East Chicago, IL	4	03–31–2012
11749–R	Occidental Chemical Corporation, Dallas, TX	4	03–31–2012
7891–R	Aldrich Chemical Company Inc., Milwaukee, WI	4	03–31–2012
6293–R	Dyno Nobel, Inc., Salt Lake City, UT	4	03–31–2012
11749–R	Union Tank Car Company, East Chicago, IN	4	03–31–2012
11502–R	Fed/Ex Express, Memphis, TN	4	03–31–2012
8697–R	TEMSCO Helicopters, Inc., Ketchikan, AK	4	03–31–2012
14385–R	Union Pacific Railroad Company, Omaha, NE	4	03–31–2012
12283–R	Interstate Battery of Alaska, Anchorage, AK	4	03–31–2012
4884–R	Airgas, Inc., Cheyenne, WY	4	03–31–2012
7835–R	Airgas, Inc., Cheyenne, WY	4	03–31–2012
12726–R	FedEx Express Corporation, Memphis, TN	4	03–31–2012
9157–R	Matheson Tri-Gas, Basking Ridge, NJ	4	03–31–2012
10709–R	Nalco Company, Naperville, IL	4	03–31–2012

Application No.	Applicant	Reason for delay	Estimated date of completion
14691–R	FedEx Express, Memphis, TN	4	03–31–2012
11984–R	Heritage Transport, LLC, Indianapolis, IN	4	03–31–2012
5112–R	U.S. Department of Defense, SCOTT AIR FORCE BASE, IL	4	03–31–2012
7835–R	Air Liquide America L.P., Houston, TX	4	03–31–2012
6971–R	Chem Service, Inc., West Chester, PA	4	03–31–2012
11660–R	Olsen Tuckpointing Company, Barrington, IL	4	03–31–2012
11055–R	Disposal Consultant Services, Inc., Piscataway, NJ	4	03–31–2012
2787–R	Raytheon Company, Andover, MA	4	03–31–2012
7887–R	Republic Environmental Systems (Pennsylvania), LLC, Hatfield, PA	4	03–31–2012
2709–R	U.S. Dept. of Defense (MSDDC), Scott AFB, IL	4	03–31–2012
10709–R	Schlumberger Technologies Corporation, Sugar Land, TX	4	03–31–2012
11984–R	American Airlines, Inc., Tulsa, OK	4	03–31–2012
4850–R	Owen Oil Tools LP, Godley, TX	4	03–31–2012
8915–R	Praxair, Inc., Danbury, CT	4	03–31–2012
9623–R	Orica USA Inc., Watkins, CO	4	03–31–2012
10045–R	FedEx Express, Memphis, TN	4	03–31–2012
11227–R	Schlumberger Well Services a Division of Schlumberger Technology Corporation, Sugar Land, TX.	4	03–31–2012
4850–R	Ensign-Bickford Aerospace & Defense Company, Simsbury, CT	4	03–31–2012
4850–R	Honeywell International, Inc., Morristown, NJ	4	03–31–2012
14741–R	Weatherford International, Fort Worth, TX	4	03–31–2012
3004–R	Air Products & Chemicals, Inc., Allentown, PA	4	03–31–2012
6443–R	Marsulex Sulfides, Fort Saskatchewan, AB	4	03–31–2012
9929–R	Alliant Techsystems Inc. Propulsion & Controls (Former Grantee ATK Elkton), Elkton, MD.	4	03–31–2012
11903–R	Comptank Corporation, Bothwell, ON	4	03–31–2012
11043–R	A & D Environmental Services, Inc., Archdale, NC	4	03–31–2012
4850–R	Schlumberger Technology Corporation, Sugar Land, TX	4	03–31–2012
8307–R	Sandia National Laboratories, Albuquerque, NM	4	03–31–2012
8445–R	Precision Industrial Maintenance, Inc., Schenectady, NY	4	03–31–2012
7972–R	E.I. Du Pont de Nemours & Company, Wilmington, DE	4	03–31–2012
11110–R	United Parcel Services Company, Louisville, KY	4	03–31–2012
11227–R	Baker Hughes Oilfield Operations, Inc., dba Baker Atlas (Former Grantee: Baker Hughes), Houston, TX.	4	03–31–2012
3004–R	Air Liquide America L.P., Houston, TX	4	03–31–2012
3004–R	Praxair Inc., Danbury, CT	4	03–31–2012
3004–R	Praxair Distribution, Inc., Danbury, CT	4	03–31–2012
4850–R	Department of Defense, Scott AFB, IL	4	03–31–2012
12283–R	Federal Aviation Administration, Alaskan Region (FAA), Anchorage, AK	4	03–31–2012
4850–R	Halliburton Energy Services, Inc., Duncan, OK	4	03–31–2012
6691–R	nexAir, LLC, Memphis, TN	4	03–31–2012
6691–R	ABCO Welding & Industrial Supply, Inc. (Show Cause Letter), Waterford, CT	4	03–31–2012
10985–R	Domtar A.W. Corp., Ashdown, AR	4	03–31–2012
8445–R	AET Environmental, Inc., Denver, CO	4	03–31–2012
970–R	Voltaix, Inc., North Branch, NJ	4	03–31–2012
10672–R	Burlington Packaging, Inc., Brooklyn, NY	4	03–31–2012

[FR Doc. 2011–31339 Filed 12–9–11; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Information Collection Activities

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice and Request for Comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3519 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek from the Office of Management and Budget (OMB) approval of the information collections required from those seeking licensing authority under 49 U.S.C. 10901–03 and consolidation authority under 11323–26. Under these Title 49 provisions, rail carriers and non-carriers are required to file an application with the Board, or seek an exemption (through petition or notice) from the full application process under § 10502, before they may construct, acquire, or operate a line of railroad; abandon or discontinue operations over a line of railroad; or consolidate their interests through a merger or common-control arrangement. The relevant information collections are described in more detail below.

Comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) 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, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collections

Title: Statutory Licensing and Consolidation Authority.

OMB Control Number: 2140–00XX.

STB Form Number: None.

Type of Review: Existing collections in use without an OMB control number.

Respondents: Rail carriers and non-carriers seeking statutory licensing or

consolidation authority or an exemption from filing an application for such authority.

Number of Respondents: 106.[1]

Frequency: On occasion.

TABLE—NUMBER OF RESPONSES IN FY 2011

Type of filing	Number of filings under 49 U.S.C. 10901–03 and 11323–26
Applications	3
Petitions *	18
Notices *	156

* Petitions for exemption and notices of exemption under § 10502 are permitted in lieu of an application.

Total Burden Hours (annually including all respondents): 4,100 hours (sum total of estimated hours per response X number of responses for eachtype of filing).

TABLE—ESTIMATED HOURS PER RESPONSE

Type of filing	Number of hours per response under 49 U.S.C. 10901–03 and 11323–26
Applications[2]	31
Petitions *	58
Notices *	19

* Petition for exemptions and notices of exemption under § 10502 are permitted in lieu of an application.

Total ''Non-hour Burden'' Cost (such as filing fees): $669,950 (Sum of estimated ''non-hour burden'' cost per response × Number of Responses for each statutory section and type of filing).[3]

TABLE—ESTIMATED ''NON-HOUR BURDEN'' COST PER RESPONSE

Type of cost	§ 10901	§ 10902	§ 10903	§§ 11323–26
Applications Filing Fees	N/A	N/A	$22,100	Major—$1,488,500. Significant—$297,700. Minor—$7,500.
Petitions* Filing Fees	$74,500	N/A	6,300	$6,600–$9,300.
Notices* Filing Fees	1,800	$1,800	3,600	$1,100–$2,400.
Other Costs (*i.e.,* copying and mailing)	450	450	450	$450.

* Petition for exemptions and notices of exemption under § 10502 are permitted in lieu of an application.

Needs and Uses: Under the Interstate Commerce Act, Public Law 104–88, 109 Stat. 803 (1995), persons seeking to construct, acquire or operate a line of railroad and railroads seeking to abandon or to discontinue operations over a line of railroad or, in the case of two or more railroads, to consolidate their interests through merger or a common-control arrangement are required to file an application for prior approval and authority with the Board. *See* 49 U.S.C. 0901–03 and 11323–26. Under 49 U.S.C. 10502, persons may seek an exemption from many of the application requirements of §§ 10901–03 and 11323–26 by filing with the Board a petition for exemption or notice of exemption in lieu of an application. The collection by the Board of these applications, petitions, and notices enables the Board to meet its statutory duty to regulate the referenced rail transactions. See *Table—Statutory and Regulatory Provisions* below.

Retention Period: Information in these collections is maintained by Board for 10 years, after which it is transferred to the National Archives as permanent records.

DATES: Comments on this information collection should be submitted by February 13, 2011.

ADDRESSES: Direct all comments to Marilyn Levitt, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001, or to *levittm@stb.dot.gov.* When submitting comments, please refer to ''Statutory Licensing and Consolidation Authority.''

FOR FURTHER INFORMATION CONTACT: Joe Dettmar at (202) 245–0395 or at *dettmarj@stb.dot.gov.* Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–(800) 877–8339. Relevant STB regulations are referenced below and may be viewed on the STB's Web site under E-Library > Reference: STB Rules, <*http://www.stb.dot.gov/stb/elibrary/ref_stbrules.html*>.

SUPPLEMENTARY INFORMATION: Under §§ 10901–03 and 11323–26, an application is required to seek authority under these sections, unless an applicant receives an exemption under 49 U.S.C. 10502. Respondents seeking such authority from the Board must submit certain information required under the Board's related regulations. The table below shows the statutory and regulatory provisions under which the Board requires the information collections that are the subject of this notice.

[1] In Fiscal Year (FY) 2011, there were 177 filings under 49 U.S.C. 10901–03 and 11323–26. See *Table—Number of Responses in FY 2011.* However, approximately 40% of the filings were additional filings submitted by railroads that had already submitted filings during the time period. Therefore, the number of respondents is approximately 40% less than the number of filings.

[2] Because most respondents seek authority under the expedited exemption process, rather than the more burdensome application process, the sample size for applications filed under §§ 10901–03 and 11323–26 is small. For example, under these provisions, only 3 applications were filed with the Board during the FY 2011, and those applications were not representative of the larger applications filed with the Board in the past. Two of the applications were adverse abandonment applications, which are inherently limited in size, and the other one was a relatively small application submitted under §§ 11323–26. For this reason, it is the agency's view that available survey data understates the substantial time and cost of the application process.

[3] Because filing fees may vary within a particular statutory section, an average filing fee was used (except for applications under §§ 11323–26, where only minor transactions were filed in FY 2011).

TABLE—STATUTORY AND REGULATORY PROVISIONS

Certificate required	Statutory provision	Regulations
Construct, Acquire, or Operate Railroad Lines	49 U.S.C. 10901	49 CFR part 1150.
Short Line purchases by Class II and Class III Rail Carriers.	49 U.S.C. 10902	49 CFR 1150.41–45.
Abandonments and Discontinuances	49 U.S.C. 10903	49 CFR part 1152.
Railroad Acquisitions, Trackage Rights, and Leases.	49 U.S.C. 11323–26	49 CFR part 1180.

Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under § 3506(c)(2)(A) of the PRA, Federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: December 7, 2011.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–31757 Filed 12–9–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 6, 2011.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 11, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 11020, Washington, DC 20220, or online at *http://www.PRAComment.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *http://www.reginfo.gov.*

International Affairs

OMB Number: 1505–0016.

Type of Review: Revision of a currently approved collection.

Title: Treasury International Capital Form BQ–1, ''Report of Customers' U.S. Dollar Claims on Foreigners''.

Abstract: Form BQ–1 is required by law and is designed to collect timely information on international portfolio capital movements, including U.S. dollar claims of customers of depository institutions, bank and financial holding companies, brokers and dealers vis-à-vis foreigners. The information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 963.

OMB Number: 1505–0017.

Type of Review: Revision of a currently approved collection.

Title: Treasury International Capital Form BC, ''Report of U.S. Dollar Claims of Depository Institutions, Brokers and Dealers on Foreigners''.

Abstract: Form BC is required by law and is designated to collect timely information on international portfolio capital movements, including own U.S. dollar claims of depository institutions, bank and financial holding companies, brokers and dealers vis-à-vis foreigners. The information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 35,856.

OMB Number: 1505–0019.

Type of Review: Revision of a currently approved collection.

Title: Treasury International Capital Form BL–1, ''Report of U.S. Dollar Liabilities of Depository Institutions, Bank Holding Companies/Financial Holding Companies, Brokers, and Dealers to Foreign-Residents''.

Abstract: Form BL–1 is required by law and is designed to collect timely information on international portfolio capital movements, including U.S. dollar liabilities of depository institutions, bank and financial holding companies, brokers and dealers vis-à-vis foreigners. The information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 29,484.

OMB Number: 1505–0020.

Type of Review: Revision of a currently approved collection.

Title: Treasury International Capital Form BQ–2, ''Part 1—Report of Foreign Currency Liabilities and Claims of Depository Institutions, Brokers and Dealers, and of Their Domestic Customers vis-à-vis Foreigners; Part 2—Report of Customers' Foreign Currency Liabilities to Foreigners''.

Abstract: Form BQ–2 is required by law and is designed to collect timely information on international portfolio capital movements, including liabilities and claims of depository institutions, bank and financial holding companies, brokers and dealers, and their customers' liabilities vis-à-vis foreigners, that are denominated in foreign currencies. This information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 3,938.

OMB Number: 1505–0024.

Type of Review: Revision of a currently approved collection.

Title: Treasury International Capital (TIC) Form CQ–1 ''Report of Financial Liabilities to, and Financial Claims on, Foreign Residents'' and Form CQ–2 ''Report of Commercial Liabilities to, and Commercial Claims on, Unaffiliated Foreign-Residents''.

Abstract: Forms CQ–1 and CQ–2 are required by law to collect timely information on international portfolio capital movements, including data on financial and commercial liabilities to, and claims on, unaffiliated foreigners and certain affiliated foreigners held by non-banking enterprises in the U.S. This information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 5,616.

OMB Number: 1505–0149.

Type of Review: Revision of a currently approved collection.

Title: 31 CFR Part 128, Reporting of International Capital and Foreign Currency Transactions and Positions.

Abstract: Title 31 CFR Part 128 establishes general guidelines for reporting on U.S. claims on, and liabilities to foreigners; on transactions in securities with foreigners; and on monetary reserve of the U.S. It also establishes guidelines for reporting on the foreign currency of U.S. persons. It includes a recordkeeping requirement in section 128.5.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 5,683.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–31711 Filed 12–9–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On June 17, 2011, OMB approved the agencies' emergency clearance requests to implement assessment-related reporting revisions to the Consolidated Reports of Condition and Income (Call Report) for banks, the Thrift Financial Report (TFR) for savings associations, the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), and the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S), all of which currently are approved collections of information, effective as of the June 30, 2011, report date. OMB's emergency approval of the assessment-related reporting revisions extends through the December 31, 2011, report date. (As separately approved by OMB, December 31, 2011, is also the final report date as of which the TFR will be collected; savings associations will begin to file the Call Report as of the March 31, 2012, report date (76 FR 39986)).

Because of the limited approval period associated with OMB's emergency clearance, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on July 27, 2011, on the assessment-related reporting revisions to which the emergency approval pertained (76 FR 44987). After considering the comments received on these revisions, the transition guidance for the reporting of subprime and leveraged loans and securities by large and highly complex institutions that was adopted by the agencies in connection with their emergency clearance request to OMB has been extended to April 1, 2012. Furthermore, the FDIC has decided to review the subprime and leveraged loan definitions in its February 2011 final rule on assessments (76 FR 10672) to determine whether changes to these definitions could alleviate concerns expressed by bankers without sacrificing accuracy in risk differentiation for deposit insurance pricing purposes. The instructions for reporting subprime and leveraged loans and securities for assessment purposes in the agencies' regulatory reports will be conformed to any revised definitions of these terms in the FDIC's assessment regulations that may result from the FDIC's review process, including any necessary rulemaking. In addition, the agencies have made certain other modifications to the assessment-related reporting revisions covered by OMB's emergency approval in response to comments received.

DATES: Comments must be submitted on or before January 11, 2012.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, *Attention:* 1557–0081, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income (FFIEC 031 and 041)'' or ''Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S),'' by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.*

Include reporting form number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 3064–0052,'' by any of the following methods:

• *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.

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

• *Email: comments@FDIC.gov.* Include ''Consolidated Reports of Condition and Income, 3064–0052'' in the subject line of the message.

• *Mail:* Gary A. Kuiper, (202) 898–3877, Counsel, *Attn:* Comments, Room F–1086, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report, FFIEC 002, and FFIEC 002S forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*).[1]

OCC: Ira Mills and Mary Gottlieb, OCC Clearance Officers, (202) 874–6055 and (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

Board: Cynthia Ayouch, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Gary A. Kuiper, Counsel, (202) 898–3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise and extend for three years the Call Report, the FFIEC 002, and the FFIEC 002S, which currently are approved collections of information.[2] [3]

1. *Report Title:* Consolidated Reports of Condition and Income (Call Report).

Form Number: Call Report: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Number: 1557–0081.

Estimated Number of Respondents: 2,035 (1,399 national banks and 636 federal savings associations).

Estimated Time per Response: National banks: 53.97 burden hours per quarter to file. *Federal savings associations:* 54.48 burden hours per quarter to file and 188 burden hours for the first year to convert systems and conduct training.

Estimated Total Annual Burden: National banks: 302,016 burden hours to file. *Federal savings associations:* 138,597 burden hours to file plus 119,568 burden hours for the first year to convert systems and conduct training. *Total:* 560,181 burden hours.

Board

OMB Number: 7100–0036.

Estimated Number of Respondents: 826 state member banks.

Estimated Time per Response: 55.48 burden hours per quarter to file.

Estimated Total Annual Burden: 183,306 burden hours.

FDIC

OMB Number: 3064–0052.

Estimated Number of Respondents: 4,747 (4,687 insured state nonmember banks and 60 state savings associations).

Estimated Time per Response: State nonmember banks: 40.47 burden hours per quarter to file. *State savings associations:* 40.47 burden hours per quarter to file and 188 burden hours for the first year to convert systems and conduct training.

Estimated Total Annual Burden: State nonmember banks: 758,732 burden hours to file. *State savings associations:* 9,713 burden hours to file plus 11,280 burden hours for the first year to convert systems and conduct training. *Total:* 779,725 burden hours.

The estimated times per response shown above for the Call Report represent the estimated ongoing reporting burden associated with the preparation of this report after institutions make the necessary recordkeeping and systems changes to enable them to generate the data required to be reported in the assessment-related data items that are the subject of this proposal. The estimated time per response is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (*e.g.,* size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). These factors determine the specific Call Report data items in

[1] Copies of the TFR, the collection of which will be discontinued after the filing of the reports for December 31, 2011, can be obtained at *http://www.ots.treas.gov/?p=ThriftFinancialReports.*

[2] The assessment-related changes to the Call Report and the FFIEC 002/002S that are the subject of this notice were approved by OMB on an emergency clearance basis and took effect June 30, 2011. OMB's emergency approval for these reports expires December 31, 2011. OMB's emergency approval also applies to the TFR, the collection of which will be discontinued after the reports for December 31, 2011, are filed. As separately approved by OMB, savings associations currently filing the TFR will convert to filing the Call Report beginning as of the March 31, 2012, report date (76 FR 39981, July 7, 2011).

[3] The agencies have also proposed to implement other revisions to the Call Report in 2012 (76 FR 72035, November 21, 2011). The new data items are proposed to be added to the Call Report as of the June 30, 2012, report date, except for two proposed revisions that would take effect March 31, 2012, in connection with the initial filing of Call Reports by savings associations. Proposed revisions to certain Call Report instructions would take effect March 31, 2012. In addition, the Board, on behalf of the agencies, has proposed certain revisions to the FFIEC 002 report effective June 30, 2012 (76 FR 72410, November 23, 2011).

which an individual institution will have data it must report. The average ongoing reporting burden for the Call Report (including the additional revisions proposed for implementation in 2012 referred to in footnote 3) is estimated to range from 17 to 715 hours per quarter, depending on an individual institution's circumstances.

2. *Report Titles:* Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank.

Form Numbers: FFIEC 002; FFIEC 002S.

Board

OMB Number: 7100–0032.

Frequency of Response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Estimated Number of Respondents: FFIEC 002—236; FFIEC 002S—57.

Estimated Time per Response: FFIEC 002—25.43 hours; FFIEC 002S—6 hours.

Estimated Total Annual Burden: FFIEC 002—24,006 hours; FFIEC 002S—1,368 hours.

As previously stated with respect to the Call Report, the burden estimates shown above are for the quarterly filings of the Call Report and the FFIEC 002/002S reports. The initial burden arising from implementing recordkeeping and systems changes to enable insured depository institutions to report the applicable assessment-related data items that have been added to these regulatory reports will vary significantly. For the vast majority of the nearly 7,600 insured depository institutions, including the smallest institutions, this initial burden will be nominal because only three of the new data items will be relevant to them and the amounts to be reported can be carried over from amounts reported elsewhere in the report.

At the other end of the spectrum, many of the new data items are applicable only to about 110 large and highly complex institutions (as defined in the FDIC's assessment regulations). To achieve consistency in reporting across this group of institutions, the instructions for these new data items, which are drawn directly from definitions contained in the FDIC's assessment regulations (as amended in February 2011), are prescriptive. Transition guidance has been provided for the two categories of higher-risk assets (subprime and leveraged loans) for which large and highly complex institutions have indicated that their data systems do not currently enable them to identify individual assets meeting the FDIC's definitions that will be used for assessment purposes only. The transition guidance provides time for large and highly complex institutions to revise their data systems to support the identification and reporting of assets in these two categories on a going-forward basis. The guidance also permits these institutions to use existing internal methodologies developed for supervisory purposes to identify existing assets (and, in general, assets acquired during the transition period, which currently extends until April 1, 2012) that would be reportable in these higher-risk asset categories on an ongoing basis.

Before the agencies submitted emergency clearance requests to OMB for approval of the assessment-related reporting revisions that are the subject of this notice, the agencies had published an initial PRA notice on March 16, 2011, requesting comment on these revisions (76 FR 14460). Comments submitted in response to the agencies' initial PRA notice that addressed the initial burden that large and highly complex institutions would incur to identify assets meeting the definitions of subprime and leveraged loans in the FDIC's assessment regulations were written in the context of applying these definitions to all existing loans. The transition guidance created for these loans is intended to mitigate the initial data capture and systems burden that institutions would otherwise incur. Thus, the initial burden associated with implementing the recordkeeping and systems changes necessary to identify assets reportable in these two higher-risk asset categories will be significant for the approximately 110 large and highly complex institutions, but the agencies are currently unable to estimate the amount of this initial burden. Large and highly complex institutions will also experience additional initial burden in connection with implementing systems changes to support their ability to report the other new assessment-related items applicable to such institutions. However, given their focus on subprime and leveraged loans, respondents to the agencies' initial PRA notice offered limited comments about the burden of the other new items for large and highly complex institutions.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), 12 U.S.C. 1464 (for savings associations), and 12 U.S.C. 3105(c)(2), 1817(a), and 3102(b) (for U.S. branches and agencies of foreign banks). Except for selected data items, including several of the data items for large and highly complex institutions that are part of this proposal, the Call Report and the FFIEC 002 are not given confidential treatment. The FFIEC 002S is given confidential treatment [5 U.S.C. 552(b)(4)].

Abstracts

Call Report: Institutions submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data provide the most current statistical data available for evaluating institutions' corporate applications, identifying areas of focus for both on-site and off-site examinations, and monetary and other public policy purposes. The agencies use Call Report data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. Call Report data also are used to calculate all institutions' deposit insurance and Financing Corporation assessments, and assessment fees for national banks and federal savings associations.

FFIEC 002 and FFIEC 002S: On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data also are used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. Managed or controlled means that a majority of the responsibility for business decisions (including, but not limited to, decisions with regard to lending or asset management or funding or liability management) or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch or agency's

FFIEC 002. The data from both reports are used for: (1) Monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund and the Bank for International Settlements that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of the OCC, the Board, and the FDIC.

Type of Review: Revision and extension of currently approved collections of information.

Current Actions

I. Background

Section 331(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. 111–203, July 21, 2010) required the FDIC to amend its regulations to redefine the assessment base used for calculating deposit insurance assessments as average consolidated total assets minus average tangible equity. Under prior law, the assessment base has been defined as domestic deposits minus certain allowable exclusions, such as pass-through reserve balances. In general, the intent of Congress in changing the assessment base was to shift a greater percentage of overall total assessments away from community banks and toward the largest institutions, which rely less on domestic deposits for their funding than do smaller institutions.

In May 2010, prior to the enactment of the Dodd-Frank Act, the FDIC published a Notice of Proposed Rulemaking (NPR) to revise the assessment system applicable to large insured depository institutions.[4] The proposed amendments to the FDIC's assessment regulations (12 CFR part 327) were designed to better differentiate large institutions by taking a more forward-looking view of risk and better take into account the losses that the FDIC will incur if an institution fails. The comment period for the May 2010 NPR ended July 2, 2010, and most commenters requested that the FDIC delay the implementation of the rulemaking until the effects of the then pending Dodd-Frank legislation were known.

On November 9, 2010, the FDIC Board approved the publication of two NPRs, one that proposed to redefine the assessment base as prescribed by the Dodd-Frank Act[5] and another that proposed revisions to the large institution assessment system while also factoring in the proposed redefinition of the assessment base as well as comments received on the May 2010 NPR.[6] After revising the proposals where appropriate in response to the comments received on the two November 2010 NPRs, the FDIC Board adopted a final rule on February 7, 2011, amending the FDIC's assessment regulations to redefine the assessment base used for calculating deposit insurance assessments for all 7,500 insured depository institutions and revise the assessment system for approximately 110 large institutions.[7] This final rule took effect for the quarter beginning April 1, 2011, and was reflected for the first time in the invoices for deposit insurance assessments due September 30, 2011, using data reported in the Call Reports, the TFRs, and the FFIEC 002/002S reports for June 30, 2011.

The FDIC further notes that the definitions of subprime loans, leveraged loans, and nontraditional mortgage loans in its February 2011 final rule (the FDIC assessment definitions) are applicable only for purposes of deposit insurance assessments. The FDIC assessment definitions are not identical to the definitions included in existing supervisory guidance pertaining to these types of loans.[8] Rather, the FDIC assessment definitions are more prescriptive and less subjective than those contained in the applicable supervisory guidance. The final rule includes prescriptive definitions to ensure that large and highly complex institutions apply a uniform and consistent approach to the identification of loans to be reported as higher-risk assets for assessment purposes and to be used as inputs to the scorecards that determine these institutions' initial base assessment rates.

Given the specific and limited purpose for which the definitions of subprime loans, leveraged loans, and nontraditional mortgage loans in the FDIC's final rule on assessments will be used, these definitions will not be applied for supervisory purposes. Therefore, the definitions of these three types of loans in the FDIC's final rule on assessments do not override or supersede any existing interagency or individual agency guidance and interpretations pertaining to subprime lending, leveraged loans, and nontraditional mortgage loans that have been issued for supervisory purposes or for any other purpose other than deposit insurance assessments. In this regard, the addition of data items to the Call Report and TFR deposit insurance assessment schedules for these three higher-risk asset categories, the definitions for which are taken directly from the FDIC's final rule (subject to the transition guidance discussed below), represents the outcome of decisions by the FDIC in its assessment rulemaking process rather than a collective decision of the agencies through interagency supervisory policy development activities.

On March 16, 2011, the agencies published an initial PRA **Federal Register** notice under normal PRA clearance procedures in which they requested comment on proposed revisions to the Call Report, the TFR, and the FFIEC 002/002S reports that would provide the data needed by the FDIC to implement the provisions of its February 2011 final rule beginning with the June 30, 2011, report date.[9] Thus, the assessment-related reporting changes were designed to enable the FDIC to calculate (1) The assessment bases for insured depository institutions as redefined in accordance with section 331(b) of the Dodd-Frank Act and the FDIC's final rule, and (2) the assessment rates for ''large institutions'' and ''highly complex institutions'' using a scorecard set forth in the final rule that combines CAMELS ratings and certain forward-looking financial measures to assess the risk such institutions pose to the Deposit Insurance Fund (DIF). The new data items proposed in the March 2011 initial PRA notice were linked to specific requirements in the FDIC's assessment regulations as amended by the final rule. The draft instructions for

[4] See 75 FR 23516, May 3, 2010, at *http://www.fdic.gov/regulations/laws/federal/2010/10proposead57.pdf*.

[5] See 75 FR 72582, November 24, 2010, at *http://www.fdic.gov/regulations/laws/federal/2010/10proposeAD66.pdf*.

[6] See 75 FR 72612, November 24, 2010, at *http://www.fdic.gov/regulations/laws/federal/2010/10proposeAD66LargeBank.pdf*.

[7] See 76 FR 10672, February 25, 2011, at *http://www.fdic.gov/regulations/laws/federal/2011/11FinalFeb25.pdf*.

[8] Interagency Expanded Guidance for Subprime Lending Programs, issued in January 2001 (*http://www.fdic.gov/news/news/press/2001/pr0901a.html*); Comptroller's Handbook: Leveraged Loans, issued in February 2008 (*http://www.occ.gov/static/publications/handbook/leveragedlending.pdf*); and Interagency Guidance on Nontraditional Mortgage Product Risks, issued in October 2006 (*http://www.fdic.gov/regulations/laws/federal/2006/06NoticeFINAL.html*).

[9] See 76 FR 14460, March 16, 2011, at *http://www.fdic.gov/regulations/laws/federal/2011/11noticeMar16.pdf*.

these proposed new items incorporated the definitions in, and other provisions of, the FDIC's amended assessment regulations. For a detailed discussion of the proposed reporting revisions associated with the redefined deposit insurance assessment base, see pages 14463–14465 of the agencies' March 2011 initial PRA notice.[10] For a detailed discussion of the proposed reporting revisions associated with the revised large institutions assessment system, see pages 14466–14470 of the agencies' March 2011 initial PRA notice.[11]

The FDIC did not anticipate receiving material comments on the reporting changes proposed in the March 2011 initial PRA notice because the FDIC's February 2011 final rule on assessments had taken into account the comments received on the two November 2010 NPRs as well as the earlier May 2010 NPR. Thus, the agencies expected to continue following normal PRA clearance procedures and publish a final PRA **Federal Register** notice for the proposed reporting changes and submit these changes to OMB for review soon after the close of the comment period for the initial PRA notice on May 16, 2011.

The agencies collectively received comments from 19 respondents on their initial PRA notice on the proposed assessment-related reporting changes published on March 16, 2011. Comments were received from fourteen depository institutions, four bankers' organizations, and one government agency. Three of the bankers' organizations commented on certain aspects of the proposed reporting requirements associated with the redefined assessment base, with one of these organizations welcoming the proposed reporting changes and deeming them ''reasonable and practical.'' Seventeen of the 19 respondents (all of the depository institutions and three of the bankers' organizations) addressed the reporting requirements proposed for large institutions, with specific concerns raised by all 17 about the definitions of subprime consumer loans and leveraged loans in the FDIC's final rule, which were carried directly into the draft reporting instructions for these two proposed data items.[12] Concerns were also expressed regarding large institutions' ability to report the amount of subprime consumer loans and leveraged loans in accordance with the final rule's definitions, particularly beginning as of the June 30, 2011, report date. More specifically, these commenters stated that institutions generally do not maintain data on these loans in the manner in which these two loan categories are defined for assessment purposes in the FDIC's final rule or do not have the ability to capture the prescribed data to enable them to identify these loans in time to file their regulatory reports for the June 30, 2011, report date. These data availability concerns, particularly as they related to institutions' existing loan portfolios, had not been raised as an issue during the rulemaking process for the revised large institution assessment system, which included the FDIC's publication of two NPRs in 2010.[13] Nevertheless, a number of respondents expressed support for the concept of applying risk-based evaluation tools in the determination of deposit insurance assessments, which is an objective of the large institution assessment system under the FDIC's final rule.

For a detailed discussion of the comments received on the reporting revisions associated with the redefined deposit insurance assessment base proposed in the agencies' March 2011 initial PRA notice, the agencies' evaluation of these comments, and the modifications that the agencies made to the March 2011 reporting proposal in response to these comments, see pages 44994–44996 of the agencies' second initial PRA notice for the assessment-related reporting changes, which was published on July 27, 2011.[14] For a detailed discussion of the comments received on the reporting revisions associated with the revised large institutions assessment system proposed in the agencies' March 2011 initial PRA notice, the agencies' evaluation of these comments, and the modifications that the agencies made to the March 2011 reporting proposal in response to these comments, see pages 44998–45003 of the agencies' second initial PRA notice for the assessment-related reporting changes, which was published on July 27, 2011.[15]

The unanticipated outcome of the public comment process for the agencies' March 2011 initial PRA notice required the FDIC to consider possible reporting approaches that would address institutions' concerns about their ability to identify loans meeting the subprime and leveraged loan definitions in the FDIC's assessments final rule while also meeting the objectives of the revised large institution assessment system. Accordingly, in recognition of these concerns, the agencies decided to provide transition guidance for reporting subprime consumer and leveraged loans originated or purchased prior to October 1, 2011, and securities where the underlying loans were originated predominantly prior to October 1, 2011. However, as a consequence of the unexpected need to develop and reach agreement on a workable transition approach for loans that are to be reported as subprime or leveraged for assessment purposes,[16] the agencies concluded that they should follow emergency rather than normal PRA clearance procedures to request approval from OMB for the assessment-related reporting changes to the Call Report, the TFR, and the FFIEC 002/002S reports. The use of emergency clearance procedures was intended to provide certainty to institutions on a timely basis concerning the initial collection of the new assessment data items as of the June 30, 2011, report date as called for under the FDIC's final rule.

The transition guidance for reporting subprime and leveraged loans was an integral part of the agencies' emergency clearance requests that were submitted to OMB on June 16, 2011. This guidance, as originally promulgated in June 2011, provides that for pre-October 1, 2011, loans and securities, if a large or highly complex institution does not

[10] See 76 FR 14463–14465, March 16, 2011, at *http://www.fdic.gov/regulations/laws/federal/2011/11noticeMar16.pdf*.

[11] See 76 FR 14466–14470, March 16, 2011, at *http://www.fdic.gov/regulations/laws/federal/2011/11noticeMar16.pdf*.

[12] In contrast, only four respondents commented on other aspects of the overall reporting proposal.

[13] In response to the November 2010 NPR on the revised large institution assessment system, the FDIC received a number of comments recommending changes to the definitions of subprime and leveraged loans, which the FDIC addressed in its February 2011 final rule amending its assessment regulations. For example, several commenters on the November 2010 NPR indicated that regular (quarterly) updating of data to evaluate loans for subprime or leveraged status would be burdensome and costly and, for certain types of retail loans, would not be possible because existing loan agreements do not require borrowers to routinely provide updated financial information. In response to these comments, the FDIC's February 2011 final rule stated that large institutions should evaluate loans for subprime or leveraged status upon origination, refinance, or renewal. However, no comments were received on the November 2010 NPR indicating that large institutions would not be able to identify and report subprime or leveraged loans in accordance with the definitions proposed for assessment purposes in their Call Reports and TFRs beginning as of June 30, 2011. These data availability concerns were first expressed in comments on the March 2011 initial PRA notice.

[14] See 76 FR 44994–44996, July 27, 2011, at *http://www.fdic.gov/regulations/laws/federal/2011/11noticejuly27no3.pdf*.

[15] See 76 FR 44998–45003, July 27, 2011, at *http://www.fdic.gov/regulations/laws/federal/2011/11noticejuly27no3.pdf*.

[16] The FDIC presented this transition approach to large institutions during a conference call on June 7, 2011, that all large institutions had been invited to attend. Several institutions offered favorable comments about the transition approach during this call.

have within its data systems the information necessary to determine subprime consumer or leveraged loan status in accordance with the definitions of these two higher-risk asset categories set forth in the FDIC's final rule, the institution may use its existing internal methodology for identifying subprime consumer or leveraged loans and securities as the basis for reporting these assets for deposit insurance assessment purposes in its Call Reports or TFRs. Institutions that do not have an existing internal methodology in place to identify subprime consumer or leveraged loans [17] may, as an alternative to applying the definitions in the FDIC's final rule to pre-October 1, 2011, loans and securities, apply existing guidance provided by their primary federal regulator, the agencies' 2001 Expanded Guidance for Subprime Lending Programs,[18] or the February 2008 Comptroller's Handbook on Leveraged Lending [19] for identification purposes. Under the agencies' transition guidance as originally issued in June 2011, all loans originated on or after October 1, 2011, and all securities where the underlying loans were originated predominantly on or after October 1, 2011, were to be reported as subprime consumer or leveraged loans and securities according to the definitions of these higher-risk asset categories set forth in the FDIC's final rule.[20]

On June 17, 2011, OMB approved the agencies' emergency clearance requests to implement the assessment-related reporting revisions to the Call Report, the TFR, and the FFIEC 002/002S reports effective as of the June 30, 2011, report date. OMB's emergency approval extends through the December 31, 2011, report date. Because the assessment-related reporting revisions need to remain in effect beyond the limited approval period associated with an emergency clearance request, the agencies, under the auspices of the FFIEC, began normal PRA clearance procedures anew with the publication of a second initial PRA **Federal Register** notice on July 27, 2011 (76 FR 44987). This second initial notice requested public comment on the assessment-related reporting revisions to the Call Report, the TFR, and the FFIEC 002/002S reports that had taken effect June 30, 2011, under OMB's emergency approval, including the transition guidance and the other modifications the agencies had made in response to the comments received on the revisions first proposed in March 2011.

After the publication of the agencies' second initial PRA notice on July 27, 2011, OMB approved the agencies' separate requests that savings associations begin to file the Call Report beginning with the reports for March 31, 2012. As a result, December 31, 2011, is the final report date as of which the TFR will be collected from savings associations. Because OMB's emergency approval of the assessment-related reporting revisions that were implemented as of the June 30, 2011, report date extends through the December 31, 2011, report date (after which the TFR will no longer be collected), this notice and the agencies' related submissions to OMB requesting approval to revise and extend for three years the Call Report and the FFIEC 002/002S report do not request this same approval for the TFR. For information on the conversion by savings associations from filing the TFR to filing the Call Report, see the agencies' final PRA notice published July 7, 2011.[21]

II. Comments Received on the July 2011 Second Initial PRA Federal Register Notice and the Agencies' Response to the Comments

The agencies collectively received comments from eight respondents on their July 27, 2011, second initial PRA notice on the assessment-related reporting revisions to the Call Report, the TFR, and the FFIEC 002/002S reports that had taken effect June 30, 2011, under OMB's emergency approval. Comments were received from four depository institutions, all of which are ''large institutions'' for deposit insurance assessment purposes, and four bankers' organizations, three of which submitted a joint comment letter.[22] The jointly commenting bankers' organizations stated they ''collectively represent all of the banks that are affected or may be affected by'' the revised assessment system for ''large institutions'' and ''highly complex institutions'' in the FDIC's February 2011 final rule on assessments. Six of the eight respondents on the second initial PRA notice focused their comments on the definitions of subprime consumer and leveraged loans in the FDIC's assessments final rule, which (subject to the transition guidance for reporting such assets described above) are the basis for the regulatory reporting instructions for reporting the amounts of these two categories of higher-risk assets for assessment purposes in the Call Report and (through the December 31, 2011, report date) the TFR. In addition, as noted in the public comment file for the second initial PRA notice, representatives of the four commenting bankers' organizations and certain large and highly complex institutions met twice with FDIC staff prior to the close of the comment period for the notice to explain their concerns about the definitions of, and the availability of the information necessary to report, subprime and leveraged loans by such institutions.

Comments also were received on the definition of nontraditional 1–4 family residential mortgage loans, the reporting of counterparty exposures by highly complex institutions, the frequency of loan loss provision and deferred tax calculations for reporting average tangible equity, the treatment of prepaid deposit insurance assessments in the measurement of average total assets for assessment base purposes, and the reporting of certain troubled debt restructurings that are guaranteed or insured by the U.S. Government. In addition, during the initial reporting of the revised assessment-related data items as of June 30, 2011, questions arose about which data items should be reported on a consolidated or an unconsolidated single FDIC certificate number basis by institutions that own another insured institution as a subsidiary because of the way in which these data are used in the FDIC's risk-based deposit insurance system.

These issues are discussed in Sections II.A through II.G below.

A. Definitions of Subprime and Leveraged Loans and Securities—Two new data items for subprime consumer and leveraged loans and securities were among the assessment-related reporting revisions applicable to large and highly

[17] A large or highly complex institution may not have an existing internal methodology in place because it is not required to report on these exposures to its primary federal regulator for examination or other supervisory purposes or did not measure and monitor loans and securities with these characteristics for internal risk management purposes.

[18] *http://www.fdic.gov/news/news/press/2001/pr0901a.html.*

[19] *http://www.occ.gov/static/publications/handbook/LeveragedLending.pdf.*

[20] For loans purchased on or after October 1, 2011, large and highly complex institutions may apply the transition guidance to loans originated prior to that date. Loans purchased on or after October 1, 2011, that also were originated on or after that date must be reported as subprime or leveraged according to the definitions of these higher-risk asset categories set forth in the FDIC's final rule.

[21] See 76 FR 39981, July 7, 2011, *http://www.fdic.gov/regulations/laws/federal/2011/11noticejuly07.pdf.*

[22] The American Bankers Association (ABA), The Clearing House, and the Financial Services Roundtable jointly commented. The Risk Management Association submitted a separate comment letter.

complex institutions that were included in OMB's approval of the agencies' emergency clearance requests and implemented in the Call Report and the TFR as of the June 30, 2011, report date. These two data items are used as inputs to the scorecard measures for large and highly complex institutions in the revised risk-based assessment system for such institutions brought about by the FDIC's February 2011 assessments final rule.

In their comments on the agencies' second initial PRA notice, the four bankers' organizations and two institutions requested that the definitions of subprime and leveraged loans in the FDIC's assessments final rule be revised, asserting that the definitions do not effectively capture the risk that the FDIC desires or needs for its large bank deposit insurance pricing model. Rather, these commenters stated that the final rule's current definitions would capture loans that are not subprime or leveraged (*i.e.,* are not higher-risk), would entail excessive reporting that would often be inconsistent across institutions, would greatly overstate institutions' actual risk exposures, and would produce a biased representation of relative risk (resulting in institutions with less risky portfolios being treated the same as institutions with more risky portfolios). The bankers' organizations, in their two comment letters, proposed ''consensus solutions'' for modifying the definitions of subprime and leveraged loans that would better correspond to industry standards and practices for such loans, better differentiate risk among large institutions, and thereby simplify and reduce the cost of the regulatory reporting process for such loans. The two institutions that addressed these definitions offered similar recommendations.

The three jointly commenting bankers' organizations stated that having the ''right definitions'' is so important that it is imperative for the FDIC to revise its assessments final rule,[23] but they also observed that revising the rule ''cannot be done instantaneously.'' Accordingly, these organizations as well as one institution recommended extending the transition approach for reporting subprime and leveraged loans and securities (which was summarized above and was scheduled to end on October 1, 2011) until more workable and accurate definitions are developed. The same commenters also noted that if the FDIC decides not to make changes to the assessments final rule's definitions of subprime and leveraged loans and securities, large and highly complex institutions will need until at least the second quarter of 2012 to build reliable systems for identifying such loans and securities and to train staff to input reliable data. According to these commenters, the additional preparation time that institutions would need if the definitions are not revised would also justify an extension of the transition reporting approach.

The FDIC has decided to review the definitions of subprime and leveraged loans and securities in the February 2011 assessments final rule to determine whether changes to the definitions could alleviate industry concerns without sacrificing accuracy in risk differentiation for deposit insurance pricing purposes. To allow sufficient time for the FDIC to undertake this review, and—in the event that the FDIC does not propose to alter the definitions in the February 2011 assessments final rule following this review—to give large and highly complex institutions additional time to adapt reporting systems to the definitions in the rule, the FDIC has also decided to allow such institutions to continue to follow the transition approach under which they may use either their existing internal methodologies or existing supervisory guidance to identify and report, for assessment purposes, subprime and leveraged loans originated or purchased prior to April 1, 2012. Thus, by extending the previous transition guidance for these two loan categories, the February 2011 assessment definitions—if left unaltered—would begin to apply to loans originated on or after April 1, 2012.

Any revised definitions of subprime and leveraged loans for assessment purposes would require approval by the FDIC Board of Directors through the notice and comment rulemaking process. The effective date for applying any revised definitions would be communicated through the rulemaking process and would be subject to comment by the industry.

The FDIC communicated these decisions in an email it sent to all large and highly complex institutions on September 28, 2011. In addition, the Call Report and TFR instructions were updated as of September 30, 2011, to reflect the extension of the transition guidance for reporting subprime and leveraged loans and securities from October 1, 2011, to April 1, 2012.

At present, the instructions for reporting subprime and leveraged loans and securities in the Call Report and the TFR (until the collection of the TFR is discontinued after the filing of the year-end 2011 reports) specifically reference the definitions of these high-risk asset categories that are contained in the FDIC's assessment regulations (12 CFR part 327) as amended by the FDIC's February 2011 final rule and then incorporate the text of these definitions from the final rule (as well as the previously mentioned transition guidance). Accordingly, if and when one or both of these two definitions—as used for assessment purposes—are revised through FDIC rulemaking, the definitions of these asset categories in the agencies' regulatory reporting instructions will be revised in the same manner to maintain conformity with the assessment regulations.

B. Nontraditional 1–4 Family Residential Mortgage Loans—The assessment-related reporting revisions applicable to large and highly complex institutions that were included in OMB's approval of the agencies' emergency clearance requests and implemented as of June 30, 2011, also included a new data item for nontraditional 1–4 family residential mortgage loans and certain securitizations of such loans. Like the new data items for subprime and leveraged loans, the new nontraditional mortgage loan data item is an input to the scorecard measures for large and highly complex institutions in the FDIC's revised risk-based assessment system for such institutions.

The three jointly commenting bankers' organizations stated that the reporting of nontraditional residential mortgage loans based on the definition in the FDIC's assessments final rule ''does not distinguish risk between banks or within the population being reported.'' These bankers' organizations recommended that their proposed consensus solution for identifying which consumer loans should be reported as subprime loans also be applied to nontraditional residential mortgage loans.[24] According to these organizations, taking this approach would enable the agencies to eliminate the separate data item for nontraditional residential mortgage loans because those mortgage loans meeting the criteria in the organizations' recommended consensus solution could be reported

[23] The other bankers' organization requested that the FDIC reopen discussions on the subprime and leveraged loan definitions.

[24] Although the comment letter from the other bankers' organization did not specifically discuss nontraditional residential mortgage loans, the agencies note that the demonstration matrix provided in support of the organization's recommended consensus solution for identifying subprime loans included a column for nontraditional mortgages.

with the consumer loans being reported as subprime.

The agencies note that the nature, extent, and level of concern about the definitions of subprime and leveraged loans and related data availability issues that bankers and bankers' organizations cited in their comments on the agencies' March 2011 first initial PRA notice, which led the FDIC to devise transition guidance for the reporting of these two categories of higher-risk assets, were not also expressed with respect to the definition and reporting on nontraditional mortgage loans.[25] As a consequence, the reporting of the new data item for nontraditional mortgage loans using the definition in the FDIC's assessments final rule was not subject to the transition guidance provided for subprime and leveraged loans. Therefore, after considering the bankers' organizations comments about nontraditional residential mortgage loans, the definition of this high-risk asset category will remain as defined in the FDIC's assessments final rule unless the results of the FDIC's review of the subprime and leveraged loan definitions (discussed above) also indicate that it would be appropriate for the FDIC to amend the definition of nontraditional residential mortgage loans through rulemaking. Should that occur, the definition of high risk residential mortgage loans in the agencies' regulatory reporting instructions will be revised in the same manner to maintain conformity with the FDIC's assessment regulations.

C. Counterparty Exposures—The assessment-related reporting revisions that took effect June 30, 2011, pursuant to OMB's approval of the agencies' emergency clearance request included two new Call Report data items applicable only to highly complex institutions for the total amount of an institution's 20 largest counterparty exposures and the amount of the institution's largest counterparty exposure. As with the other new data items that are inputs to the revised assessment system for large and highly complex institutions, the Call Report instructions explaining the scope and measurement of the two counterparty exposure items are drawn from the definitional guidance on counterparty exposures in the FDIC's February 2011 assessments final rule.

The final rule's definition of counterparty exposure states that exposure should be measured for each counterparty or borrower at the consolidated entity level. The three jointly commenting bankers' organizations recommended that the term ''legal consolidated entity,'' as used in this definition in relation to a counterparty, should be clarified, but they also noted that an outstanding Office of Financial Research proposal is considering the creation of unique identifiers for derivative counterparties, thereby ''demonstrating regulatory recognition of unanswered questions on consolidating counterparty exposures.'' Given the absence of an industry standard for recognizing connections between counterparties and the regulatory uncertainty in this area, the three bankers' organizations asserted that this reporting requirement is not appropriate at present.

The three jointly commenting bankers' organizations also stated that there is an inconsistency between the counterparty credit risk data the FDIC used to calibrate the assessment pricing model for highly complex institutions in its final rule and the counterparty exposure data these institutions are required to report in the Call Report. The organizations stated that the model was calibrated using Exposure at Default (EAD) data reported in the FFIEC 101 reports[26] of institutions going through their Basel II parallel runs as opposed to the data that highly complex institutions are asked to submit on their Call Reports for deposit insurance assessment pricing purposes. The organizations recommended that the FDIC review the counterparty credit exposure that highly complex institutions report in their Call Reports in accordance with the guidance provided in the assessments final rule, compare this to the counterparty credit exposure the institutions report in their FFIEC 101 reports, and then consider whether the pricing model should be recalibrated based upon the FDIC's findings. These commenters further requested that the FDIC accept the results of a highly complex institution's Internal Models Methodology (IMM) for deposit insurance assessment pricing purposes only, prior to its exit from its parallel run, provided the IMM models are acceptable. Finally, these commenters recommended that once an institution's IMM model is approved, the institution should be allowed to amend the amounts previously reported on its Call Reports for counterparty EADs and the FDIC should use these amended amounts to retroactively adjust the institution's assessments for those previous periods.

The FDIC continues to believe that, for the purposes of calculating deposit insurance premiums, highly complex institutions should report counterparty credit exposure on a consolidated entity basis (legal consolidated entity). The FDIC believes that highly complex institutions should have the ability to aggregate exposures arising from financial contracts with entities within a legal consolidated entity and report the exposure as outlined in the final rule. Although the Office of Financial Research's November 2010 Statement on Legal Entity Identification for Financial Contracts addresses the establishment of a system to uniquely identify all market participants, which would enable institutions to better aggregate counterparty exposures, the main goal of the proposal is to standardize the system and allow for better oversight, tracking, monitoring, and enforcement. The absence of such a system does not preclude institutions from internally aggregating their exposures to entities within a legal consolidated entity.

The FDIC is reviewing the claim that there is an inconsistency between the counterparty credit risk data used to calibrate the model and the data required to be provided in the Call Report under the final rule. The FDIC has asked highly complex institutions to voluntarily submit counterparty credit risk data to the FDIC that has been measured under the institutions' IMMs for comparison with the data reported in the Call Report. The FDIC will review these data and consider the need for appropriate changes to the pricing model to ensure that it differentiates risk, including consideration of the effect on prior periods. In the interim, institutions should continue to report counterparty exposures in the Call Report using the final rule's existing definition. Additionally, the FDIC continues to believe that it is not appropriate for pricing purposes to use data calculated via an institution's IMM model before the IMM model has been approved and the bank has exited its parallel run period. To adopt the IMM to calculate EADs for purposes of the risk-based capital requirements under the Advanced Capital Adequacy Framework, institutions must first

[25] However, commenters on the agencies' March 2011 first initial PRA notice did request certain clarifications of the scope of the nontraditional mortgage loan data item. As mentioned in the agencies' July 2011 second initial PRA notice, in response to these comments, the agencies agreed that certain clarifications of the final rule's nontraditional mortgage loan definition would be appropriate to assist institutions in properly reporting the amount of such loans in the Call Report and TFR. These clarifications were incorporated into the instructions for reporting nontraditional mortgage loans that were issued and took effect for the June 30, 2011, report date.

[26] Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework, OMB Nos.: Board, 7100–0319; FDIC, 3064–0159; and OCC, 1557–0239.

receive approval from their primary federal regulator to exit the parallel run period. Institutions also must receive approval from their primary federal regulator to use their IMMs. Once an institution has conducted a satisfactory parallel run and satisfied the approval requirements for the IMM, the IMM results should be used to report counterparty exposure data in the Call Report for deposit insurance pricing purposes.

D. Frequency of Loan Loss Provision and Deferred Tax Calculations for Reporting Average Tangible Equity—As required by section 331(b) of the Dodd-Frank Act, the FDIC's assessments final rule redefines the deposit insurance assessment base as average consolidated total assets minus average tangible equity. Under the final rule, tangible equity is defined as Tier 1 capital.[27] As one of the assessment-related reporting revisions applicable to all institutions that was included in OMB's approval of the agencies' emergency clearance requests and implemented in the Call Report, the TFR, and the FFIEC 002 report as of June 30, 2011, the agencies added a new data item for average tangible equity. The final rule requires average tangible equity to be calculated on a monthly average basis by institutions with $1 billion or more in total assets, all newly insured institutions, and institutions with less than $1 billion in total assets that elect to do so. For all other institutions, ''average'' tangible equity is based on quarter-end Tier 1 capital.

The three jointly commenting bankers' organizations and one institution stated that the requirement for certain institutions to estimate month-end Tier 1 capital numbers prior to quarter-end is problematic because they do not calculate their provision for loan and lease losses expense and deferred taxes on a monthly basis, which are two potentially significant drivers of Tier 1 capital. These commenters recommended that, for purposes of measuring average tangible equity on a monthly average basis, institutions that do not perform monthly loan loss provision or deferred tax calculations be allowed to use a ''pro-rated, one-third estimate of the quarter-end reported'' provision and deferred tax amounts for months other than quarter-end. These commenters argued that institutions are not required to update these calculations monthly in accordance with generally accepted accounting principles for external reporting purposes and the cost of doing so would outweigh the benefits.

The agencies believe the commenters' suggested approach has merit as a means to reduce institutions' compliance costs. Accordingly, for institutions required or electing to report average tangible equity on a monthly average basis that do not perform monthly loan loss provision or deferred tax calculations, the agencies will permit such institutions to use one third of the amount of provision for loan and lease losses and deferred tax expense (benefit) reported for the quarterly regulatory reporting period for purposes of estimating the retained earnings component of Tier 1 capital in each of the first two months of the quarter. As suggested by the institution commenting on this issue, the agencies will revise the instructions for the data item for average tangible equity to describe this permissible approach.

For example, if the reported amount of the provision expense for the quarterly reporting period for an institution applying this approach is $3 million, then the institution would include a $1 million provision expense as an adjustment to its earnings when measuring its tangible equity for assessment purposes in each of the first two months of the quarter. Similarly, if the reported amount of the institution's deferred tax expense (benefit) for the quarterly reporting period is a benefit of $900,000, then the institution would include a $300,000 deferred tax benefit as an earnings adjustment for assessment purposes in each of the first two months of the quarter. By making these adjustments, the institution's retained earnings component of Tier 1 capital for monthly average tangible equity calculation purposes would be $700,000 and $1.4 million less than its internally reported retained earnings at the end of the first and second months of the quarterly reporting period, respectively. In addition, the agencies remind institutions that the measurement of Tier 1 capital includes a limit on deferred tax assets, with the amount in excess of the limit deducted from Tier 1 capital. Thus, the month-end pro-rated amounts of an institution's reported amount of deferred tax expense (benefit) for the quarterly reporting period also should be taken into account when determining the amount of the institution's deferred tax assets (liabilities) and, hence, the amount of disallowed deferred tax assets, if any, at the end of each of the first two months of the quarter for monthly average tangible equity calculation purposes.

E. Prepaid Deposit Insurance Assessments—The three jointly commenting bankers' organizations requested that prepaid deposit insurance assessments, which institutions include in the total assets reported on their balance sheets, should not be included in the redefined assessment base. These commenters argued that there is no justification for charging deposit insurance premiums on funds that institutions were forced to give the FDIC as interest-free loans. These commenters recommended that if the FDIC believes it is required by law to include prepaid assessments in the assessment base, then ''this asset should be allowed a zero risk-weighting in the risk-based premiums formula.''

Section 331(b) of the Dodd-Frank Act explicitly states that an institution's assessment base is average consolidated total assets minus average tangible equity. Because prepaid assessments are included in the assets of an institution, this asset amount must be included in the assessment base. In addition, the risk-weightings that apply to assets for risk-based capital purposes under the agencies' regulatory capital standards are not used when calculating the assessment base for deposit insurance assessment purposes.

F. Troubled Debt Restructurings Guaranteed or Insured by the U.S. Government—Under the FDIC's February 2011 final rule, assessment rates for large and highly complex institutions are calculated using scorecards that combine CAMELS ratings and certain forward-looking financial measures to assess the risk such an institution poses to the Deposit Insurance Fund. The Credit Quality Measure for large and highly complex institutions includes a score for ''Underperforming Assets/Tier 1 Capital and Reserves.'' For purposes of this score, ''Underperforming Assets'' includes:

> loans that are 30 days or more past due and still accruing interest, nonaccrual loans, restructured loans (including restructured 1–4 family loans), and ORE, excluding the maximum amount recoverable from the U.S. Government, its agencies, or government-sponsored agencies, under guarantee or insurance provisions.'' [28]

Two institutions commented that the Call Report and TFR do not collect all of the data necessary to correctly measure ''Underperforming Assets.''

[27] For an insured branch, tangible equity would be defined as eligible assets (determined in accordance with section 347.210 of the FDIC's regulations) less the book value of liabilities (exclusive of liabilities due to the foreign bank's head office, other branches, agencies, offices, or wholly owned subsidiaries).

[28] See Appendix A to Subpart A of part 327—Description of Scorecard Measures in the FDIC's assessments final rule, 76 FR 10721, at *http://www.fdic.gov/regulations/laws/federal/2011/11FinalFeb25.pdf.*

More specifically, although institutions report the amount of loans restructured in troubled debt restructurings that are in compliance with their modified terms (*i.e.,* restructured loans other than those that are 30 days or more past due and still accruing interest or that are in nonaccrual status), the amount of such restructured loans that is recoverable from the U.S. government, including its agencies and its government-sponsored agencies, under guarantee or insurance provisions is not reported. Thus, these institutions stated that the agencies should begin to collect data on recoverable restructured loans so that the underperforming assets ratio can be properly calculated.

The agencies agree that the collection of this information is necessary to accurately calculate a large or highly complex institution's underperforming assets ratio, as defined in the FDIC's assessments final rule, and its total score within the scorecard. Accordingly, the agencies propose to include a new Memorandum item 16 to Call Report Schedule RC–O beginning with the June 30, 2012, report date in which large and highly complex institutions would report the ''Portion of loans restructured in troubled debt restructurings that are in compliance with their modified terms and are guaranteed or insured by the U.S. government (including the FDIC).'' For quarter-end report dates after the effective date of the FDIC's assessments final rule but prior to the effective date of this Call Report change (*i.e.,* June 30, 2011, through March 31, 2012), large and highly complex institutions that have such restructured loans may choose to, but are not required to, provide this information to the FDIC on a voluntary basis. Large and highly complex institutions interested in submitting this restructured loan information to the FDIC for scorecard purposes for quarter-end dates before the information begins to be collected in the Call Report should send an email to *RRPSAdministrator@FDIC.gov* notifying the FDIC of their interest. The FDIC will provide the institution with an Excel worksheet and instructions that will enable the institution to submit the data to the FDIC in a specific format via FDIC*Connect.* For an institution that chooses to submit this prior period information, the FDIC will adjust the institution's total score and corresponding assessments for the affected periods as applicable.

G. Consolidated or Unconsolidated Single FDIC Certificate Number Reporting—Before the assessment-related reporting revisions took effect June 30, 2011, the information that institutions reported for assessment purposes generally consisted of deposit data. Because deposit insurance premiums are assessed separately against each individual insured depository institution, the instructions for reporting assessment data before June 30, 2011, advised institutions to report these data on an unconsolidated single FDIC certificate number basis. If an institution owns another insured institution as a subsidiary, this means that the parent institution must complete the assessment data items by accounting for this subsidiary under the equity method of accounting rather than consolidating the subsidiary. With limited exceptions, all other data items reported in the Call Report and the TFR are reported on a consolidated basis. For the vast majority of institutions that do not own another insured institution as a subsidiary, there is no difference between reporting on a consolidated basis or on unconsolidated single FDIC certificate number basis.

The assessment-related reporting revisions that took effect June 30, 2011, included several new data items applicable to large and highly complex institutions that serve as inputs to the scorecards used to determine the initial base assessment rate for each large institution and highly complex institution under their revised risk-based assessment system. The ratios in these scorecards are calculated on a fully consolidated basis. In addition, for certain small institutions, the initial base assessment rate is determined using the financial ratios method. Like the scorecard ratios, the financial ratios method employs fully consolidated data. Most of the data items used as inputs to the scorecards and financial ratios are collected in other schedules of the Call Report and the TFR on a fully consolidated basis. However, five assessment data items that were collected from all institutions before June 30, 2011, on an unconsolidated single FDIC certificate number basis and continue to be collected also serve as either scorecard or financial ratio inputs.

As a result, during the initial reporting of the revised assessment-related data as of June 30, 2011, questions were raised as to whether the new data items for large and highly complex institutions as well as the five existing, but retained, assessment data items should be reported on a consolidated or an unconsolidated single FDIC certificate number basis. For the large and highly complex institution data items,[29] consolidated reporting is appropriate and the reporting instructions will be clarified accordingly.

On the other hand, for the five existing assessment data items reported on a single FDIC certificate number basis, among the purposes for which the FDIC has used and continues to use them is to perform industry analyses of the Deposit Insurance Fund, which rely on unconsolidated single FDIC certificate number data consistent with how institutions are insured. However, because these existing items now also enter into scorecard and financial ratio calculations, these five data items are also needed on a consolidated basis from institutions that own another insured depository institution. Therefore, to resolve this issue for these parent institutions given the inquiries about the appropriate basis of reporting, the agencies will add five items to Call Report Schedule RC–O effective June 30, 2012, one of which would be applicable to all institutions that own another institution while the other four would be completed only by the large and highly complex institutions that own another insured depository institution. More specifically, in new item 9.a of Schedule RC–O, the five institutions that own another institution and have reciprocal brokered deposits would report the fully consolidated amount of reciprocal brokered deposits. In new Memorandum items 17.a through 17.d of Schedule RC–O, the three large and highly complex institutions that own another insured depository institution would report total deposit liabilities before exclusions, total allowable exclusions, unsecured other borrowings with a remaining maturity of one year or less, and estimated amount of uninsured deposits on a fully consolidated basis. For quarter-end report dates after the effective date of the FDIC's assessments final rule but prior to the effective date of these Call Report changes (*i.e.,* June 30, 2011, through March 31, 2012), institutions that own another insured depository institution may choose to, but are not required to, provide the applicable additional fully consolidated information to the FDIC on a voluntary basis. Institutions that own another insured institution and are interested in submitting the applicable additional fully consolidated information to the FDIC for scorecard or financial ratio purposes for quarter-end dates before the information begins to be collected in the Call Report should send an email to *RRPSAdministrator@FDIC.gov* notifying the FDIC of their interest. The FDIC will provide the institution with an Excel

[29] For example, Memorandum items 6 through 15 on Call Report Schedule RC–O.

worksheet and instructions that will enable the institution to submit the data to the FDIC in a specific format via FDIC*Connect.* For an institution that chooses to submit this prior period information, the FDIC will adjust the institution's scorecard or financial ratios and corresponding assessments for the affected periods as applicable.

Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: December 5, 2011.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, December 6, 2011.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 6th day of December, 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–31888 Filed 12–9–11; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning miscellaneous sections affected by the Taxpayer Bill of Rights 2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

DATES: Written comments should be received on or before February 10, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins (202) 622–6665, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224 or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Miscellaneous Sections Affected by the Taxpayer Bill of Rights 2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

OMB Number: 1545–1356.

Regulation Project Number: REG–248770–96.

Abstract: Under Internal Revenue Code section 7430 a prevailing party may recover the reasonable administrative or litigation costs incurred in an administrative or civil proceeding that relates to the determination, collection, or refund of any tax, interest, or penalty. Section 301.7430–2(c) of the regulation provides that the IRS will not award administrative costs under section 7430 unless the taxpayer files a written request in accordance with the requirements of the regulation.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations, not-for-profit institutions, farms, and the Federal government.

Estimated Number of Respondents: 38.

Estimated Time per Respondent: 2 hours, 16 minutes.

Estimated Total Annual Burden Hours: 86.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 2, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–31704 Filed 12–9–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13997

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13997, Validating Your TIN and Reasonable Cause.

DATES: Written comments should be received on or before February 10, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Validating Your TIN and Reasonable Cause.

OMB Number: 1545–2144

Form Number: Form 13997

Abstract: Under the provisions of Internal Revenue Code Section (IRC §) 6039E, Information Concerning Resident Status, individuals are required to provide certain information (see IRC § 6039E(b)) with their application for a U.S. passport or with their application for permanent U.S. residence. This form will be an attachment to Letter 4318 to inform the individual about the IRC provisions, the penalty, and to request them to complete this form and return it to the IRS.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a previously approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 2,000 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 2, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–31698 Filed 12–9–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 56

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 56, Notice Concerning Fiduciary Relationship.

DATES: Written comments should be received on or before February 10, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Notice Concerning Fiduciary Relationship.

OMB Number: 1545–0013.

Form Number: 56.

Abstract: Form 56 is used to inform the IRS that a person is acting for another person in a fiduciary capacity so that the IRS may mail tax notices to the fiduciary concerning the person for whom he/she is acting. The data is used to ensure that the fiduciary relationship is established or terminated and to mail or discontinue mailing designated tax notices to the fiduciary.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 25,000.

Estimated Time per Respondent: 1 hr. 41 min.

Estimated Total Annual Burden Hours: 292,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: December 6, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–31705 Filed 12–9–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Allowance for Private Purchase of an Outer Burial Receptacle in Lieu of a Government-Furnished Graveliner for a Grave in a VA National Cemetery

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Public Law 104–275 was enacted on October 9, 1996. It allows the Department of Veterans Affairs (VA) to provide a monetary allowance towards the private purchase of an outer burial receptacle for use in a VA national cemetery. Under VA regulation (38 CFR 38.629), the allowance is equal to the average cost of Government-furnished graveliners less any administrative costs to VA. The law provides a veteran's survivors with the option of selecting a Government-furnished graveliner for use in a VA national cemetery where such use is authorized.

The purpose of this Notice is to notify interested parties of the average cost of Government-furnished graveliners, administrative costs that relate to processing and paying the allowance and the amount of the allowance payable for qualifying interments that occur during calendar year 2012.

FOR FURTHER INFORMATION CONTACT: Tamula Jones, Budget Operations and Field Support Division, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. *Telephone:* (202) 461–6688 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 2306(e)(3) and (4) and Public Law 104–275, Section 213, VA may provide a monetary allowance for the private purchase of an outer burial receptacle for use in a VA national cemetery where its use is authorized. The allowance for qualified interments that occur during calendar year 2012 is the average cost of Government-furnished graveliners in fiscal year 2011, less the administrative costs incurred by VA in processing and paying the allowance in lieu of the Government-furnished graveliner.

The average cost of Government-furnished graveliners is determined by taking VA's total cost during a fiscal year for single-depth graveliners that were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by VA during that fiscal year. The calculation excludes both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners. Using this method of computation, the average cost was determined to be $271.00 for fiscal year 2011.

The administrative costs incurred by VA consist of those costs that relate to processing and paying an allowance in lieu of the Government-furnished graveliner. These costs have been determined to be $9.00 for calendar year 2012.

The allowance payable for qualifying interments occurring during calendar year 2012, therefore, is $262.00.

Approved: December 6, 2011.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2011–31753 Filed 12–9–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Disciplinary Appeals Board Panel

AGENCY: Department of Veterans Affairs.

ACTION: Notice with request for comments.

SUMMARY: Section 203 of the Department of Veterans Affairs Health Care Personnel Act of 1991 (Pub. L. 102–40), dated May 7, 1991, revised the disciplinary grievance and appeal procedures for employees appointed under 38 U.S.C. 7401(1). It also required the periodic designation of employees of the Department who are qualified to serve on Disciplinary Appeals Boards. These employees constitute the Disciplinary Appeals Board Panel from which Board members in a case are appointed. This notice announces that the roster of employees on the Panel is available for review and comment. Employees, employee organizations, and other interested parties shall be provided, without charge, a list of the names of employees on the Panel upon request and may submit comments concerning the suitability for service on the Panel of any employee whose name is on the list.

DATES: Names that appear on the Panel may be selected to serve on a Board or as a grievance examiner after January 11, 2012.

ADDRESSES: Requests for the list of names of employees on the Panel and written comments may be directed to: Secretary of Veterans Affairs (051), Department of Veterans Affairs, 810 Vermont Avenue NW., Mailstop 051, Washington, DC 20420. Requests and comments may also be faxed to (202) 772–3315.

FOR FURTHER INFORMATION CONTACT: Larry Ables, Employee Relations and Performance Management Service, Office of Human Resources Management, Department of Veterans Affairs, 810 Vermont Avenue NW., Mailstop 051, Washington, DC 20420. Mr. Ables may be reached at (202) 772–1896.

SUPPLEMENTARY INFORMATION: Pub. L. 102–40 requires that the availability of the roster be posted in the **Federal Register** periodically, and not less than annually.

Dated: December 1, 2011.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2011–31772 Filed 12–9–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Reasonable Charges for Medical Care or Services; V3.9, 2012 Calendar Year Update

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This Department of Veterans Affairs (VA) notice informs the public of updated data for calculating the ''Reasonable Charges'' collected or recovered by VA for medical care or services provided or furnished by VA to a veteran for: (1) A non service-connected disability for which the veteran is entitled to care or the payment of expenses for care under a health plan contract; (2) a non service-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or (3) a non service-connected disability incurred as a result of a motor vehicle accident in a state that requires automobile accident reparations insurance. The charge tables and supplemental tables that are applicable to this notice can be viewed on the Veterans Health Administration Chief Business Office's Internet Web

sites. These changes are effective January 1, 2012.

FOR FURTHER INFORMATION CONTACT: Romona Greene, Chief Business Office (10NB1A), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–1595. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Section 17.101 of title 38, United States Code of Federal Regulations (CFR), sets forth the Department of Veterans Affairs (VA) medical regulations concerning ''Reasonable Charges'' for medical care or services provided or furnished by VA to a veteran for: (1) A non service-connected disability for which the veteran is entitled to care (or the payment of expenses for care) under a health plan contract; (2) a non service-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or (3) a non service-connected disability incurred as a result of a motor vehicle accident in a state that requires automobile accident reparations insurance.

The regulation includes methodologies for establishing billed amounts for the following types of charges: Acute inpatient facility charges; skilled nursing facility and sub-acute inpatient facility charges; partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by Healthcare Common Procedure Coding System (HCPCS) Level II codes. In cases where charges for medical care or services provided or furnished at VA expense (by either VA or non-VA providers) have not been established under other provisions or regulations, the method for determining VA's charges is set forth at 38 CFR 17.101(a)(8).

The regulation provides that the actual charge amounts at individual VA facilities based on these methodologies and the data sources used for calculating those actual charge amounts will either be published as a notice in the **Federal Register** or will be posted on the Internet site of the Veterans Health Administration Chief Business Office. Certain charges are hereby updated as described below, effective January 1, 2012.

Based on the methodologies set forth in 38 CFR 17.101, this document provides an update to charges for 2012 HCPCS Level II and Current Procedural Technology (CPT) codes. Charges are also being updated based on more recent versions of data sources for the following charge types: Partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes. These updated charges are effective January 1, 2012. As of the date of this notice, the actual charge amounts at individual VA facilities based on the methodologies in the regulation will be posted at *http://www1.va.gov/CBO/apps/rates/index.asp,* under the heading ''Reasonable Charges Data Tables'' and identified as ''V3.9 Data Tables (Outpatient and Professional).''

The list of data sources used for calculating the actual charge amounts listed above also will be posted at *http://www1.va.gov/CBO/apps/rate/index.asp* under the heading ''Reasonable Charges Data Sources'' and identified as ''Reasonable Charges V3.9 Data Sources (Outpatient and Professional)(PDF).''

Acute inpatient facility charges and skilled nursing facility/sub-acute inpatient facility charges remain the same as set forth in the notice published in the **Federal Register** on September 28, 2011 (76 FR 60136). The effective date of those charges is October 1, 2011. The data tables containing those actual charges are posted at *http://www1.va.gov/CBO/apps/rates/index.asp*, under the heading ''Reasonable Charges Data Tables'' and identified as ''V3.8 Data Tables (Inpatient).'' The data sources used to calculate these charges are posted at *http://www1.va.gov/CBO/apps/rate/index.asp* under the heading ''Reasonable Charges Data Sources'' and identified as ''Reasonable Charges V3.8 Data Sources (Inpatient) (PDF).''

The list of VA medical facility locations has also been updated. We set forth the list of VA medical facility locations, which includes the first three-digits of their zip codes and provider based/non-provider based designations. The updated VA medical facility locations will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www1.va.gov/CBO/apps/rate/index.asp* under the heading ''VA Medical Facility Locations,'' and identified as ''VA Medical Facility Locations V3.9 (Jan12).''

Consistent with the regulations, the updated data tables and supplementary tables containing the changes described in this notice will be posted online, as indicated above. The updated data tables and supplementary tables containing the changes described will be effective until changed by a subsequent **Federal Register** notice.

Approved: December 6, 2011.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2011–31769 Filed 12–9–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 76 Monday,
No. 238 December 12, 2011

Part II

Department of Justice

Drug Enforcement Administration

21 CFR Part 1308
Schedules of Controlled Substances: Placement of Carisoprodol Into Schedule IV; Final Rule

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–333]

Schedules of Controlled Substances: Placement of Carisoprodol Into Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Administrator of the Drug Enforcement Administration (DEA) places the substance carisoprodol, including its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, into Schedule IV of the Controlled Substances Act (CSA). This action is pursuant to the CSA which requires that such actions be made on the record after opportunity for a hearing. The decision of the Administrator is reprinted in its entirety below.

DATES: *Effective Date:* January 11, 2012.

FOR FURTHER INFORMATION CONTACT: Rhea D. Moore, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone (202) 307–5268.

SUPPLEMENTARY INFORMATION:

ALJ Docket No. 10–46

Background

This is a proceeding under 21 U.S.C. 811(a) for the issuance of a rule placing carisoprodol in schedule IV of the Controlled Substances Act (CSA). Under this provision, ''the Attorney General may, by rule,'' add a ''drug or other substance'' to one of the five schedules of controlled substances, ''if he * * * finds that such drug or other substance has a potential for abuse, and * * * makes with respect to such drug or other substance the findings prescribed by [21 U.S.C. 812(b)] for the schedule in which such drug is to be placed.'' 21 U.S.C. 811(a). However, a rule made under this provision ''shall be made on the record after opportunity for a hearing pursuant to the rulemaking procedures prescribed by subchapter II of chapter 5 of Title 5.'' *Id.*

''[W]ith respect to each drug * * * proposed to be controlled,'' the CSA requires that the Attorney General consider eight factors in making the findings required under both subsections 811(a) and 812(b). These are:

(1) [The drug's] actual or relative potential for abuse.

(2) Scientific evidence of its pharmacological effect, if known.

(3) The state of current scientific knowledge regarding the drug or other substance.

(4) Its history and current pattern of abuse.

(5) The scope, duration, and significance of abuse.

(6) What, if any, risk there is to the public health.

(7) Its psychic or physiological dependence liability.

(8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter.

21 U.S.C. 811(c).

However, ''before initiating proceedings * * * to control a drug * * * and after gathering the necessary data,'' the Attorney General is required to ''request from the Secretary a scientific and medical evaluation, and his recommendations, as to whether such drug * * * should be controlled.'' *Id.* 811(b). The statute further provides that ''[i]n making such evaluation and recommendations, the Secretary shall consider the Factors listed in paragraphs (2), (3), (6), (7), and (8) of subsection (c) * * * and any scientific or medical considerations involved in paragraphs (1), (4), and (5) of such subsection. The recommendations of the Secretary shall include recommendations with respect to the appropriate schedule, if any, under which such drug * * * should be listed.'' *Id.*

Finally, ''[t]he recommendations of the Secretary to the Attorney General shall be binding as to such scientific and medical matters, and if the Secretary recommends that a drug * * * not be controlled, the Attorney General shall not control the drug * * *. If the Attorney General determines that these facts and all other relevant data constitute substantial evidence of potential for abuse such as to warrant control * * * he shall initiate proceedings for control * * * under subsection (a) of this section.'' *Id.*

Procedural History

Pursuant to section 811(b), in March 1996, the Drug Enforcement Administration (DEA) requested from the Department of Health and Human Services (HHS) a scientific and medical evaluation of carisoprodol, and a recommendation as to whether it should be controlled. ALJ Ex 1, at 3. In February 1997, however, the U.S. Food and Drug Administration's (FDA) Drug Abuse Advisory Committee concluded that the then-available data did not support controlling carisoprodol. *Id.*

Thereafter, at the direction of the National Institute on Drug Abuse (NIDA) and the College of Problems of Drug Dependence (CPDD), additional pharmacological studies of carisoprodol's abuse liability were conducted. In the meantime, DEA gathered additional new data on actual abuse and law enforcement encounters involving the drug, as well as other information, which it sent to HHS on November 14, 2005. FDA also acquired new data from the Drug Abuse Warning Network (DAWN), the National Survey on Drug Use and Health (NSDUH), Florida Medical Examiners Commission reports, FDA's Adverse Event Reporting System, as well as other information from a variety of sources.

On October 6, 2009, HHS concluded its review of the evidence pertaining to the eight factors set forth in 21 U.S.C. 811 and recommended that carisoprodol be placed in schedule IV. GX 6, at 1. Thereafter, on November 17, 2009, DEA issued a Notice of Proposed Rulemaking, which proposed placing carisoprodol in schedule IV. ALJ Ex., at 1 (74 FR 59108). Therein, DEA invited all persons to submit written comments or objections to the proposed rule; DEA also notified ''interested persons'' of their right to request a hearing. *Id.* at 2 (citing 5 U.S.C. 556 and 557).

DEA received seventeen comments on the proposed rule; sixteen of the commenters (which included law enforcement officials, medical professionals and state regulators) supported the proposed rulemaking.[1] One entity, Meda Pharmaceuticals, Inc. (Meda), which manufactures the branded drug Soma, objected to the proposed rule on the ground that the ''the administrative record does not include substantial and reliable evidence of potential for abuse sufficient to warrant scheduling carisoprodol and because the proposal gives inadequate weight to the negative impact on patient care of scheduling carisoprodol.'' ALJ Ex. 2, at 3. Meda also requested a hearing. *Id.* at 1. On March 21, 2010, I granted Meda's request and assigned the matter to the Agency's Office of Administrative Law Judges (ALJ). ALJ Ex. 3, at 2.

Following pre-hearing procedures, an ALJ conducted a hearing on July 6, 8,

[1] None of the commenters raised any issue as to the various Regulatory Certifications contained in the Notice of Proposed Rulemaking. *See* 74 FR at 59111. One commenter, which represents wholesale distributors, requested that if the proposed rule is finalized, its effective date be set at 120 days from the date of publication to provide adequate time to comply with various regulations.

and 9, as well as on August 3–6, 2010. At the hearing, both the Government and Meda elicited the testimony of witnesses and introduced various documents into evidence. Thereafter, both the Government and Meda filed briefs containing their proposed findings of fact and conclusions of law.

The ALJ's Recommended Decision

On December 8, 2010, the ALJ issued her recommended decision. Therein, prior to discussing the eight ''factors determinative of control,'' 21 U.S.C. 811(c), the ALJ discussed the weight to be given the FDA's findings as to scientific and medical matters. ALJ at 6; *see also* 21 U.S.C. 811(b). As explained more fully below, the ALJ adopted the Government's argument that the statute ''limits the scope of the administrative hearing to those issues outside of the medical and scientific fact-findings of the FDA,'' ALJ at 11, and concluded that ''the plain language and legislative history of § 811(b), federal case law, and [HHS's] process for conducting its administrative review, make clear that Congress intended that the Secretary's scientific and medical fact-findings bind the DEA during the hearing and the subsequent scheduling determination.'' *Id.* at 18.

However, the ALJ then noted that ''not all of the conclusions that the FDA made in its review are scientific and medical'' in nature and that the FDA's conclusions based on data obtained from the Drug Abuse Warning Network (DAWN), the National Survey on Drug Use and Health (NSDUH), and the Florida Medical Examiners/Coroners Reports ''could equally fall under the umbrella of law enforcement or science and medicine.'' *Id.* at 19–20. The ALJ ultimately concluded that ''the data gathered by these sources [was] primarily statistical, and not medical, and [is] therefore capable of review by this agency.'' *Id.* at 20. The ALJ thus concluded that FDA's conclusions based on this data are ''not binding.'' *Id.* Moreover, notwithstanding her statement as to the scope of the hearing, the ALJ allowed Meda to introduce extensive evidence including expert testimony as to the various scientific and medical matters considered by the FDA.

The ALJ then made extensive findings as to each of the eight section 811(c) factors. With respect to Factor One—the actual or relative potential for abuse—the ALJ first explained that ''abuse is using a drug for nonmedical purposes for [its] positive psychoactive effects.'' *Id.* at 82. The ALJ then noted the testimony of one of Meda's expert witnesses, who runs a drug treatment center, that he could not recall a single case of a person being treated at his center for dependence on carisoprodol and his opinion that ''the data and information presented by the FDA and DEA do not establish that carisoprodol has a potential for abuse similar'' to schedule IV controlled substances. *Id.*

However, the ALJ found ''more compelling'' data compiled by Meda and the predecessor holders of the New Drug Application for carisoprodol which had been submitted to the FDA's Adverse Events Reporting System (AERS). *Id.* at 82. This data, which includes reports from consumers and healthcare practitioners, showed that between January 1979 and May 1, 2010, there had been ''731 spontaneous adverse event'' reports of which eighty-three used such terms as abuse, dependency or withdrawal. *Id.* at 82–83.

The ALJ further noted that in 2009, FDA required that Meda re-write the drug's label to note the effects of chronic use, that there are ''published case reports of human carisoprodol dependence,'' and that various animal studies indicate the drug has ''effects similar to the use of barbital, meprobamate, and chlordiazepoxide,'' all of which are controlled substances. *Id.* at 83. The ALJ also noted that Meda eventually accepted the labeling change. *Id.* at n.42. Based on the AERS data and the drug's label, the ALJ concluded that carisoprodol's ''abuse potential is recognized,'' and that ''the record contains substance evidence of a potential for abuse when carisoprodol is chronically used.''

With respect to Factors Two and Three—the scientific evidence of carisoprodol's pharmacological effect and the state of current scientific knowledge regarding the drug—the ALJ noted that ''[b]oth the DEA and the FDA relied on animal studies of self-administration, drug discrimination, and physical dependence to support their position that carisoprodol should be classified as a schedule IV drug.'' *Id.* at 84. The ALJ then noted the testimony of Meda's Expert that ''while the animals reflected behavior patterns with respect to carisoprodol that suggest patterns similar to barbiturates, the limitations of animal studies 'do not provide an adequate basis to make decisions concerning abuse potential in humans,' '' and that '' 'certain drugs will substitute for drugs of abuse without themselves being subject to any significant drug abuse.' '' *Id.* The ALJ, however, then held that ''the FDA's conclusions regarding carisoprodol's pharmacology and withdrawal patterns [were] binding on this proceeding.'' *Id.*

The ALJ then discussed three different human studies. With respect to the Fraser study,[2] the ALJ noted that Meda's Expert interpreted the results as showing that ''ingestions 'did not induce a characteristic barbiturate intoxication pattern * * *, nor did the abrupt withdrawal of carisoprodol reveal any signs of barbiturate-like abstinence' behavior.'' *Id.* at 85. However, the ALJ then noted that ''the FDA and the DEA found that the subjective and objective effects were similar to those of barbiturates or alcohol and different from those of opiates'' and that the drug ''has sedative-like effects.'' *Id.* Here again, the ALJ found FDA's findings binding on the proceeding. *Id.*

Next, the ALJ discussed the studies Meda had conducted to obtain FDA approval to market a smaller-strength dose. While these studies, which involved 4,000 patients, showed no evidence of diversion, misuse, or abuse, and none of the patients experienced withdrawal following discontinuation of the drug, the ALJ noted that the studies' subjects received only therapeutic doses and did so only ''for a period of one to two weeks.'' *Id.* The ALJ thus concluded that these trials ''did not test the effects of prolonged use of carisoprodol at ingestion levels above the levels for therapeutic use.'' *Id.*

The ALJ then discussed a case study by doctors from the Mayo Clinic of a 51-year old man who had taken up to six times the maximum recommended daily dose, which concluded that the case ''demonstrates adverse effects of both carisoprodol toxicity and withdrawal.'' *Id.* at 85–86. More specifically, the ALJ noted the study's findings that ''abrupt discontinuation of high-dose carisoprodol may result in withdrawal symptoms including anxiety, psychosis, tremors, myoclonus, ataxia and seizures,'' and that ''[t]his withdrawal syndrome is likely underrecognized.'' *Id.* at 86.

Finally, the ALJ noted the FDA's findings that ''carisoprodol possesses sedative properties which may underlie its therapeutic usefulness and its potential for abuse,'' that ''[r]ecent *in vitro* studies demonstrated that carisoprodol 'possesses barbiturate-like effects,' '' that the drug ''has positive reinforcing effects and [that] its discriminative stimulus effects are similar to other schedule IV drugs such as barbital, meprobamate and chlordiazepoxide.'' *Id.* While the ALJ

[2] While both parties and the ALJ cited this study as if it was an exhibit in the case, it was not included in the record forwarded to this Office and there is no indication that it was entered into evidence.

noted that Meda's Expert had challenged the FDA's reliance on an *in vitro* study, she held again that the FDA's ''conclusion is binding on this proceeding.'' *Id.* Based on ''the totality of the record,'' the ALJ thus concluded that ''the record demonstrates that excessive carisoprodol use creates similar toxicity and withdrawal symptoms to other schedule IV drugs.'' *Id.*

With respect to Factors Four and Five—the history and current pattern of abuse, and the scope, duration, and significance of abuse—the ALJ began by noting the testimony of several law enforcement officials including the head of the DEA Office of Diversion Control, the Executive Director of the Ohio State Board of Pharmacy, and a Special Agent in Charge with the Tennessee Bureau of Investigation, each of whom testified that carisoprodol was being obtained for other than a legitimate medical purpose and being either abused or sold on the street.

The ALJ then discussed data obtained from the National Forensic Laboratory Information System (NFLIS), the National Survey on Drug Use and Health (NSDUH), the Drug Abuse Warning Network (DAWN), Florida Medical Examiners, and the National Poison Data System (NPDS). While noting that the NFLIS data, which showed that carisoprodol was consistently among the top twenty-five drugs being seized during criminal investigations and analyzed by state and local forensic laboratories are ''not direct evidence of abuse,'' the ALJ concluded these data ''lead[] to an inference that [the drug] has been diverted and abused.'' *Id.* at 88.

As for the NSDUH data, the ALJ noted that data for the years 2004 through 2007 estimate that between 2,525,000 and 2,840,000 million individuals have used carisoprodol during their lifetime for a non-medical reason. *Id.* at 89. While observing that the yearly estimates ''may remain relatively consistent,'' the ALJ observed that ''they are still a significant number of nonmedical uses.'' *Id.* However, the ALJ then noted that ''these numbers are significantly lower than comparable numbers for the nonmedical use of benzodiazepines.'' *Id.*

Next, the ALJ discussed the DAWN data. With respect to the DAWN Emergency Department data, the ALJ noted that these data show that the abuse frequency of carisoprodol ''is similar to that of diazepam, a schedule IV drug,'' and that the data show an ''increasing frequency of nonmedical use emergency department visits associated with carisoprodol.'' *Id.* However, the ALJ then noted the credited testimony of another of Meda's expert witnesses that there is a ''lack of transparency in the methods used to collect * * * and statistically extrapolate'' the data, that without ''understanding the nature and extent of the changes in case findings(s) during the last several years, it is impossible to conclusively say what proportion of the increases in DAWN ED national estimates is attributable to changes in methodology versus changes in the actual number of DAWN cases associated with a particular drug,'' and that ''[t]his hinders any effort to interpret'' the trends over time. *Id.* The ALJ thus agreed with Meda's expert that DAWN ED data ''may not be the best evidence in this record for concluding that the abuse of carisoprodol is increasing over time.'' *Id.*

As for the DAWN Medical Examiner data, the ALJ noted that the ''reporting [of] a drug in this reporting system means that the drug need only be implicated or suspected in the death.'' *Id.* at 90. Quoting the testimony of Meda's Expert, the ALJ found that '' 'carisoprodol may not have been the actual cause of death, and it is not possible to conclude that carisoprodol 'abuse' was the cause of death in these cases.' '' *Id.* However, the ALJ noted that the data ''showed a link, even if not direct evidence of a cause, between carisoprodol use in combination with other drugs and death in 434 cases of death in 2006.'' *Id.*

Turning to the Florida Medical Examiner data, which show that 415 carisoprodol-related deaths occurred in 2008, and an increase of ''about 62 percent'' in the ''total occurrence of carisoprodol/meprobamate in Florida drug abuse deaths,'' the ALJ again noted the testimony of Meda's Expert that ''carisoprodol may not be the cause of death, but rather it may be merely present in the body at the time of death.'' *Id.* However, the ALJ then found that the FDA ''determined that carisoprodol was considered the cause of death in 88 cases in 2007.'' *Id.*

Next, the ALJ noted that the NPDS data show that in 2007, '' 'carisoprodol was associated with 8,821 toxic exposure cases, including 3,605 cases in which [it] was the sole drug mentioned,' '' and that ''[c]ases of individuals treated in health-care facilities because of a major adverse health-outcome total 122 out of the 2,821 single exposure cases.'' *Id.* at 91. The ALJ then acknowledged the testimony of Meda's Expert that because the cases are self-reported and ''the reporting individual may misidentify the substance during the call to the poison center, 'it [is] impossible to conclude that a mentioned drug was causally implicated in the exposure.' '' *Id.* However, the ALJ also noted the testimony of Meda's Expert that the '' 'poison center data have some use, but must be interpreted with caution.' '' *Id.*

The ALJ further found that while the ''the intentional exposure data'' for the years 2006 and 2007 show that the number of deaths attributable to ''single exposure cases'' had remained at one per year, the number of cases with ''major effects went from 105 to 122,'' and the number of cases with ''moderate effects went from 688 to 720.'' *Id.* at 91–92. The ALJ thus concluded that the increases in the major and moderate effects cases support the ''conclusion that 'individuals are taking carisoprodol in amounts sufficient to cause hazard to their health.' '' *Id.* at 92.

Finally, the ALJ observed that the FDA had ''found that data from '2002–2006 indicate that more than 25 percent of patients used the drug [for] longer than one month and 4.3 percent used the drug more than 360 days,' '' and that '' '[l]onger term use may contribute to increased risks of misuse and abuse.' '' *Id.* The ALJ then noted that she ''agree[d] with the FDA's conclusion.'' *Id.*

With respect to Factor Six—the risk, if any, to public health—the ALJ again noted the testimony of the head of DEA Office of Diversion Control, the Executive Director of the Ohio State Board of Pharmacy, and the Special Agent in Charge with the Tennessee Bureau of Investigation to the effect that ''the failure to schedule carisoprodol poses a great risk to public health.'' *Id.* at 92–93. The ALJ further noted the FDA's conclusion that because carisoprodol is metabolically converted to meprobamate, a schedule IV controlled substance, ''the public health risks of carisoprodol may be similar to those of meprobamate''; the poison control center data which ''show that 'individuals are taking carisoprodol in amounts sufficient to cause hazard to their health' ''; and FDA's finding that '' 'the risks of carisoprodol to the public health are typical of other central nervous system depressants that are controlled' '' and that '' '[t]hese risks include central nervous system depression, respiratory failure, cognitive and motor impairment, addiction, dependence, and abuse.' '' *Id.* (citations omitted). The ALJ again found that the FDA's conclusions were ''binding on this proceeding.'' *Id.* at 93.

The ALJ then noted Meda's evidence showing a decline in the number of prescriptions that occurred in four States which have controlled

carisoprodol, as well as Meda's contention that controlling the drug would have a chilling effect on the legitimate prescribing of the drug because of the reluctance of physicians to prescribe a controlled substance and that this would be ''to the detriment of those patients who would be best treated with carisoprodol.'' *Id.* at 93–94. The ALJ found, however, that ''anecdotal evidence in this record contradicts this prediction,'' because one of Meda's Experts testified that if carisoprodol was controlled, he would continue to prescribe it. *Id.* at 94. The ALJ then found that DEA data showed that controlling other drugs ''did not result in physicians ceasing to prescribe'' them. *Id.*

Finally, the ALJ found that ''carisoprodol has been implicated in cases of impaired driving, with symptoms consistent with other central nervous system depressants, especially alcohol,'' and that ''[a] Norwegian study also supported this proposition.'' *Id.* The ALJ was unpersuaded by Meda's argument ''that many uncontrolled drugs have labels warning against driving while taking such drugs,'' noting that ''[i]mpaired driving is a risk to the public health,'' and thus supports the ''conclusion that published scientific reports indicate that taking carisoprodol is associated with risk to the public health.'' *Id.*

With respect to Factor Seven—the drug's psychic or physiological dependence liability—the ALJ observed that ''[d]ependence includes both physical and psychological dependence.'' *Id.* While noting that ''there are noncontrolled drugs for which an individual may have a physical dependence,'' a drug-taker's conduct must be ''viewed in total'' to determine if the person ''has a psychic drive or craving to obtain the drug.'' *Id.* at 95. The ALJ then noted that based on various scientific studies, the FDA had ''found that carisoprodol has a dependence liability that is similar to that of barbital, a Schedule IV central nervous system depressant, in its dependence potential,'' and that the FDA's finding was binding on the proceeding. *Id.* The ALJ also cited the testimony of a DEA witness that carisoprodol is abused by individuals to obtain a ''mellow euphoria.'' *Id.*

The ALJ also found that two studies had shown that carisoprodol produces ''subjective and objective effects'' in ''human subjects [that] were similar to those of barbiturates or alcohol,'' the former being controlled substances listed in both schedules III and IV. *Id.* at 96. The ALJ then noted the testimony of Meda's Expert that if ''carisoprodol induced a barbiturate intoxication pattern, [this] could be a possible indicator that carisoprodol possesses barbiturate-like abuse liability.'' *Id.*

Finally with respect to Factor Eight—whether carisoprodol is an immediate precursor to a substance already controlled—the ALJ found it undisputed that the drug ''is not an immediate chemical precursor or intermediary of a controlled substance.'' *Id.*

The ALJ then addressed the three section 812(b) placement factors. With respect to Factor One—whether the drug has a low potential for abuse relative to the drugs in schedule III—the ALJ began by noting the FDA's recommendation (and the concurrence of the National Institute on Drug Abuse (NIDA)), that carisoprodol should be placed in schedule IV. *Id.* The ALJ found that ''[e]mpirical evidence supports the FDA's conclusion,'' including the evidence that carisoprodol metabolizes into meprobamate, a schedule IV controlled substance,'' and that various studies support the conclusion that carisoprodol has effects similar to barbiturates, which are schedule III and IV controlled substances. *Id.* at 96–97. The ALJ also found that notwithstanding that the DAWN ED data, which show that the ''abuse frequency of carisoprodol is similar to that of diazepam, a schedule IV drug,'' ''may be overly inclusive,'' this limitation would not result in ''any significant difference in ED visits between the reported drugs.'' *Id.* at 98. While acknowledging that the NSDUH data show that ''carisoprodol is being abused * * * at a rate significantly less than that of benzodiazepines,'' the ALJ found that ''the NSDUH and DAWN are two distinct studies, both on methodology and measurement, and therefore cannot adequately be compared.'' *Id.* at 98–99.

With respect to Factor Two—whether the drug has a currently accepted medical use in treatment in the United States—the ALJ found it undisputed that carisoprodol has been approved by the FDA for the treatment of ''acute, painful musculoskeletal conditions.'' *Id.* at 99–100. The ALJ thus found that ''carisoprodol has a currently accepted medical use in the United States.'' *Id.* at 100.

With respect to Factor Three—whether abuse of the drug may lead to limited physical or psychological dependence relative to the drugs in schedule three—the ALJ credited the testimony of two of Meda's experts to the effect that carisoprodol ''does not create abuse liability patterns typical of controlled drugs'' and that ''[t]here does not appear to be any patient 'liking' that would indicate an abuse potential.'' *Id.* at 101. The ALJ nonetheless found that ''there is substantial evidence in the record based on the animal data, AERS reports, and Mayo Clinic data that carisoprodol produces dependence and withdrawal symptoms similar to other controlled substances in schedule IV.'' *Id.* The ALJ further held that ''FDA's conclusions regarding the psychological and physiological dependence of carisoprodol [were] binding on this proceeding.'' *Id.*

The ALJ thus concluded that substantial evidence supports the controlling of carisoprodol under the eight factors of section 811(c). *Id.* at 102. The ALJ further concluded that substantial evidence supported the placement of carisoprodol in schedule IV. *Id.* (citing 21 U.S.C. 812).

Meda filed Exceptions to the ALJ's decision. Thereafter, the ALJ forwarded the record to me for final agency action.

Having considered the entire record, including Meda's Exceptions (which are discussed more fully below), I agree with its contention that the ALJ erred in holding that the FDA's scientific and medical findings are binding on this proceeding. However, because the ALJ allowed Meda to put on extensive evidence as to the scientific and medical matters considered by the FDA, and because, as ultimate factfinder (*see* 5 U.S.C. 557(b)), I have considered Meda's evidence in deciding whether substantial evidence supports the scheduling of carisoprodol, I conclude that the ALJ's error is not prejudicial. Because I hold that the record as a whole contains substantial evidence to support the findings required to control carisoprodol and place it in schedule IV of the CSA, I will issue a rule placing carisoprodol in schedule IV.

The ALJ's Ruling on the Binding Nature of the FDA's Scientific and Medical Evaluation

As noted above, ''before initiating proceedings * * * to control a drug or other substance,'' the Attorney General is required to ''request from the Secretary a scientific and medical evaluation, and [her] recommendations, as to whether such drug or other substance should be so controlled.'' 21 U.S.C. 811(b). Congress specified that ''[i]n making such evaluation and recommendations, the Secretary shall consider the factors listed in paragraphs (2), (3), (6), (7), and (8) of subsection (c) * * * and any scientific or medical considerations involved in paragraphs (1), (4) and (5) of such subsection.'' *Id.* The Secretary is directed to provide the Attorney General with her ''evaluation and * * * recommendations,'' which

''shall include recommendations with respect to the appropriate schedule, if any, under which such drug or other substances should be listed.'' *Id.*

Subsection (b) further provides that ''[t]he recommendations of the Secretary to the Attorney General shall be binding as to such scientific and medical matters, and if the Secretary recommends that a drug or other substance not be controlled, the Attorney General shall not control the drug or other substance.'' *Id.* Moreover, ''[i]f the Attorney General determines that these facts and all other relevant data constitute substantial evidence of potential for abuse such as to warrant control * * * he shall initiate proceedings for control * * * under subsection (a),'' the provision which requires that a rule scheduling a substance ''be made on the record after opportunity for a hearing pursuant to the rulemaking procedures prescribed by'' 5 U.S.C. 556 and 557.

The ALJ held that ''the CSA limits the scope of the administrative hearing to those issues outside of the medical and scientific fact-findings of the FDA.'' ALJ at 11. According to the ALJ, the ''the plain language and legislative history of [sections 811(a) and (b)] and federal case law indicate [that] Congress intended that the Secretary's scientific and medical fact-findings bind the [Agency] throughout the scheduling process.'' *Id.* The ALJ further rejected Meda's contention that construing the statute in this manner would deny it a meaningful hearing and render the hearing ''largely superfluous,'' concluding that ''Respondent will be afforded the opportunity for a meaningful APA hearing without the opportunity to litigate the factual underpinnings of the [HHS] report.'' *Id.*

The ALJ thus rejected Meda's contention that the FDA's findings as to medical and scientific matters are only binding on the Agency's decision as to whether to initiate a scheduling proceeding and that the Secretary's findings are not binding on either the ALJ or the Administrator in evaluating the record of the hearing. *Id.* at 9–11 (discussing Meda Br. 15–18). As noted above, throughout her consideration of the factors, the ALJ held that she was bound by FDA's findings as to scientific and medical matters and that Meda was not entitled to challenge the Secretary's medical and scientific findings. *See, e.g.,* ALJ at 85–86 (holding FDA's findings as to Factor Two (Section 811(c)) binding notwithstanding Meda's contrary evidence).

I find the ALJ's reasoning confusing,[3] and that she gave insufficient consideration to the most relevant judicial decisions; I therefore reject her legal conclusion. To be sure, the Supreme Court has recognized that ''[t]he CSA allocates decision making powers among statutory actors so that *medical judgments* * * * are placed in the hands of the Secretary,'' and that the ''[t]he structure of the CSA * * * conveys unwillingness to cede medical judgments to an Executive official who lacks medical expertise.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 265 (2006). Yet, the ALJ's sweeping conclusion that this ''language supports the inference that the Supreme Court interpreted 811(b) to indicate that those medical judgments *are final and not subject to litigation before the DEA,*'' ALJ at 13 (emphasis added), cannot be squared with other provisions of the statute. Moreover, the Court did not decide the issue.

As noted above, upon receiving the Secretary's evaluation and recommendation, the Attorney General is charged with the duty to ''determine that these facts and all other relevant data *constitute substantial evidence of potential for abuse such as to warrant control.*'' 21 U.S.C. 811(b) (emphasis added). In the event the Secretary's evaluation and the other relevant data constitute substantial evidence such as to warrant control, the Attorney General may then initiate proceedings to control the drug. However, Congress further provided that ''Rules of the Attorney General [to control a drug] shall be made on the record after opportunity for a hearing pursuant to the rulemaking procedures prescribed by'' the Administrative Procedure Act (APA). 21 U.S.C. 811(a).

Under this provision, a rule may not be ''issued except on consideration of the whole record or those parts thereof cited by a party and supported by and *in accordance with the reliable, probative, and substantial evidence.*'' 5 U.S.C. 556(d) (emphasis added). Were it the case that the Secretary's findings as to medical and scientific matters are not subject to litigation in the subsequent rulemaking hearing, the only issues left to be litigated would be the drug's ''actual'' abuse, its ''history and current pattern of abuse'' and the ''scope, duration, and significance of abuse.'' 21 U.S.C. 811(b). However, an on-the-record hearing (as opposed to notice and comment rulemaking) would hardly be necessary to determine whether the data proffered by the Agency is adequate to support the findings necessary to control a drug. As the DC Circuit explained in *Reckitt,*[4] if HHS's medical and scientific findings are binding throughout a proceeding, ''it is difficult to see what purpose the agency's on-the-record hearing [would] serve[.]'' [5]

The ALJ's also found unpersuasive *Grinspoon* v. *DEA,* 828 F.2d 881 (1st Cir. 1987). *Grinspoon* involved a petition to review the Agency's issuance of a final rule placing MDMA in schedule I. 828 F.2d at 882. In *Grinspoon,* the petitioner raised four different challenges to the Agency's rule. *Id.* at 882–83. These included, *inter alia,* that the ''Administrator applied the wrong legal standard'' because he interpreted the ''phrases 'accepted medical use in treatment in the United States,' and 'accepted safety for use * * * under

[3] *Compare* ALJ at 11 (noting that dicta in *Reckitt & Coleman, Ltd.,* v. *Administrator,* 788 F.2d 22, 27 n.8 (DC Cir. 1977), ''highlights the inherent ambiguity in the statutory language''), *with id.* at 18 (holding that ''the plain language'' of section 811(b) ''make[s] clear that Congress intended that the Secretary's scientific and medical fact-findings bind the DEA during the hearing and the subsequent scheduling determination'').

[4] At issue in *Reckitt & Coleman* was a rulemaking which rescheduled buprenorphine from schedule II to schedule V, but which designated the drug as a narcotic based on the ground that it is a derivative of thebaine. *See* 788 F.2d at 22. In a footnote, the Court of Appeals discussed an argument advanced in the brief of a third-party intervenor (which the Department endorsed at oral argument) that the Agency's conclusion could be upheld on the ground that ''HHS's initial communication to DEA stated that buprenorphine is a thebaine derivative, and the Act makes HHS's recommendations as to 'scientific and medical matters' binding on the DEA.'' 788 F.2d 27 n.8 (citing 21 U.S.C. 811(b)). While the court concluded that it was unnecessary to reach the issue, as noted above, it expressed considerable skepticism as to the reasonableness of the view that the Attorney General is bound by the Secretary's finding on a scientific issue notwithstanding contrary evidence presented at a hearing. While the DC Circuit's discussion is not binding, it is dictum which the Agency ignores at its peril.

[5] As support for her holding, the ALJ also cited *United States* v. *Spain,* 825 F.2d 1426, 1428 (10th Cir. 1987), and *United States* v. *Pastore,* 419 F.Supp. 1318 (S.D.N.Y. 1976). As for the ALJ's reliance on *Spain,* that case addressed the Attorney General's authority under 21 U.S.C. 811(h), which authorizes the ''scheduling of a substance in schedule I on a temporary basis [when] necessary to avoid an imminent hazard to the public safety.'' *See* 825 F.2d at 1427. Under this provision, the Attorney General is not required to obtain a scientific and medical evaluation from the Secretary before acting. *Id.* at 148–29. Thus, the case does not address the issue of whether the Secretary's medical and scientific evaluation and recommendations are subject to re-litigation at the hearing. *See* 825 F.2d at 1427.

Pastore involved a motion to dismiss an indictment which charged various offenses involving the unlawful distribution and obtaining of the controlled substances phendimetrazine and phentermine. *See* 419 F. Supp. at 1334–35. While the defendants raised various challenges to the Attorney General's decision scheduling these drugs, both drugs were scheduled without a formal on-the-record hearing. *Id.* at 1346–48. Here again, the case did not address the issue of whether the Agency is bound by the Secretary's finding on a scientific or medical issue in a formal rulemaking proceeding. *See id.*

medical supervision' '' as meaning ''approved for interstate marketing * * * under the'' Food, Drug and Cosmetic Act, *id.* at 884 (quoting 21 U.S.C. 812(b)(1)(A)), as well as that ''the rule [was] based upon incomplete and arbitrary recommendations from the Secretary.'' *Id.* at 883.

The First Circuit held that the Administrator had erroneously interpreted the phrases ''accepted medical use in treatment in the United States'' and ''accepted safety for use * * * under medical supervision'' as meaning that the drug had not been approved by FDA for interstate marketing. *Id.* at 891. The Court thus vacated the rule and ordered the Agency to reconsider the scheduling determination. *Id.*

The Court, however, also addressed the Petitioner's other challenges to the rule, including that HHS had acted in an arbitrary and capricious manner because it ''failed to look beyond its own files upon receiving the Administrator's section 811(b) request,'' that it did not ''consult any organization of medical professionals'' or FDA's ''Drug Abuse Advisory Committee,'' that it simply rubber-stamped DEA's eight-factor analysis, and that it had failed to forward a letter from NIDA which questioned evidence pertaining to MDMA's abuse potential in animals. *Id.* at 897. In rejecting the Petitioner's contention, the court explained:

> [T]he HHS recommendation to schedule a substance is not binding and, indeed, serves to trigger an administrative hearing at which interested persons may introduce evidence to rebut the Secretary's scheduling recommendation. Ultimately, of course, responsibility rests with the Administrator, not HHS, to ensure that the final rule rests on permissible legal standards and substantial evidence.

Id. (footnote omitted).

As *Grinspoon* makes clear, while the Secretary is the expert as to the scientific and medical matters at issue in the scheduling decision, the Attorney General is obligated to conduct a hearing and to consider contrary evidence even as to these issues. The legislative history buttresses this conclusion.[6] As the House Report explains:

> The procedure which the Attorney General must then follow to control a drug involves rulemaking proceedings on the record after opportunity for a hearing. This provides opportunity for consideration of the views of persons who would be adversely affected by control of a drug, with judicial review available thereafter; however, this administrative proceeding is more streamlined in its operation than the existing procedures under section 701(e) of the Federal, Food, Drug, and Cosmetic Act, so that controls may be established expeditiously where necessary, with full consideration of all factors involved in the decision-law enforcement problems, medical, and scientific determinations, and the interests of parties affected by the decision to control.

H. Rep. No. 91–1444, 1970 U.S.C.C.A.N. at 4589.

The ALJ also reasoned that the FDA's ''detailed administrative process [for] making its scientific and medical fact findings suggests that Congress did not intend the DEA to secondarily review those filings.'' ALJ at 17. Citing a 1999 Hearing Report of the Subcommittee on Oversight and Investigations of the House Committee on Commerce, the ALJ noted that the '' 'the scientific and medical evaluation process is a complex one which is part of the balancing of the interests of various agencies' '' and that the process ''may extend over many years, [and] is subject to review by various components of the FDA and interagency review.'' *Id.* The ALJ further noted that under two different FDA regulations, Meda could have requested a hearing before the FDA. ALJ at 17–18 n.5; *see also id.* at 4 n.2.

However, in enacting subsection 811(a), Congress did not bifurcate the hearing between the two Agencies. Rather, it tasked the Attorney General with the responsibility for conducting the hearing. Moreover, neither the statute nor the legislative history evidences that Congress intended that challenges to the Secretary's scientific and medical findings be litigated in a proceeding before HHS.

In addition, both the statute and the legislative history make plain that Congress was concerned that scheduling proceedings be done in an expeditious manner. For instance, section 811(b) requires that the Secretary submit his report ''to the Attorney General *within a reasonable time.*'' 21 U.S.C. 811(b) (emphasis added). Likewise, in discussing the hearing provision, the House Report manifests Congress' intent ''that controls may be established expeditiously where necessary.'' 1970 U.S.C.C.A.N. at 4589. The ALJ's suggestion that Meda was required to request a hearing under either 21 CFR 14.172 or 21 CFR 15.1(a), *see* ALJ at 17 & n.5,[7] runs counter to Congress's manifest interest in the expeditious resolution of proceedings to control a drug.

In its Exceptions, Meda contends that ''the ALJ's decision in this proceeding is predicated upon an erroneous belief that Meda had an opportunity to challenge the scientific and medical fact-finding underlying'' the HHS recommendation. Meda Exc. at 1. The exception is well taken. Indeed, as set forth in footnote seven above, under both of these provisions, the decision as to whether to grant a hearing is discretionary. Requiring that Meda litigate the medical and scientific findings before an FDA forum would likely add several years of delay, and would raise a host of additional issues, including whether DEA was required to stay its proceeding while the findings were being challenged before an FDA forum, whether those findings are entitled to *res judicata* effect if a formal evidentiary hearing was not held, whether the FDA's decision was a final decision triggering the right to judicial review, and likely others.

Also unpersuasive is the ALJ's reasoning that because the FDA's process for evaluating a scheduling request is complex and time-consuming, ''Congress did not intend the DEA to secondarily review those findings.'' ALJ at 17. As the House Report makes plain,

[6] Throughout her discussion, the ALJ explained that ''the CSA limits the scope of the administrative hearing to those issues outside of the medical and scientific fact-findings of the FDA,'' that ''Congress intended that the Secretary's scientific and medical fact-findings bind the DEA throughout the scheduling process,'' that ''Respondent will be afforded the opportunity for a meaningful APA hearing without the opportunity to litigate the factual underpinnings of the [HHS] report,'' ALJ at 11, and that *Gonzales* ''indicate[s] that [the FDA's] medical judgments are final and not subject to litigation before the DEA.'' *Id.* at 13.

However, after concluding that *Grinspoon* does not support Meda and was distinguishable because the Agency had blindly relied on FDA approval as the *sine qua non* of the ''currently accepted medical use'' and ''accepted safety for use * * * under medical supervision'' standards, the ALJ quoted the passage set forth above and observed that ''[i]n light of th[e Administrator's] independence, and Meda's opportunity to present evidence relevant to the Administrator's decision, this tribunal would be hard-pressed to conclude that there was '' 'no opportunity for consideration of the views of persons who would be adversely affected by control of the drug.' '' *Id.* at 16 (quoting H. Rep. No. 91–1444, at 23 (1970)). Yet, she subsequently concluded that ''the plain language and legislative history * * *, federal case law, and [HHS's] process for conducting its administrative review, make clear that Congress intended that the Secretary's scientific and medical fact-findings bind the DEA during the hearing and the subsequent scheduling determination.'' *Id.* at 18.

[7] Under 21 CFR 14.172, ''[a]ny interested person may request, under § 10.30, that a specific matter relating to a particular human prescription drug be submitted to an appropriate advisory committee for a hearing and review and recommendations * * *. The Commissioner may grant or deny the request.'' Under 21 CFR 15.1(a), the Commissioner may ''conclude[], as a matter of discretion, that it is in the public interest to permit persons to present information and views at a public hearing on any matter pending before the Food and Drug Administration.'' Notably, under both provisions, the decision as to whether to grant a hearing is within the Commissioner's discretion.

in enacting the scheduling provisions, Congress manifested its intention that scheduling proceedings would be done in an expeditious fashion, but with ''*full consideration of all factors involved in the decision,''* including the medical and scientific determinations involved in the decision. 1970 U.S.C.C.A.N. at 4589 (emphasis added). The ALJ's conclusion that the medical and scientific findings of FDA are binding and cannot be ''secondarily review[ed]'' in this proceeding, is contrary to this intent.

Accordingly, consistent with the APA's requirement that the record as a whole must be considered, I hold that, notwithstanding the Secretary's expertise as to the scientific and medical matters, the Agency is (and the ALJ was) obligated to consider Meda's contrary evidence even as to the Secretary's medical and scientific findings and to determine whether substantial evidence supports the finding that carisoprodol ''has a potential for abuse,'' as well as the findings made in support of placing the drug in schedule IV. *See* 21 U.S.C. 811(a).

However, while the ALJ misconstrued the statute, she did allow Meda to put on evidence to rebut the Secretary's evaluation of the medical and scientific evidence. Because ''[t]he Agency, and not the ALJ, is the ultimate factfinder,'' *Reckitt & Colman,* 788 F.2d at 26, I conclude that ALJ did not commit prejudicial error. *Cf.* 5 U.S.C. 706 (''due account shall be taken of the rule of prejudicial error''). Accordingly, a remand is not necessary and I proceed to consider the evidence with respect to the section 811(c) factors.

Findings of Fact

Since 1959, carisoprodol has been approved for marketing in the United States under the brand name of Soma; the drug, which is also available as a generic drug, is approved by the FDA for the ''relief of discomfort associated with acute, painful musculoskeletal conditions.'' GX 6, at 1 (letter of Howard H. Koh, M.D., Asst. Sec. for Health, HHS, to the Administrator (Oct. 6, 2009)). As noted above, on October 6, 2009, HHS completed its review and recommended that carisoprodol be controlled and placed in schedule IV of the CSA. *Id.*

FDA made extensive findings as to each of the eight section 811(c) factors. These findings are discussed below,[8] along with additional evidence provided by DEA's witnesses and the testimony and exhibits submitted by Meda.

Factor 1—Carisoprodol's Actual or Relative Potential for Abuse

The terms ''abuse'' and ''potential for abuse'' are not defined in the CSA. *See generally* 21 U.S.C. 802. However, the legislative history of the CSA explains that a drug or ''substance has a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect'' based on the following indicators:

> 1. Individuals are taking the substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or to the community; or
>
> 2. There is significant diversion of the drug or substance from legitimate drug channels; or
>
> 3. Individuals are taking the substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such substance; or
>
> 4. The substance is so related in its action to a substance already listed as having a potential for abuse to make it likely that it will have the same potential for abuse as such substance, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.

Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91–1444, reprinted in 1970 U.S.C.C.A.N. 4566, 4601.

The legislative history also explains that a determination that a substance has ''potential for abuse'' should not ''be determined on the basis of isolated or occasional nontherapeutic purposes.'' *Id.* at 4602 (other citation and int. quotations omitted). Rather, ''there must exist a substantial potential for the occurrence of significant diversions from legitimate channels, significant use by individuals contrary to professional advice, or substantial capability of creating hazards to the health of the user or the safety of the community.'' *Id.* However, the legislative history also makes clear that the Attorney General is not ''required to wait until a number of lives have been destroyed or substantial problems have already arisen before'' controlling a drug. *Id.*

The legislative history further explains that ''[i]n speaking of 'substantial' potential the term 'substantial' means more than a mere scintilla of isolated abuse, but less than a preponderance.'' *Id.* Thus, evidence that ''several hundred thousand dosage units of a drug have been diverted would be 'substantial' evidence of abuse despite the fact that tens of millions of dosage units of that drug are legitimately used in the same time period.'' *Id.* Moreover, ''[m]isuse of a drug in suicides and attempted suicides, as well as injuries resulting from unsupervised use are regarded as indicative of a drug's potential for abuse.'' *Id.*

As the Assistant Secretary noted, ''there is no single test or assessment procedure that, by itself, provides a full and complete characterization of a substance's abuse potential, as this is a complex determination that is multidimensional.'' GX 6, at 3. Accordingly, in ''assessing the abuse potential of a substance, the Secretary considers multiple factors, data sources and analyses,'' including ''the prevalence, frequency and manner of use in the general public and specific subpopulations, the amount of material that is available for illicit use, as well as evidence relevant to populations that may be of particular risk.'' *Id.*

The Assistant Secretary further explained that:

> [a]nimal, human, and epidemiological data are all used in determining a substance's abuse potential. Scientifically, a comprehensive evaluation of the relative abuse potential of a substance includes consideration of the drug's receptor binding affinity, preclinical pharmacology, reinforcing effects, discriminative stimulus effects, dependence producing potential, pharmacokinetics and routes of administration, toxicities, assessment[] of the clinical efficacy, safety database relative to actual abuse, clinical abuse potential studies and the public health risks following marketing of the substance. Epidemiological data can also be an important indicator of actual abuse. Finally, evidence of clandestine production and illicit trafficking of a substance are also important factors.

Id. Set forth below is the parties' evidence as to each of the four indicators of carisoprodol's potential for abuse.[9]

[8] Meda argues that the FDA review ''is entitled to very little weight'' because ''DEA counsel did not call any HHS or FDA witness to testify and justify the scientific, medical, and legal basis underlying the HHS recommendation.'' Meda. Br. 22. However, most of the findings in the FDA's evaluation were supported by citations to publicly available articles, and it is not clear why an FDA witness was required to testify as to the contents of articles which have been published in scientific and medical journals. Moreover, Meda did not seek to subpoena any of the FDA officials who were involved in the review. Finally, while the Government did not call an FDA or HHS witness ''to answer questions about the numerous weaknesses in the data,'' Meda was clearly able to put on an effective challenge to some of the data cited by the Government.

[9] I have considered Meda's argument that by relying on the four indicators of abuse set forth in the legislative history, the Agency ''has improperly attempted to redefine 'abuse' to mean something much broader than what the Committee contemplated (*i.e.,* use for nontherapeutic

1. Use of Carisoprodol Results in Harm to Individuals and the Public

The FDA found that an evaluation of published case reports and case series, the FDA Adverse Event Reporting System (AERS), and the SAMHSA DAWN databases, show that carisoprodol as currently used raises concerns not only for the health and safety of the users of this substance, but also for the public because of exposure to those who use carisoprodol. More specifically, the FDA found that these sources of information indicate that serious adverse events, including death, drug dependence, drug withdrawal symptoms, and non-intentional and deliberate overdose are related to the abuse of carisoprodol.

The FDA further noted that adverse events have occurred both when carisoprodol is the sole drug of use, as well as when it is used in combination with other drugs, both licit and illicit (polypharmacy). In addition, the use of carisoprodol has been implicated as a factor in vehicle accidents due to driver impairment. The FDA thus concluded that there is evidence that individuals are taking the substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or to the community.[10]

Drug Abuse Warning Network (DAWN) Data

The Substance Abuse Mental Health Service's Administration (SAMHSA) administers the Drug Abuse Warning Network (DAWN, 2007; *http://dawninfo.samhsa.gov/*). DAWN is a national probability survey of U.S. hospitals with emergency departments (EDs) which is designed to obtain information on ED visits in which recent drug use is implicated. The data are gathered from a representative sample of hospital EDs and are weighted to produce national estimates. In addition to the DAWN ED data, DAWN also collects data on drug-related deaths investigated by Medical Examiners and Coroners (ME/C).[11]

DAWN ED Data

According to FDA, many factors can impact the estimates of ED visits, GX 6, at 11; which ''are identified through a retrospective review of medical charts.'' MX 34, at 33 n.13. Individuals (whether patients or drug abusers) who use a drug may visit EDs for a variety of reasons, including treatment of a life threatening adverse event or to obtain a certification of need before entering a formal detoxification program. If multiple drugs are involved, DAWN may not be able to distinguish whether a single drug or the interaction of drugs caused the ED visit. Moreover, while ''DAWN tries to capture only drugs that are related to the ED visit and actively discourages the reporting of current medications that are unrelated to the visit[,] * * * it is not possible, given the limitations of medical record documentation, to eliminate completely the reporting of current medications.'' MX 34, at 33.

In addition, DAWN defines ''nonmedical use'' as ''use that does not meet the definition of medical use.'' *Id.* Under this definition, ''nonmedical use of pharmaceuticals includes taking more than the prescribed dose of a prescription pharmaceutical * * *; taking a pharmaceutical prescribed for another individual; deliberate poisoning with a pharmaceutical by another person; and documented misuse or abuse of a prescription'' pharmaceutical. *Id.* Because of ''the limitations of medical record documentation, [DAWN has] concluded that distinguishing misuse from abuse reliably is not feasible.'' *Id.* n.13.

Selected data from DAWN for 2004–2007 are shown in Table 1 below. These data show an increase in the frequency of nonmedical use ED visits associated with carisoprodol. More specifically, in 2004, DAWN estimated that there were 14,736 ED visits related to the nonmedical use of carisoprodol, and that in 2007, there were 27,505 nonmedical ED visits related to the nonmedical use of the drug. However, according to SAMHSA, the increase from 2004 through 2007 did not reach statistical significance. GX 6, at 12. Accordingly, the data do not support a finding that the rate of abuse of carisoprodol is increasing.

The data do, however, support a finding that carisoprodol is resulting in ED visits at a level comparable to that of diazepam, a benzodiazepine and schedule IV controlled substance. As Table 1 shows, in 2004 there were an estimated 15,619 ED visits related to diazepam.[12]

TABLE 1—SELECTED PHARMACEUTICAL ED VISITS (NONMEDICAL USE): 2004–2007 FROM DAWN

[Data output 08/02/2008]

Selected drugs	Estimates			
	2004	2005	2006	2007
Carisoprodol	14,736	20,082	24,505	27,128
Cyclobenzaprine	6,183	7,629	7,142	6,197
Diazepam	15,619	18,433	19,936	19,674

purposes).'' Med. Br. 13. However, as the Assistant Secretary noted, determining a substance's potential for abuse is a complex and multi-dimensional determination which includes an analysis of animal, human, and epidemiological studies, as well as other factors, GX 6, at 3; and the record contains extensive evidence as to the numerous considerations relevant in assessing a drug's abuse potential.

[10] The FDA more fully discussed the data under Factor Four—carisoprodol's history and current patterns of use, and Factor Six—what, if any, risk there is to public health. GX 6, at 3.

[11] According to the FDA's report, DAWN mortality cases now include the following deaths: Completed suicides, Overmedication, Adverse reactions, Accidental ingestions, Homicide by drugs, Underage drinking and Other deaths related to drugs. The FDA further noted that ''[t]he mortality component of DAWN is not national in scope, and Medical Examiners or Coroners (ME/Cs) that report to DAWN are concentrated in metropolitan areas.'' GX 6, at 17. The FDA then acknowledged that because ''the report does not represent a scientific sample, results from participating jurisdictions cannot be extrapolated nationally,'' and that ''because participants can vary from year to year, it is not appropriate to compare aggregated death data between years.'' *Id.* Moreover, because ''[c]ertain jurisdictions within the metropolitan area may not participate in DAWN * * * selected data can not necessarily be generalized to an entire metropolitan area.'' *Id.*

FDA further noted that ''[a]pproximately half of the carisoprodol-related deaths reported involve the use of meprobamate in combination with carisoprodol'' and that ''[d]ue to reporting method variability, it is difficult to determine if both drugs were taken in combination or if meprobamate was present in the deceased as a result of carisoprodol metabolism.'' *Id.* Finally, FDA noted that ''[t]he reporting of carisoprodol found by the ME/C following a post mortem examination does not necessarily imply that carisoprodol was the ultimate cause of death * * *, only that it was identified by the ME/C as involved in the death,'' and that ''[v]ery few deaths from 2003 and 2004 involve the use of carisoprodol by itself and are consistent with other data indicating that carisoprodol is used most often in combination with a variety of other agents.'' *Id.* at 18. Because of the numerous limitations with this data, I give no weight to the DAWN ME/C data.

[12] In 2007, DAWN ED carisoprodol visits also accounted for an increasing percentage of the nonmedical use ED visits associated with skeletal muscle relaxants, increasing each year from 59 percent in 2004, to 70 percent in 2007.

By dividing the number of ED visits by the number of prescriptions, FDA calculated ''abuse frequencies'' for carisoprodol; cyclobenzaprine, a non-scheduled muscle relaxant; and diazepam, which is also prescribed for its muscle relaxant properties. These calculations, which are found in Table 2 below, show that the ''abuse frequency'' of carisoprodol is in the same range as diazepam and greater than that of cyclobenzaprine. More specifically, even in 2004, the carisoprodol rate was 15.1 ED visits per 10,000 prescriptions, while diazepam's rate was 12.5. By contrast, cyclobenzaprine, another skeletal muscle relaxant had a rate of 4.1 ED visits per 10,000 prescriptions. Most significantly, even in 2004, and before the increase in the estimates of carisoprodol-related ED visits, carisoprodol had a greater frequency of ED related visits than diazepam.

TABLE 2—FREQUENCY OF DAWN ED VISITS (NONMEDICAL USE) PER 10,000 RX FOR CARISOPRODOL, CYCLOBENZAPRINE AND DIAZEPAM

[2004–2007]

Selected drugs	2004	2005	2006	2007
Carisoprodol	15.1	19.7	22.9	22.6
Cyclobenzaprine	4.1	4.61	4.1	3.3
Diazepam	12.5	14.5	15.0	14.1

Data derived from proprietary SDI data. SDI Vector One®: National, Years 2002–2007, Data Extracted April, 2008 File: VONA 2008–517 4–15 [13]

Carisoprodol has been reported as a primary or sole drug of abuse in DAWN only since 2006. According to the 2006 DAWN data, there were an estimated 24,505 ED visits related to carisoprodol, of which it was reported as the sole drug in 21 percent of the cases. This is consistent with the FDA's finding that the majority of the cases published in the scientific literature report that carisoprodol abuse has primarily been a component of multi-drug abuse.

FDA reviewed DAWN data and found that the drugs most frequently used in combination with carisoprodol that resulted in ED visits were opioids (hydrocodone, oxycodone), benzodiazepines (alprazolam, diazepam, clonazepam), alcohol, and illicit drugs (marijuana, cocaine). Table 3 below sets forth the respective levels of carisoprodol ED visits related to single use and as a component of multi-drug use.

TABLE 3—ESTIMATED NONMEDICAL USE—CARISOPRODOL ED VISITS FROM DAWN 2006, AS SOLE DRUG AND IN COMBINATION WITH OTHER DRUGS

All patients			Females only			Males only		
Drug	Number	Percent	Drug	Number	Percent	Drug	Number	Percent
Total Carisoprodol	24,505	.....	Total Carisoprodol	14,219	42	Total Carisoprodol	10,286	58
Carisoprodol single-drug.	5,055	21	Carisoprodol single-drug.	3.870	27	Carisoprodol single-drug.	1,185	12
Carisoprodol multi-drug.	19,450	79	Carisprodol multi-drug	10,349	73	Carisoprodol multi-drug.	9,101	88

Information received from SAMHSA on June 18, 2008.

FDA also found that although carisoprodol is approved for short term use (3 weeks), SDI Vector One data from 2002–2006 [14] show that more than 25 percent of patients used the drug for longer than one month, and 4.3 percent used the drug for more than 360 days. GX 6, at 15. FDA concluded that longer term use may contribute to increased risks of misuse and abuse. *Id.*

MEDA's Evidence Regarding the DAWN Data

Meda offered the testimony of Mr. Nabarun Dasgupta as an expert witness in epidemiology and pharmacoepidemiology. MX 173; Tr. 628. Mr. Dasgupta offered a lengthy critique of the DAWN ED data and opined that ''the DAWN ED data are subject to constraints that limit their potential reliability for use in scientific research and public health policy.'' MX 173, at 3.

More specifically, Mr. Dasgupta criticized the sampling methodology used by DAWN, noting that DAWN uses an oversample of hospitals in select metropolitan areas and a sample of hospitals from the rest of the country and that ''[t]he number of hospitals sampled is relatively small compared to the national estimates that are extrapolated from the sample.'' *Id.* Mr. Dasgupta noted that for the year 2007, ''207 hospitals submitted provided data on 300,983 drug related ED visits * * *.

[13] According to FDA, SDI's Vector One™ National (VONA) measures retail dispensing of prescriptions or the frequency with which drugs move out of retail pharmacies into the hands of consumers via formal prescriptions. GX 6, at 13 n.7. Information on the physician's specialty, the patient's age and gender, and estimates for the numbers of patients that are continuing or new to therapy are available. *Id.*

The Vector One™ database integrates prescription activity from a variety of sources including national retail chains, mass merchandisers, pharmacy benefits managers and their data systems, and provider groups. *Id.* Vector One receives over 1.8 billion prescription claims per year, representing over 150 million unique patients. *Id.* The number of dispensed prescriptions is obtained from a sample of virtually all retail pharmacies throughout the United States, and represents approximately half of retail prescriptions dispensed nationwide. *Id.* SDI receives all prescriptions from approximately one-third of the stores and a significant sample of prescriptions from the remaining stores. *Id.*

[14] See Table 6 from the OSE ''Duration of Use Analysis'' for Soma (NDA 11–792) dated June 27, 2007.

which resulted in a national estimate of 3,998,228 drug-related ED visits.'' *Id.* at 3–4. Mr. Dasgupta further stated that ''[t]he location of all hospitals participating * * * is not disclosed due to privacy reasons,'' and that ''the number of hospitals can change *post hoc* in the published annual report tables.'' *Id.* at 4. As support for the latter assertion, Mr. Dasgupta cited the 2005 and 2006 annual reports; however, only one of these (the 2006 report) was submitted for the record.

Later in his testimony, Mr. Dasgupta asserted that ''[o]nce the cases in the participating hospitals are counted, DAWN applies statistical methods to extrapolate to a 'national estimate,' '' and that each case is given ''a weight from 1 to 60 to arrive at the national estimates,'' and that while it is ''routine to describe how weights are derived,'' DAWN does not ''completely describe the process.'' *Id.* at 14. Mr. Dasgupta also explained that while such factors as '''non-response,' missing data, hospital size, physical location, whether it is an academic training hospital, and other factors are accounted for in the weight, * * * the method for doing this is not published.'' *Id.* Mr. Dasgupta concluded that ''the credibility of the national DAWN data * * * hinges on the statistical methods employed to analyze the sample data, but SAMHSA does not publicly disclose the current methods. We do not know how the weights of the individual hospitals are being applied, and we do not know what impact the extrapolations may be having on the reported national estimates.'' *Id.* Mr. Dasgupta thus opined that ''[t]he lack of information provided by DAWN concerning its statistical extrapolation methods hinders interpretation and hence limits the weight that can be given the DAWN national estimates.'' *Id.* at 14–15.

On examination by the ALJ, Mr. Dasgupta was asked if, ''within the community of epidemiologists, * * * the DAWN ED national estimation [is] still relied upon?'' Tr. 652. Mr. Dasgupta replied that ''[t]he DAWN ED data are important to look at,'' and that ''others would agree * * * in that it sets * * * it's the data that is used for policy making.'' *Id.* Mr. Dasgupta then asserted that ''[f]rom a scientific perspective, it doesn't carry much weight.'' *Id.* However, DAWN ED does not purport to be anything other than an estimate, and Mr. Dasgupta's testimony suggests that epidemiologists still consider the estimates sufficiently reliable to make policy decisions.

Moreover, Mr. Dasgupta generally did not identify what practices (including what level of disclosure) the field of epidemiologists considers to be necessary to establish the validity of a methodology and the statistical methods used to extrapolate the data to develop a national estimate. While Mr. Dasgupta's criticisms of the DAWN ED data may be based on the generally accepted standards of epidemiology, in the absence of evidence establishing those standards, there is no basis for concluding that his criticisms of DAWN ED data reflect those of the community of epidemiologists rather than his personal opinion.

Mr. Dasgupta further asserted that the scientific validity of the data ''is questionable'' because it ''does not conform with the FDA's published guidance on Good Pharmacovigilance Practices and Pharmacoepidemiologic Assessments.'' MX 173, at 4–5. According to Mr. Dasgupta, this ''call[s] into question whether DAWN ED data should be used by FDA and FDA-regulated entities for post-marketing surveillance.'' *Id.* However, Mr. Dasgupta did not identify in what respect DAWN does not comply with the FDA's guidance. *See id.* Nor is it clear why compliance with the FDA's guidance is necessary to establish that the DAWN ED data, which is only an estimate, is not sufficiently reliable to support a finding that carisoprodol ''has a potential for abuse.'' 21 U.S.C. 811(a)(1)(A).

Mr. Dasgupta's next criticism was that the reporters of DAWN ED data ''may identify an ED visit as a DAWN case even if the patient has a valid prescription for the drug(s) mentioned in the ED chart and is taking the drug(s) for therapeutic purposes.'' *Id.* at 5. Mr. Dasgupta noted that ''[w]hile Reporters are trained on selecting cases, no published studies have evaluated the consistency between Reporters or between hospitals, or over time.'' *Id.* Mr. Dasgupta also noted that this ''calls into question the reliability of reporting across sites, given the lack of published validation of the consistency between Reporters at different sites.'' *Id.*

Mr. Dasgupta further noted that ''there has been a concerted effort by SAMHSA and the contractor to improve [the] selection of cases, [which is] aimed at identifying more ED visits for inclusion.'' *Id.* at 5–6. Mr. Dasgupta stated that because there has been ''no public documentation of this process,'' it is not clear if ''the increases in cases over time is due to better case finding or due to increases in the underlying sociobiologic phenomena that give rise to DAWN cases.'' *Id.* at 6. According to Mr. Dasgupta, ''it is impossible to conclusively say what proportion of the increases in DAWN ED national estimates is attributable to changes in methodology versus changes in the actual number of DAWN cases associated with a particular drug'' and ''[t]his hinders any effort to interpret the meaning of time trends.'' *Id.*

On examination by the ALJ, Mr. Dasgupta testified that this, *i.e.,* the increase ''attributable to enhanced case-finding versus [that] attributable to the underlying actual abuse * * * is something that is routinely looked at in epidemiologic studies.'' Tr. 657. He also suggested that in such circumstances, ''a validation study'' would be done to determine how well those persons who review the case files were doing. *Id.* at 658. However, even acknowledging the validity of this criticism, the FDA's recommendation stated that the increase in the estimates of carisoprodol-related ED visits between 2004 and 2007 was not statistically significant.

Mr. Dasgupta also observed that ''DAWN has acknowledged the difficulty in identifying cases of abuse'' because of the limitation of medical record documentation. *Id.* at 7. As Mr. Dasgupta observed, because DAWN defines ''nonmedical use'' to include a variety of scenarios beyond misuse/abuse, ''ED visits counted as 'nonmedical use' '' by DAWN ''do not necessarily represent cases of abuse as that term is commonly understood,'' and as ''used for purposes of scheduling.'' *Id.* at 9–10.

Mr. Dasgupta also noted that ''[a]lthough current medications unrelated to the visit are not supposed to be recorded, distinguishing medications that pertain to the ED visit from those that do not requires a complex toxicological determination,'' which hospitals may not conduct ''in the interest of providing expedient medical care.'' *Id.* at 10. Mr. Dasgupta stated that differences in how toxicology testing is conducted at different hospitals ''may influence whether a drug is detected,'' and that ''the simple presence of a drug in toxicology results is not sufficient to implicate its involvement in an ED visit.'' *Id.* at 12. He further noted that ''it is highly probable that to some extent the determination of the involvement of unrelated medications may be inherently subjective, [and may] vary between Reporters,'' who have different training and experience.[15] *Id.* at 10.

[15] Mr. Dasgupta also testified that the DAWN data may be affected by diagnostic suspicion bias in that DAWN reporters may have become sensitized by news reports or other information as to the abuse of a particular drug, and therefore, may over-report such cases. MX 173, at 12. However, Mr. Dasgupta produced no evidence as to the existence of this

Continued

However, Mr. Dasgupta then opined that ''drugs are most often identified by patient self-reporting,'' that ''[o]nly a small percentage is confirmed by toxicology tests,'' and that therefore, ''DAWN data are subject to all of the uncertainties and potential misidentifications associated with self-reporting.'' [16] *Id.* at 13.

As explained above, DAWN explicitly recognizes the limitations inherent in medical record documentation. Moreover, even crediting Mr. Dasgupta's criticisms, as even he recognized, ''[t]he DAWN ED data are important to look at'' and ''it's the data that is used for policymaking.'' Tr. 652. The DAWN ED data provide only an estimate; the data constitute just one of many pieces of evidence which support the conclusion that persons are taking carisoprodol ''in amounts sufficient to create a hazard to their health.''

FDA Adverse Event Reporting System (AERS) Data [17]

As noted above, FDA also reviewed the AERS data and found that through June 2007, there were a total of 472 reports related to potential carisoprodol abuse, including 48 reports identifying dependence and 19 identifying withdrawal syndrome. GX 6, at 15. In the majority of cases, multiple drugs were used, but there are 61 unique reports where carisoprodol was the only suspect drug. *Id.*

Meda's Chief Medical Officer (CMO) provided more up-to-date data. In his written direct testimony, MEDA's CMO stated that ''MEDA's database contains a total of 731 spontaneous adverse events for carisoprodol from January 1979 through May 1, 2010,'' of which ''only 83 reports included the terms abuse, dependency, or withdrawal.'' MX 171, at 10. MEDA's CMO further noted that in the five-year period of 2005–2009, more than 54 million prescriptions, totaling nearly four billion tablets of carisoprodol, were dispensed. *Id.* at 11.

While the AERS data appears relatively small when compared with the total number of prescriptions, as explained in footnote fifteen, this data is obtained from health care professionals and consumers, both of whom voluntarily submit the reports. As FDA notes, it ''does not receive all adverse event reports that occur with a product'' as ''[m]any factors can influence whether or not an event will be reported.'' FDA, Adverse Events Reporting System, available at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Surveillance/AdverseDrugEffects/default.htm.* Accordingly, ''AERS cannot be used to calculate the incidence of an adverse event in the U.S. population.'' *Id.* Indeed, the voluntary nature of the reports suggests that they are likely to under-represent the actual number of adverse events.

Florida Medical Examiners Commission Data

In 2008, Florida's medical examiners reported 8,556 drug-related deaths (whether the drug was the cause of death or merely present) through toxicology reports submitted to the Medical Examiners Commission. GX 7, at 11. The presence of carisoprodol and/or its metabolite, meprobamate, was found in 415 deaths (5 percent of the drug related deaths). *Id.* In 84 of these deaths (20%), carisoprodol was determined to be the cause of death. *Id.* The following table lists, for the years 2003 through 2008, the number of deaths in which carisoprodol and meprobamate were found in toxicology testing and the number of deaths in which carisoprodol and meprobamate were found to be a cause of death.

TABLE 4—FLORIDA MEDICAL EXAMINER'S DATA 2003–2008

Year	Drugs found in body	Total occurrences	Cause (% total)	Present	% Change from prior year
2003 [18]	Carisoprodol/Meprobamate	208	45 (22)	163	ND
2004	Carisoprodol/Meprobamate	289	81 (28)	208	39
2005	Carisoprodol/Meprobamate	314	96 (31)	218	9
2006	Carisoprodol/Meprobamate	313	74 (24)	239	−0.3
2007	Carisoprodol/Meprobamate	337	88 (26)	249	8
2008	Carisoprodol/Meprobamate	415	84 (20)	331	23

Id.; see also GX 7, at 11.

With respect to this data, Mr. Dasgupta stated that ''[t]he presence of a drug in the body does not establish it as a cause of death'' or necessarily ''indicate drug abuse.'' MX 173, at 23. As for the first contention, the data recognizes as much as it differentiates between those instances in which toxicology testing established that carisoprodol/meprobamate was present in a body and those in which *a medical examiner concluded* that the ingestion of carisoprodol or meprobamate *was a cause of death.* Likewise, while a drug's presence in the body does not necessarily establish that the person was engaged in ''drug abuse,'' it nonetheless is an indicator of drug abuse, especially where the deaths were found to be caused by an overdose.

Mr. Dasgupta further concluded that because the data combines carisoprodol and meprobamate, ''it is not possible to determine * * * which drug * * * was a cause of death.'' *Id.* at 23. However, carisoprodol metabolizes into meprobamate, and other data in the record (more specifically, the NSDUH

phenomenon among DAWN reporters either generally or with respect to carisoprodol.

[16] Mr. Dasgupta further noted that DAWN may at times impute data when data is missing from certain hospitals. MX 173, at 18–19. While Mr. Dasgupta suggested that this practice is of ''questionable validity,'' *id.,* this is not the same as saying that this practice is not generally accepted by experts in the field. Indeed, on examination by the ALJ, Mr. Dasgupta testified that ''it is valid to use imputation methods to fill in missing data, but it's a very, very sensitive issue that needs to be done carefully.'' Tr. 669. Mr. Dasgupta then stated that ''[t]here are three, four, maybe five major ways in which imputation is done in epidemiology to fill in missing data like these, and the choice of which of those imputation methods * * * can very strongly influence your results,'' that ''the onus is on the researcher to show that those assumptions have been met and that the method selected is the appropriate one,'' and that ''if there is kind of [a] referenced imputation[,] it's odd to not see those kinds of descriptions on which statistical imputation method is used.'' *Id.* at 669–70. However, Respondent produced no evidence that the use of imputed data has affected the DAWN data for carisoprodol.

[17] The Adverse Event Reporting System (AERS) is a computerized database designed to support the FDA's postmarketing safety surveillance program for all approved drug and therapeutic biologic products. GX 6, at 15. The FDA receives adverse drug reaction reports from manufacturers as required by regulation. *Id.* Health care professionals and consumers send reports voluntarily through the MedWatch program, which become part of a database; the database complies with the international safety reporting guidance (ICH E2B) issued by the International Conference on Harmonization. *Id.*

[18] Carisoprodol was scheduled as C–IV in Florida in July 2002, but was not tracked until 2003. GX 6, at 18.

data, *see* Table 7) indicates that more than eleven times as many persons have engaged in the nonmedical use of carisoprodol than have engaged in the nonmedical use of meprobamate. This supports the conclusion that the great majority of the Florida Medical Examiner cases in which carisoprodol/meprobamate was determined to be a cause of death are attributable to carisoprodol.[19]

Finally, Mr. Dasgupta asserted that the Florida data shows that ''the proportion of total fatal overdose occurrences * * * has generally been decreasing annually since 2005.'' *Id.* at 24. However, it is doubtful that this change is statistically significant, and even if it is, the data still show that a significant and disturbing number of persons have died from carisoprodol overdoses and are dying each year in this State alone.

National Poison Data System

Data from the National Poison Data Systems (NPDS), formerly known as the Toxic Exposure Surveillance System of the American Association of Poison Control Centers (AAPCC), show that carisoprodol products are involved in a number of toxic exposures (Table 5). Some of these carisoprodol exposures led to major adverse health outcomes (Table 6). For example, in 2007, carisoprodol was associated with 8,821 toxic exposure cases, including 3,605 cases in which it was the sole drug mentioned. A total of 122 of the 2,821 single exposure cases, which were treated in a health-care facility, had a major adverse health outcome.

TABLE 5—CARISOPRODOL EXPOSURES DATA FROM NATIONAL POISON DATA SYSTEM (NPDS)

	2003	2004	2005	2006	2007
Case Mentions	8,248	8,765	8,613	8,187	8,821
Single Exposures	.....	.....	.....	3,515	3,605

Note: Single exposure data is not available prior to 2006.

TABLE 6—SERIOUS ADVERSE HEALTH OUTCOMES IN CARISOPRODOL EXPOSURES CASES WHO WERE TREATED IN HEALTH CARE FACILITIES

	2003	2004	2005	2006	2007
Treated in Health Care Facility *	6,617	7,032	7,501	2,687	2,821
Deaths	28	30	18	1	1
Major Effect **	406	468	525	105	122
Moderate Effect ***	1,710	1,882	1,953	688	720
Total	2,144	2,878	2,496	794	843

* The data for 2006 and 2007 are from single exposure cases.
** Major effect: The patient exhibited signs or symptoms as a result of the exposure that were life-threatening or resulted in significant residual disability or disfigurement.
*** Moderate effect: The patient developed signs or symptoms as a result of the exposure that were more pronounced, more prolonged or more systemic in nature than minor effects.

Regarding the NPDS data, Mr. Dasgupta acknowledged that the persons who answer the calls to the regional poison centers ''are nurses, pharmacists, and physicians who have been trained in medical toxicology and are instructed on the proper ways of completing case report forms in a systematic manner'' and that the data collection software has ''[a]n extensive data quality assurance process.'' MX 173, at 29–30. Mr. Dasgupta then stated that there is the ''potential misidentification of the substance during the initial call to the poison center'' and that researchers have ''determined that, for some drugs, 25–30% are misclassified during the first call.'' *Id.* at 30. However, Meda did not provide this research and Mr. Dasgupta did not provide evidence as to what the rate of misclassification is for carisoprodol. He then opined that the self-reporting and (apparently the lack of toxicology test results) showing the ''presence and levels of drug * * * make it impossible to conclude that a mentioned drug was causally implicated in the exposure.'' *Id.*

Mr. Dasgupta also maintained that ''the single exposure data presented by DEA combines single-entity carisoprodol and carisoprodol/aspirin combination products.'' *Id.* at 31 (citing Meda Ex. 63).[20] However, as the data for 2007 show, even if single entity and combination products should not be counted together, the amount of case mentions and single exposures attributable to combination products is a small fraction of both the case mentions (163 v. 8658) and single exposures (69 v. 3536) attributable to single entity products. *See* MX 64, at 1020, 1026.

Mr. Dasgupta also criticized the use of the NPDS data because the intentional exposures data includes suicide attempts and accidental pediatric exposures. MX 173, at 34. However, the Senate Report, which accompanied the CSA's enactment, expressly stated that ''[m]isuse of a drug in suicides and attempted suicides, as well as injuries resulting from unsupervised use are regarded as indicative of a drug's potential for abuse.'' S. Rep. 91–613, 1970 U.S.C.C.A.N., at 4602. Thus, contrary to Mr. Dasgupta's understanding, the fact that Table 6 includes suicides, ''suicide attempts,'' and ''accidental pediatric exposures,'' *see* MX 173, at 34; does not reduce the data's probative value in assessing carisoprodol's abuse potential.

Mr. Dasgupta criticized Table 6 because it ''purports to show 'serious adverse health outcomes in carisoprodol exposure cases,' '' but ''[i]ntentional exposure cases can also include associated medical outcomes that are not serious.'' *Id.* at 32. Mr. Dasgupta further asserted that ''[t]he DEA Review does not present enough detail concerning methodology to determine

[19] Mr. Dasgupta also raised the possibility that the Florida Medical Examiner data is subject to diagnostic suspicion bias. MX17, at 23. Again, this is simply speculation.

[20] As support for this assertion, Mr. Dasgupta cited the 2008 annual report (MX 63); however, the above tables do not include data for that year.

what type of cases were included in Table [6].'' *Id.*

However, it is apparent that Table 6 simply replicates the NPDS's classification of carisoprodol incidents by the severity of the outcome. *See* MX 64, at 940–41, 1020, 1026 (2007 report). Moreover, even if single entity and combination carisoprodol products should not have been added together, the number of cases attributable to combination products is a small fraction of those attributable to single entity products (15 v. 705 moderate effects outcomes, 2 v. 120 major effect outcomes, and 0 v. 1 death). *Compare id.* at 1020, *with id.* at 1026.

2. Is there significant diversion of carisoprodol from legitimate drug channels?

The NFLIS Data

Current data shows that there is significant diversion of carisoprodol from legitimate drug channels. Data collected by DEA establishes that carisoprodol has been seized from persons engaged (and places used) in illegal activities involving other controlled substances, including diazepam, marijuana, cocaine, methamphetamine, codeine, and hydrocodone. DEA has found carisoprodol present during the execution of search warrants at residences, offices, and pharmacies. According to data retrieved from DEA's National Forensic Lab Information System (NFLIS) database, which includes data on samples analyzed by DEA laboratories (STRIDE), as well as state and local forensic laboratories,[21] since 2000, carisoprodol has consistently ranked in the top 25 of the drugs most frequently seized and identified by state and local forensic laboratories during the course of criminal investigations.

In terms of the number of seizures, in 2008, NFLIS reported 4,291 identifications of carisoprodol, thus ranking it above such controlled substances as codeine, psilocin, lorazepam, MDA, hydromorphone, and methylphenidate. MX 53, at 9. In 2007, NFLIS reported 4,420 identifications of carisoprodol, thus ranking it above such controlled substances as phencyclidine (PCP), psilocin, buprenorphine, MDA, methylphenidate, ketamine, lorazepam, and hydromorphone. MX 54, at 7. Because the primary focus of law enforcement agencies is on investigating the unlawful distribution of controlled drugs, the incidents in which carisoprodol has been found during law enforcement seizures supports a finding that the drug is being abused and diverted. Moreover, because carisoprodol is not controlled in most States, there is reason to believe that many laboratories may not report those incidents in which they have identified a substance as carisoprodol. GX 9, at 3.

Mr. Dasgupta opined that the NFLIS data are of ''limited utility for making public health decisions.'' MX 173, at 26. While he acknowledged that carisoprodol has been among the top twenty-five drugs analyzed, Mr. Dasgupta explained that ''[t]he likelihood of a particular sample being analyzed is substantially affected by the prosecutor's perceptions of the available criminal charges, as well as politics, prosecutorial priorities, and bureaucratic influences.'' *Id.* at 25. Mr. Dasgupta then noted that ''[p]rosecutors in states where carisoprodol is a controlled substance would be more likely to submit a sample to NFLIS for identification,[22] as the state-level scheduling would be more likely to result in a stiffer criminal penalty,'' and that ''[f]orensic laboratory data from these states may be an artifact of state-level scheduling because more suspected carisoprodol samples may be sent for analysis once a controlled substance criminal charge is potentially available in a particular state.'' *Id.* at 26. As Mr. Dasgupta noted, only seventeen States have controlled carisoprodol. *Id.* n.7.

This argument, however, actually supports the Government's view that many laboratories do not report carisoprodol that is seized during criminal investigations, and thus the drug is being diverted at even greater levels than the NFLIS data suggests. According to U.S. Census data, of which I take official notice, the seventeen States, which have controlled carisoprodol, have a total population of approximately 108 million and thus comprise only 35% of the national population.[23] *See* Appendix A. This suggests that carisoprodol would likely rank substantially higher in the NFLIS data were it controlled nationally.

The testimony of various officials further supports a finding that carisoprodol is being diverted. The Deputy Assistant Administrator of DEA's Office of Diversion Control testified that carisoprodol was being distributed in combination with narcotic drugs and benzodiazepines through Internet schemes in which patients were issued prescriptions by physicians they never saw and could simply order the drugs through a Web site. GX 9, at 2–3; Tr. 343–44. As several courts have recognized, the dispensing of controlled substances in this manner is a violation of 21 U.S.C. 841(a)(1). *See United States* v. *Nelson,* 383 F.3d 1227, 1231–32 (10th Cir. 2004); *United States* v. *Smith,* 573 F.3d 639, 657–58 (8th Cir. 2009); *United States* v. *Fuchs,* 467 F.3d 889 (5th Cir. 2006). The Deputy Assistant Administrator also noted that ''DEA investigations reveal that thousands of customers throughout the United States seek carisoprodol, either alone or, most frequently, in combination with controlled substances from pain clinics, physicians, and from illicit street dealers.'' GX 9, at 3.

A Special Agent in Charge with the Tennessee Bureau of Investigation, who oversees drug enforcement responsibilities in twenty-eight of the State's counties and who was formerly Coordinator of the Tennessee Drug Diversion Task Force, testified that in his experience, ''carisoprodol has been used for non-medical purposes and illicitly distributed in circumstances that are similar to the non-medical use and illicit trafficking in controlled substances such as oxycodone, hydrocodone, and alprazolam. Law enforcement investigations have revealed that many Tennesseans seek carisoprodol, either alone or, most frequently, in combination with controlled substances from pain clinics [and] physicians,'' who ''conduct little or no physical examination of the patients'' and who ''issue prescriptions for the specific drugs requested by the 'patients.' '' GX 10, at 3–4. The official also related that carisoprodol is being sold on the street. *Id.* at 4.

The official also testified that ''carisoprodol abuse has been implicated in many overdose events in Tennessee including overdose fatalities,'' and that reports from the State's medical examiner ''from 2006 through 2008'' show that carisoprodol has been ''associated with approximately 100 deaths.'' *Id.* at 3, 5. This official further stated that ''[i]n the majority of these cases[,] carisoprodol is seen in combination with a 'cocktail' of

[21] Participating state and local laboratories handle 88% of the nation's 1.2 million analyses of state and local drug cases.

[22] Contrary Mr. Dasgupta's understanding, drug samples are not submitted ''to NFLIS for identification.'' MX 173, at 26. Rather, NFLIS collects reports of drugs items which have been seized and analyzed and identified as a drug by a forensic laboratory. However, I agree with Mr. Dasgupta's opinion that if a criminal charge is not available in a State, it is less likely that evidence which looks like carisoprodol tablets will be sent to a lab for analysis and subsequently reported to the NFLIS.

[23] Pursuant to 5 U.S.C. 556(e), Meda ''is entitled, on timely request, to an opportunity to show the contrary.'' In the event Meda disputes the census data, it may file a motion for reconsideration within fifteen days of the date of service of this rule, which shall begin on the date of mailing.

other drugs[,]'' such as ''oxycodone or hydrocodone.'' *Id.* at 5.

The Executive Director of the Ohio State Board of Pharmacy, who has worked as a pharmacist as well as held oversight/investigatory positions at the Board, testified that he has ''personally investigated cases involving carisoprodol,'' and that ''carisoprodol has been abused in the State of Ohio for more than 20 years.'' GX 8, at 3. The official testified that he was ''aware from [his] experience that many abusers of narcotics and other drugs abuse carisoprodol to mellow the effect of the narcotics or other drugs.'' *Id.*

The official further testified that under Ohio law, pharmacies are required to report the dispensing of any controlled substance as well as carisoprodol. He then related that he had run a search of the Ohio prescription reporting system and found that carisoprodol ''is always prescribed in combination with an opiate, a benzodiazepine, or both.'' *Id.* at 4–5. Moreover, ''even though * * * the use of a muscle relaxant such as carisoprodol in conjunction with an opiate and a benzodiazepine is rarely clinically indicated,'' [24] the official ''found that our top ten prescribers of this 'trinity' have prescribed this combination [of drugs] to a range of 140 [to] 1,376 patients.'' *Id.* at 5. The official further found that ''many patients received carisoprodol from multiple prescribers,'' that during 2009, the top ten patients ''received prescriptions from 8 [to] 13 different prescriptions,'' and that these ''patients received between 1,020 [and] 1,863 days' supply'' of the drug during the ''365 day period.'' *Id.* However, carisoprodol is indicated only for short-term use of up to two to three weeks, ''because adequate evidence of effectiveness for more prolonged use has not been established and because acute, painful musculoskeletal conditions are generally of short duration.'' MX 6, at 2 (prescribing information). As the official concluded, these statistics provide evidence of improper prescribing by physicians, as well as doctor shopping and over-utilization by patients, and show that ''carisoprodol is a drug of abuse in Ohio.'' *Id.*

3. Non-Medical Use of Carisoprodol

Review of the currently available data and other information shows that individuals are taking the substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such substances. More specifically, the National Survey on Drug Use and Health (NSDUH) [25] data show that from 2004 through 2007, between 2.5 and 2.8 million persons admitted to having used carisoprodol for a non-medical purpose during their lifetime.[26] As Table 7 below shows, in 2007, approximately 2.7 million persons have at some point engaged in the non-medical use of carisoprodol. This figure is more than eleven times the number of persons who have used meprobamate products for a non-medical purpose.

Moreover, many reports of carisoprodol abuse have been published both in the United States and in other countries. These cases include the use of carisoprodol by itself and in combination with other drugs of abuse. *See also infra* Factor 5.

TABLE 7—NSDUH DATA ON NONMEDICAL USE OF SPECIFIC TRANQUILIZER IN LIFETIME

[Numbers in thousands and percentage]

Drugs	2004 # (%)	2005 # (%)	2006 # (%)	2007 # (%)
Benzodiazepines	18,643 (7.8)	19,686 (8.1)	19,662(8.0)	18,934 (7.6)
Valium or Diazepam	14,607(6.1)	14,914 (6.1)	14,824 [b] (6 [b])	13,172 (5.3)
Meprobamate Products [1]	245 (0.1)	305 (0.1)	216 (0.1)	236 (0.1)
Muscle Relaxants [2]	3,907 (1.6)	3,773 (1.6)	4,449 (1.8)	4,274 (1.7)
Soma®	2,616 (1.1)	2,525 (1.0)	2,840 (1.2)	2,709 (1.1)
Flexeril®	1,968 (0.8)	1,891 (0.8)	2,405 (1.0)	2,438 (1.0)

[1] Includes Equanil®, meprobamate, and Miltown®, [2] Includes Flexeril® and Soma®, [b]difference between 2006 and 2007 estimates statistically significant, p. ≤ 0.01. Source: SAMHSA, office of Applied Studies, National Survey on Drug Use and Health.

Mr. Dasgupta acknowledged that ''NSDUH is a validated and generally scientifically defensible survey.'' MX 173, at 28. However, he then criticized the study because it relies on self-reporting and because the study does not specifically ask whether carisoprodol or Soma have been used in the ''past year'' or ''past 30 days,'' although a survey participant may ''spontaneously offer[]'' that he/she has used the drug within the respective time frame. *Id.* Mr. Dasgupta further noted that the NSDUH data show that the level of lifetime nonmedical use ''is essentially flat over time and not increasing.'' *Id.* at 29.

Nonetheless, that the NSDUH survey has consistently shown that between 2.5 million and 2.8 million persons have engaged in non-medical use of carisoprodol is not evidence of ''isolated or occasional nontherapeutic'' use. S. Rep. 91–613; *reprinted in* 1970 U.S.C.C.A.N., at 4602. Rather, it is substantial evidence of ''significant use by individuals contrary to professional advice.'' *Id.* Where, as here, a drug has been this widely abused, DEA is not required to develop evidence that the rate of abuse is increasing in order to control it.

4. Carisoprodol's Pharmacological Activities Are Similar to Other Drugs With Known Abuse Liabilities

According to the FDA, when originally marketed in 1959, carisoprodol was described as having qualitatively different kinds of central muscle relaxant properties than meprobamate, a schedule IV depressant

[24] On cross-examination, the official explained that both carisoprodol and benzodiazepines have muscle relaxant and anti-anxiety effects, and that prescribing both drugs simultaneously ''is duplication of therapy,'' which is rarely warranted. Tr. 464–65.

[25] The NSDUH is an annual survey sponsored by SAMHSA that obtains information on nine different categories of illicit drug use: use of marijuana, cocaine, heroin, hallucinogens, and inhalants; and the nonmedical use of prescription-type pain relievers, tranquilizers, stimulants, and sedatives in the civilian, non-institutionalized population of the United States age 12 or older. The survey interviews approximately 67,500 persons each year. The NSDUH provides yearly national and state level estimates of drug abuse, and includes prevalence estimates by lifetime (*i.e.,* ever used), past year and past year abuse or dependence. Substance Abuse and Mental Health Services Administration (SAMHSA), Office of Applied Studies, *Results from the 2007 National Survey on Drug Use and Health: National Findings* (2008).

[26] ''Lifetime prevalence'' is a cumulative indicator of the total number of people who have ever tried drugs, including many in the distant past.

(FDA Reference 1).[27] However, the specific mechanisms of action of carisoprodol are not completely understood (2, 3).

FDA found that although carisoprodol is classified as a muscle relaxant, it has little direct effect on skeletal muscle. GX 6, at 5. According to FDA, both carisoprodol and meprobamate possess sedative properties and their therapeutic utility in acute painful musculoskeletal problems may be in part due to these sedative properties. *Id.* FDA also found that the drugs may be abused for their sedative properties and that *in vitro* studies demonstrate that carisoprodol elicits barbiturate-like effects. *Id; See also* discussion *infra* under Factor Two.

Recent clinical reports addressing carisoprodol's abuse potential and its metabolic conversion to meprobamate have been published in scientific and medical journals. According to FDA, it was initially believed that carisoprodol's abuse potential was primarily related to its metabolic conversion to meprobamate. *Id.* at 6. However, new animal data from NIDA demonstrate that the abuse potential and pharmacology of carisoprodol may be independent of the metabolic pathway in humans to meprobamate. More specifically, FDA cited NIDA studies by Gatch, *et al.,* which show that carisoprodol can be easily recognized by animals in drug discrimination studies as Schedule II, III or IV CNS depressants. (4–6). These studies are discussed more fully below under Factors Two (Scientific Evidence of the Drug's Pharmacological Effect) and Seven (Psychic or Physiological Dependence Potential).

Factor 2—The Scientific Evidence of Carisoprodol's Pharmacological Effect

Carisoprodol is a centrally-acting muscle relaxant used medically for relief of discomfort associated with acute, painful musculoskeletal conditions, including spasms and spasticity. GX 6, at 6. The original approved therapeutic dose of carisoprodol was 350 mg three times a day, and at bedtime. *Id.* In placebo-controlled studies, carisoprodol was found more effective than placebo in treatment of acute musculoskeletal disorders (7) and less effective or not different from placebo in chronic disorders. In 2007, FDA approved a 250 mg tablet to be taken three times a day and at bedtime, for up to three weeks. GX 6, at 6.

Although the exact mechanism of muscle relaxant action of this group of drugs is not known, it is believed to occur by depressing interneuronal cells and diminishing the facilitatory background activity on spinal motor neurons and by also inhibiting supraspinal influences, primarily in the lateral reticular area of the brain stem. *Id.* The polysynaptic reflexes are more readily depressed than monosynaptic reflexes. *Id.* These drugs produce sedation and drowsiness as their common side effects, which may reflect depressed neuronal activity essential for wakefulness, in the medial reticular ascending system. *Id.* Despite chemical structures that are unrelated, all muscle relaxants possess sedative properties. *Id.* The drugs also exhibit anticonvulsant activity in several animal models (3).

Receptor Binding Studies

According to FDA, the complete binding profile of carisoprodol has not been characterized. One study showed that carisoprodol has negligible affinity for the benzodiazepine site, using [^{3}H]-diazepam as a ligand in rat brain tissue (8).

In Vitro Studies

The FDA concluded that the findings of *in vitro* studies demonstrate that carisoprodol elicits barbiturate-like effects. Whole-cell patch clamp studies were conducted to examine mechanistic similarities between carisoprodol and barbiturates (Schedules II, III or IV, depending on the particular barbiturate) using recombinant rat $\alpha1\beta2$ $GABA_AR$. GX 6, at 6. GABA-gated currents were potentiated by micromolar carisoprodol (EC_{50} = 89 μM)). *Id.* At millimolar concentrations, currents began to be inhibited, and rebound currents were apparent upon termination of drug administration. *Id.*

According to FDA, this barbiturate-like trend was consistent with a previous description of carisoprodol effects on human $\alpha1\beta2_y2$ $GABA_AR$ function, demonstrating that carisoprodol, like barbiturates, does not require the y subunit for its activity. *Id.* at 6–7. Carisoprodol directly activated human $\alpha1\beta2_y2$ $GABA_AR$, producing inward currents in a concentration-dependent manner (EC_{50} = 410 μM). *Id.* The amplitude of carisoprodol mediated currents (EC_{40}) was reduced to 24 percent of control following incubation with bemegride (a barbiturate antagonist that has not been demonstrated to be specific for barbiturates). *Id.* By contrast, the benzodiazepine antagonist, flumazenil, had no significant effect on either the allosteric or direct effects of carisoprodol (9).

MEDA challenged the FDA's reliance on this study. More specifically, MEDA elicited the testimony of Dr. Donald Robert Jasinski, who is a Professor of Medicine at the Johns Hopkins University School of Medicine and the Chief of the Center for Chemical Dependence, Johns Hopkins Bayview Medical Center. MX 172, at 1. Dr. Jasinski testified that even assuming that the model used in this study was ''sufficiently robust to establish an affinity of carisoprodol at a GABAα receptor, this does not establish that carisoprodol has barbiturate-like activity, but merely that it, like many other drugs including other non-controlled CNS depressants, has an affinity to attach to a GABAα receptor[].'' *Id.* at 3. Dr. Jasinski then explained that ''while barbiturates as a class have an affinity for GABAα receptors, not all drugs that have affinity for GABAα receptors have barbiturate-like activity and/or abuse liability profiles similar to the barbiturates.'' [28] *Id.* at 4. Dr. Jasinski further opined that the finding that ''bemegride, a non-specific barbiturate antagonist, apparently reduced the amplit[ude] of carisoprodol-mediated currents by 24% [does not] indicate that carisoprodol will have barbiturate like effects.'' *Id.*

While Dr. Jasinski may be correct that the findings of the aforementioned study do not conclusively establish that carisoprodol has barbiturate-like effects, there is substantial other evidence in the record (including human studies) which supports this finding. *See* discussion under Factor Five.

Animal Pharmacology Studies

Berger, *et al.* (1, 10), described the muscle relaxant and analgesic properties of carisoprodol in animals. Reversible paralysis of voluntary muscles that lasts for nearly 15 minutes occurs in most mice administered carisoprodol (180 mg/kg, i.p.). Paralysis was preceded by signs of excitement manifested by aimless running and staggering, hyperextension of the neck, and clonic movement of extremities. After administration of high doses, pre-narcotic excitement was absent. During paralysis, respiration and heartbeat were regular, skeletal muscles were relaxed, tremors and twitchings were absent, and corneal reflex was present. Stimulation of the sciatic nerve during paralysis produced prompt muscular response of the leg, indicating that the peripheral

[27] The complete list of FDA References 1–58 is attached as Appendix B.

[28] Dr. Jasinski further testified that in a subsequent article, the authors of this study wrote that ''[a]lthough both our *in vivo* and *in vitro* studies are consistent with barbiturate-like effects of carisoprodol, we are not concluding that carisoprodol is acting at the barbiturate site of the receptor.'' MX 172, at 3 n.1.

nerve, myoneural junction, and muscle were not significantly affected by the drug. Depression of motor activity, as measured by loss of the righting reflex, occurred in 50 percent of animals after oral administration of 400 mg/kg of carisoprodol in mice and 750 mg/kg in rats.

According to FDA, carisoprodol is a relatively poor strychnine antagonist in mice, which differs from other muscle relaxants such as mephenesin (a centrally-acting muscle relaxant that is not marketed in the United States). Carisoprodol depresses the electro-cortical activation response to electrical stimulation of the sciatic nerve, the midbrain reticular formation or of the diffuse thalamic system (nucleus centralis lateralis). Carisoprodol showed an antinociceptive action in response to injection of silver nitrate into joints of rats. Carisoprodol differs from meprobamate (Schedule IV) by not affecting the hippocampal seizures produced by stimulation of the fornix (10).

More recently, the National Toxicology Program of the National Institutes of Environmental Health Sciences examined the toxicity of carisoprodol (11). Male rodents in the 200 mg/kg carisoprodol group and female rodents in the 100 and 800 mg/kg carisoprodol groups had significantly greater mean body weight gains than animals that received vehicle (control group). The incidence of adverse events was dose-related, and females were more sensitive than males to the effects of carisoprodol. Carisoprodol induced ataxia and prostration in rats and mice, increases in liver weights in rats and mice, and nephropathy in male rats.

In cats, carisoprodol was very effective in abolishing decerebrate rigidity, whereas meprobamate and mephenesin had no effect on spasticity. Carisoprodol appeared to be eight times more potent than these drugs in alleviating decerebrate spasticity (10).

In dogs, carisoprodol (100 mg/kg p.o.) produced loss of muscle tone. At larger doses (200 mg/kg p.o.), signs of excitement characterized by tail wagging and howling were observed along with muscular weakness and ataxia with no tremors, convulsions or salivation (10).

Self-Administration Studies

The FDA found that carisoprodol has positive reinforcing effects, in that rhesus monkeys maintained self administration responding that was greater than rates maintained by saline, although less than rates maintained by i.v. injections of methohexital (C–IV). GX 6, at 8. However, because of the limited solubility of carisoprodol, doses larger than 0.3 mg/kg injection could not be tested. NIDA Research Monograph, volume 146:423–433 (1999). This dose (0.3 mg/kg/injection) is lower than the doses used orally in humans. GX 6, at 8.

Drug-Discrimination Studies

According to the FDA, ''drug discrimination studies in animals are believed to be predictive of subjective effects in humans and are thus useful in assessing the abuse potential of drugs.'' *Id.* Carisoprodol can stimulate the barbiturate site on the GABA–A receptor. In drug discrimination studies, pentobarbital (C–II) fully substitutes in carisoprodol-trained rats and bemegride fully antagonizes the subjective effects of carisoprodol.

FDA also noted that another study found that in dogs tolerant and dependent on barbital (C–IV), oral doses of 200 mg/kg of carisoprodol every six hours were completely effective and equivalent to 100 mg/kg of barbital in preventing the appearance of abstinence phenomena (12).

Bemegride fully blocked the discriminative stimulus effects of the training dose of carisoprodol (100 mg/kg p.o.), whereas the benzodiazepine antagonist, flumazenil, produced a moderate attenuation of the discriminative stimulus effects of carisoprodol across a wide range of doses. According to FDA, these findings suggest that carisoprodol may directly activate or allosterically modulate $GABA_A$ receptors which mediate the discriminative stimulus effects of carisoprodol. FDA further found that the actions of carisoprodol at the barbiturate site may be more relevant than actions at the benzodiazepine site and that certain effects of carisoprodol may be independent of its metabolism to meprobamate (C–IV) (9).

Gatch, *et al.,* (4) assessed the ability of rats to discriminate carisoprodol from vehicle. Rats were trained to discriminate carisoprodol and a carisoprodol dose-effect curve was established for doses from 25 to 100 mg/kg. Meprobamate (C–IV), pentobarbital (C–II/C–III), and chlordiazepoxide (C–IV) were each tested for their ability to substitute for the discriminative stimulus effects of carisoprodol; each was found to substitute fully for the discriminative stimulus effects produced by 100 mg/kg of carisoprodol.

In another study, Gatch, *et al.* (5), found that 5 mg/kg bemegride antagonized the discriminative stimulus effects produced by 100 mg/kg of carisoprodol in rats trained to discriminate carisoprodol and decreased the response rate to 79 percent of the carisoprodol control group. Gatch, *et al.* (6), also studied the effects of carisoprodol in the presence of Cimetidine, to determine if the effects of carisoprodol are produced by its active metabolite, meprobamate. Cimetidine, a P450 enzyme inhibitor, which prevents the conversion of carisoprodol to meprobamate, failed to inhibit the discriminative stimulus effects produced by 100 mg/kg of carisoprodol in rats trained to discriminate carisoprodol. According to FDA, these results suggest that carisoprodol can produce discriminative stimulus effects directly without being converted into meprobamate.

Dr. Jasinski disputed the FDA's reliance on the various animal studies it used to assess carisoprodol's abuse potential. MX 172, at 4–7. While Dr. Jasinski acknowledged that ''in these studies the animals reflected behavior patterns with respect to carisoprodol that suggest patterns similar to barbiturates,'' he then opined that ''due to the inherent limitations of animal studies they simply do not provide an adequate basis to make decisions concerning abuse potential in humans.'' *Id.* at 4. Dr. Jasinski offered no further explanation as to what those limitations are. Moreover, at the hearing, Dr. Jasinski testified that it is appropriate to rely on animal studies as one aspect of assessing a drug's abuse potential in humans.[29] Tr. 721.

With respect to the self-administration study involving rhesus monkeys, Dr. Jasinski explained that the fact that ''the monkeys seem[ed] to prefer carisoprodol over a saline, but less than a schedule IV substance, merely indicates that the * * * monkey prefers carisoprodol over saline'' and that ''[t]his preference could be due to factors unrelated to any potential for abuse in humans.'' *Id.* at 5.

As for the drug-discrimination studies involving rats, Dr. Jasinski acknowledged that the study showed that ''pentobarbital substitutes for carisoprodol in rats trained to discriminate carisoprodol and that'' bemegride, a barbiturate antagonist, ''blocked the discriminate stimulus

[29] In its brief, Meda argues that animal studies ''are significantly less probative than human studies'' in assessing a drug's abuse potential. Meda Br. 25. However, Meda did not establish the degree to which animal studies are less probative than human studies and even its Expert conceded that it is appropriate to rely on animal studies in assessing abuse potential in humans. Tr. 721. While Meda cites human data—in particular, the results of recent clinic trials it conducted and the Fraser study—and argues that this data should be given greater weight than the animal studies, as discussed below, both studies have significant limitations.

effects.'' *Id.* Dr. Jasinski then opined that ''these data at most are only indicative that carisoprodol may have certain effects similar to those of barbiturates (*e.g.,* they have activity at the GABA receptor site) and not that any such similarity translates into a similar potential abuse liability.'' *Id.* Dr. Jasinski further explained that ''it is well known that certain drugs will substitute for drugs of abuse without themselves being subject to any significant drug abuse.'' *Id.*

As for the study showing that 200 mg/kg of carisoprodol substituted for 100 mg/kg in dogs which are dependent on barbital, Dr. Jasinski noted that the authors had concluded that carisoprodol was an exception to the general rule that ''whenever drugs produce physiological dependence in which abstinence syndrome is similar, these drugs must possess a common mechanism of action and abuse liability profiles.'' *Id.* at 6 (citing MX 91). As Dr. Jasinski observed, based on several unpublished studies which showed that ''the chronic administration of carisoprodol in 4 divided doses of 1 gm/day for 6 months [did] not result in the development of physiological dependence,'' the authors concluded that ''[t]he fact that carisoprodol did effectively substitute for sodium barbital in [their] study indicates that false positive results are possible from the substitution evaluation of barbiturate-like physiological dependence capacity.'' MX 91; *see also* MX 172, at 6.

However, as the authors made clear, their conclusion that carisoprodol produced a false positive was based on studies which showed that taking one gram per day of the drug did not cause physiological dependence. Thus, this study does not foreclose the possibility that chronic use of carisoprodol in daily doses of greater than one gram per day could cause physiological dependence and calls into question the validity of the authors' conclusion that carisoprodol caused a false positive when substituted for barbital.

Accordingly, even discounting the rhesus monkey study, I find that substantial evidence supports the FDA's conclusion that the drug-discrimination studies in both dogs and rats indicate that carisoprodol has positive reinforcing and discriminative effects similar to other drugs currently regulated under C–IV, including barbital, meprobamate, and chlordiazepoxide.

Clinical Experience and Human Studies

Pharmacodynamic Effects

Beebe, *et al.* (13), reviewed the pharmacodynamic effects of carisoprodol. Lethargy, drowsiness, ataxia, dysmetria and fatigue are common side effects at therapeutic doses [30] and in overdose (14). More severe CNS-related effects including confusion, amnesia and coma occur less frequently at therapeutic doses, but occur with overdose (15; 16). Respiratory depression may occur in patients with significant CNS depression (17; 18).

The primary toxic effect with poisoning or exposure to carisoprodol is CNS depression and, in severe cases, coma. Euphoria, CNS stimulation, muscular incoordination, confusion, headache, hallucinations and dystonic reactions have also been reported. Anticholinergic effects (tachycardia, dry, warm skin) are reported following carisoprodol poisoning. Fever is reported following carisoprodol overdose (14; 19). Both mild hypertension and mild hypotension are reported in conjunction with serotonin syndrome after carisoprodol overdose (19). Horizontal nystagmus, mydriasis, and blurred vision have also been reported with carisoprodol overdose (20).

In addition to the above adverse effects, drug abuse, dependence and tolerance are reported following long-term use of carisoprodol. *See infra* Factor Seven.

Human Behavioral Studies

Fraser, *et al.* (21), evaluated whether carisoprodol possessed morphine-like (C–II) or barbiturate like (C–II, C–III and C–IV) addictive properties in human subjects, all of whom ''were former opiate addicts.'' H.F. Fraser, *et al., Evaluation of carisoprodol and phenyramidol for addictiveness,* Bulletin on Narcotics 1 (Oct–Dec. 1961). The study had three arms: the first evaluated the effect of single oral doses in non-addicted patients, the second evaluated the 24-hour substitution of carisoprodol for morphine in morphine-stabilized patients and was used to assess whether carisoprodol can prevent symptoms of abstinence from morphine, and the third assessed physical dependence following chronic administration of carisoprodol and abrupt discontinuation of the drug. *See id.*

In the first arm of the study, single doses of carisoprodol ranging from 1,050 mg to 2,500 mg (three to seven times the usual dose of 350 mg) were administered orally in capsules to fasting, non-tolerant opiate addicts. *Id.* Assessments were carried out hourly for six hours with the single-dose opiate questionnaire. *Id.*

The study found that carisoprodol's effects were not consistent at doses lower than 2,000 mg. *Id.* at 1–2. Only one of fifteen subjects that received the 2,500 mg dose identified the drug as ''dope.'' *Id.* In the same dose-range group, most subjects became sleepy one or two hours after receiving 2,500 mg of carisoprodol, and when awakened, did not show as much dysarthria as would have been anticipated from an equivalent dose of barbiturates. *Id.* at 2. According to the FDA, the subjective and objective effects noted in this group were similar to those of barbiturates or alcohol and different from those of opiates. GX 6, at 10.

In the second arm of the study, 3,600 to 4,800 mg of carisoprodol, which was divided into three equal oral doses, were substituted for morphine in six and three morphine-stabilized patients, respectively. Fraser, at 2. The study was controlled ''negatively, by substitution of a placebo for morphine, and positively, by continuing the customary dose morphine in the same subjects.'' *Id.* Moreover, because ''carisoprodol seemed to be barbiturate-like in many respects, the study was also controlled by substituting'' an average dose of 1.11 g of pentobarbital for morphine, which was divided among five doses, in another experiment which involved eleven other subjects. *Id.* Following substitution, hourly ''[o]bservations for the intensity of abstinence were made * * * from the 11th through the 24th hour of abstinence.'' *Id.*

This arm of the study concluded that ''carisoprodol partially but significantly suppressed symptoms of abstinence.'' *Id.* The study found that the patients receiving the 4,800 mg dose of carisoprodol ''were quite sedated and somewhat difficult to arouse, but showed only a slight degree of dysarthria and ataxia.'' *Id.*

The FDA did not discuss the third arm of the study. *See* GX 6, at 10. Instead, it concluded that this study was conducted before the advent of modem human abuse liability testing that uses validated measures, and that it therefore does not directly address the issue of the human abuse potential of carisoprodol. *Id.* However, the FDA further found that ''the study results indicate that carisoprodol has sedative-like effects, as opposed to opiate-like effects.'' *Id.*

[30] See current label information for carisoprodol (Soma) (*http://www.fda–gov/cder/foil1abe1l2007/0_11792s0411bl.pdf*).

Dr. Jasinski expressed his disagreement with the FDA's assessment of the validity of the study results, opining that ''[w]hile there have been enhancements in methodologies use[d] to assess abuse liability in intervening years, * * * the methodology used by Fraser yielded valid scientific results and should not be discounted based solely upon the fact that different methodologies would be used today.'' MX 172, at 7. Dr. Jasinski found it ''significant that in the Fraser study[,] the chronic administration of carisoprodol for a period of 18 to 54 days at doses that progressed from 1200 mg/day to 4800 mg/day * * * did not induce a characteristic barbiturate intoxication pattern,'' and that ''the abrupt withdrawal of carisoprodol [did not] reveal any signs of barbiturate-like abstinence.'' *Id.* at 7–8. Dr. Jasinski thus opined that ''these data show that carisoprodol does not possess barbiturate-like abuse liability and that in light of these data[,] it is not scientifically sound to reach a contrary conclusion based solely upon less reliable animal or *in vitro* data.'' *Id.* at 8.

Both parties and the ALJ cited the Fraser study as being an exhibit in the record. *See* Gov. Br. at 19 (citing Meda Ex. 98); Meda Br. at 56–57 (citing same), ALJ at 32 (¶ 46). However, this exhibit was not included in the record forwarded to this office, and a review of the transcripts contains no indication that Meda Exhibit 98 was ever entered into evidence. Because both parties and the ALJ have cited the Fraser study as if it were in evidence, I take official notice of it. Moreover, given the dispute as to significance of the study's findings, a discussion of the third arm is warranted.

The third arm of the Fraser study, which was only single-blinded,[31] involved the administration of large doses of carisoprodol to five patients, with four of the patients receiving the drug for 18 days and one receiving the drug for 54 days. Fraser, at 3. Each patient received an initial dose of 1,200 mg, which was increased by 200 mg each day for 16 days, and then by 300 mg on days 17 and 18 for a maximum daily dose of 4800 mg. *Id.* The patient who was given the drug for 54 days received a daily dose of 4800 mg from days 18 through 54. *Id.* Following the respective 18 and 54-day periods, the drug was abruptly withdrawn from the patients, who were then given placebo. *Id.*

The study found that with the exception of changes in the patients' EEG (electroencephalogram) patterns, ''the outstanding feature was a complete absence of any significant subjective effects even when the dosage was increased to 4,800 mg daily.'' *Id.* Continuing, the authors noted that ''it was not possible to differentiate carisoprodol from a placebo.'' *Id.* Moreover, following the cessation of carisoprodol, none of the patients showed signs of abstinence and all were unaware that their medication had been changed. *Id.*

While the study found that the patients' EEGs showed a ''barbiturate-like effect'' when the patients were receiving 4200 to 4800 mg, it also found that all of the patients' EEGs had returned to normal within thirty-six hours of the last dose. *Id.* Moreover, ''[n]one of these patients showed focal or generalized abnormalities of the paroxysmal type during withdrawal, such as those seen following withdrawal of barbiturates.'' *Id.* The study thus concluded that ''[c]hronic administration on a progressive dosage schedule did not induce a characteristic barbiturate intoxication pattern'' and that the abrupt withdrawal of the drug did not result in ''barbiturate-like abstinence'' symptom. *Id.*

However, the authors noted that ''it remains to be seen whether administering carisoprodol continuously in larger doses would induce a chronic state of intoxication and whether abrupt withdrawal under such circumstance would provoke a barbiturate or meprobamate type of abstinence.'' *Id.* The authors further noted that ''[s]uch a possibility is suggested by the fact that carisoprodol is a congener of meprobamate and exhibits many barbiturate-like pharmacological effects.'' *Id.* at 3–4.

As for Dr. Jasinski's testimony that the Fraser study ''yielded valid scientific results,'' another of Meda's Exhibits (the FDA's Draft Guidance on *Assessment of Abuse Potential of Drugs*) states that ''[h]uman abuse potential studies are usually double blind, double dummy, placebo, and positive comparator controlled, and are crossover designed.'' MX 12, at 14. Moreover, such studies typically involve a substantially greater number of patients than the Fraser study involved and both ''[t]he investigator and the staff who interact with subjects should not know the sequence of substances administered.'' *Id.* In short, the Fraser study did not meet most of these criteria. Moreover, it seems unlikely that scientists would draw a definitive conclusion from the findings with respect to the single patient who received the drug for 54 days.

Meda also cites recent clinical trials it conducted in support of its application to market carisoprodol in 250 mg strength as evidence that the drug does not cause withdrawal symptoms and is not subject to diversion, misuse, or abuse. MX 171, at 5. MEDA's CMO maintains that these studies, which involved several thousand patients at hundreds of clinical research centers, ''provide the only evidence-based body of *human data* from which [to] evaluate the likelihood of drug diversion, drug seeking behavior, and withdrawal symptoms in a controlled setting.'' *Id.* at 9 (emphasis in original). According to MEDA's CMO, during these studies, there was no evidence of diversion and ''there was *no evidence* whatsoever of carisoprodol-induced withdrawal syndrome following abrupt cessation of up to two weeks of treatment.'' *Id.* at 10. Meda's CMO then opined that ''[u]nlike other drugs, such as opioids, this suggests that if dependence occurs, it is only following prolonged treatment with carisoprodol.'' *Id.*

As for the lack of evidence of withdrawal, diversion or drug seeking behavior, the short-term nature of the studies (which involved administration of the drug at therapeutic levels for either one or two weeks at most, MX 171, at 8) renders this evidence of minimal value in determining whether carisoprodol causes dependency. Moreover, FDA found that there is extensive evidence in the scientific literature establishing that carisoprodol can cause dependency in humans. *See* discussion under Factors Five, Six, and Seven, *infra.* Finally, that short-term administration of carisoprodol does not cause dependency is not dispositive because the CSA does not impose an arbitrary time frame for assessing whether the taking of a drug can cause dependency.[32]

[31] While the patients ''were unaware of the nature and schedule of medication,'' the observers were not. Fraser, at 3.

[32] Dr. Jasinski also noted that in his experience as the Chief of the Center for Chemical Dependence at Johns Hopkins Bayview Medical Center, he could not ''recall a single incidence in which an individual has visited our center to be treated for carisoprodol addiction/dependence.'' MX 172, at 9. While that may be, this may simply reflect that different drugs are more popular with drug abusers in the geographic area served by Johns Hopkins.

Dr. Jasinski also noted that according to the Treatment Episode Data Set, a database maintained by SAMHSA of admissions to substance abuse treatment centers, ''there were no mentions of carisoprodol in any of the TEDS reports from 2002 through 2007.'' *Id.* (citing MXs 31 & 32). However, the TEDS reports do not separately list carisoprodol, but rather use broader categories such as ''Other non-Benzodiazepine Tranquilizers,'' which ''[i]ncludes meprobamate, tranquilizers, etc.''

Continued

Factor 3—The State of Current Scientific Knowledge Regarding Carisoprodol

The current scientific knowledge regarding carisoprodol includes information about the drug's chemistry and pharmacokinetics.

Chemistry

Chemically, Carisoprodol is (l-methylethyl) carbamic acid 2-[[(aminocarbonyl)oxy]methyl]-2-methylpentyl ester; *N*-isopropyl-2-methyl-2-propyl-l, 3-propanediol dicarbamate; isopropyl meprobamate. GX 6, at 10. Carisoprodol is also identified by CAS number 78–44–4. Carisoprodol has a molecular weight of 260.33; its molecular formula is $C_{12}H_{24}N_20_4$. Id.

Carisoprodol is a bitter tasting, odorless, white crystalline powder. Its melting point (without decomposition) ranges from 92–94 °C and it has low water solubility (30 mg/100 ml at 25 °C). *Id.* Carisoprodol is soluble in many organic solvents and practically insoluble in vegetable oils. *Id.* Carisoprodol is stable in dilute acid and alkali and is not altered by artificial gastric or intestinal juices. *Id.* It is a racemic compound with one asymmetric center. *Id.* Qualitative and quantitative methods for detection of carisoprodol and other drugs by gas chromatography/mass spectrometry (GC/MS) or thin layer chromatography in combination with GC/MS have been published (22–25).

Pharmacokinetics

The pharmacokinetics of carisoprodol have been investigated in several animal and human studies. At a dose of 350 mg, the mean peak plasma concentration (Cmax) achieved was 2.29 ± 0.68 μg/ml; women tended to reach peak plasma concentrations earlier than men (1.45 vs. 2.5 hrs) and had a faster apparent oral clearance (0.772 vs. 0.38 l/h/kg). GX 6, at 10. Carisoprodol is metabolized in the liver via cytochrome 2D6. *Id.* Meprobamate (C–IV) is one of the products of carisoprodol metabolism. *Id.* Following a single 350 mg dose of carisoprodol, the corresponding normalized peak concentration of meprobamate was 2.08 ± 0.48 μg/ml; these levels are approximately 25 percent those observed following a single 400 mg dose of meprobamate. *Id.* Carisoprodol is eliminated by both renal and non-renal routes with a terminal elimination halflife of 2.44 ± 0.93 hr. *Id.* at 10–11.

Factor 4—Carisoprodol's History and Current Pattern of Abuse

In 1959, carisoprodol was introduced into the U.S. market as a single-agent drug, and in 1960, as a combination product with aspirin. *Id.* at 11. In 1983, carisoprodol was marketed in combination with aspirin and codeine. *Id.* Numerous generic products have been introduced into the U.S. market. *Id.* Carisoprodol is also marketed worldwide under various trade names including Artifar, Carisoma, Carisoprodol Sintesina, Listaflex, Mio Relax, Sanoma, Soma, Somadril, and Somflam. *Id.*

In assessing carisoprodol's history and current pattern of abuse, DEA and FDA relied on multiple data sources. As discussed above, these include DAWN, NSDUH, AERS, and Florida Medical Examiners Commission Data. In addition, reports from the scientific literature were reviewed.

DAWN ED Data

As discussed above under Factor One (and as set forth in Table One), DAWN data suggest that there has been an increase in the frequency of nonmedical use ED visits associated with carisoprodol. In 2004, DAWN estimated the number of ED visits related to nonmedical use of carisoprodol as 14,736; in 2007, it estimated that there were 27,128 nonmedical ED visits related to carisoprodol. By comparison, DAWN estimated that in 2004, there were 15,619 ED visits related to the nonmedical use of diazepam, and in 2007, there were an estimated total of 19,674 nonmedical ED visits related to diazepam. However, according to SAMHSA, the increase in the number of carisoprodol visits between 2004 and 2007 was not statistically significant. Nonetheless, even if there were only an estimated 14,736 ED visits related to carisoprodol, this is still a significant number of visits when compared with the number of diazepam-related visits.

In addition, as found above under Factor One (and set forth in Table 2), when the number of estimated nonmedical use ED visits is adjusted for the number of prescriptions issued (by dividing the number of visits by 10,000 prescriptions), in 2007 the carisoprodol rate was 22.6/10,000 Rx, while diazepam's rate was 14.1/10,000 Rx. By contrast, cyclobenzaprine, another skeletal muscle relaxant, had a rate of 3.3/10,000 Rx.

As also found above under Factor One, NSDUH survey data for the years 2004 through 2007 show that between 2.5 and 2.84 million persons have used carisoprodol for non-medical purposes. To be sure, the NSDUH data may not reflect a statistically significant increase in the number of persons who have used carisoprodol for a non-medical purpose. However, the fact that approximately 2.5 to 2.8 million persons have engaged in non-medical use of carisoprodol is itself significant.

Demographic and Epidemiological Factors Associated With Nonmedical Use of Carisoprodol

FDA's review found that the majority of cases reported in the scientific literature note that carisoprodol abuse has primarily been a component of multi-drug abuse. GX 6, at 13. According to FDA, DAWN data indicates that the drugs most frequently used in combination with carisoprodol that resulted in ED visits were opioids (hydrocodone, oxycodone), benzodiazepines (alprazolam, diazepam, clonazepam), alcohol, and illicit drugs (marijuana, cocaine). *Id.* at 14.

Beginning in 2006, carisoprodol has been reported as a primary or sole drug of abuse in DAWN. Additional analysis of DAWN data specifically addresses details of this issue for carisoprodol nonmedical use in 2006 (see Table 3).

As set forth in Table 3, the DAWN 2006 data estimated that there were a total of 24,505 ED visits related to the nonmedical use of carisoprodol. Of these, 42 percent involved females and 58 percent males. In twenty-one percent of the cases, carisoprodol was reported as the sole drug, with it being the sole drug in twenty-seven percent of the female cases, and twelve percent of the male cases. The FDA's analysis concluded that these gender-based differences may suggest effects related to dosage and pharmacokinetic/pharmacodynamic effects that could influence abuse potential.

The DAWN data also suggest that there are some age-related differences in the use of carisoprodol, with greater reports of single use among those 12–17 years old (27 percent) and those 45–54 years old (30 percent) than other age groups.[33] A study by Forrester (26) found that adolescents accounted for 17 percent of the abuse calls related to carisoprodol in an analysis of Texas

MX 31, at 28. Thus, admissions to treatment centers for carisoprodol abuse might well be reported under this category. Accordingly, I place no weight on this testimony.

[33] According to FDA, ''such abuse may represent a significant change in the pattern of abuse of carisoprodol, as abuse of carisoprodol without other substances and significant single drug use by such a large young population has not previously been documented in national data.'' GX 6, at 14. However, prior to 2006, carisoprodol was not previously reported as a sole drug in the DAWN ED data. Thus, it is unclear whether there has been a significant change in the abuse of carisoprodol by adolescents.

Poison Centers' data from 1998–2003, a rate similar to that reported in RADARS (27).

TABLE 8—ESTIMATED NONMEDICAL-USE CARISOPRODOL ED VISITS FROM DAWN 2006 BY AGE AND MOST COMMON DRUG COMBINATIONS [34]

Carisoprodol	Age											
	All	0–5	6–11	12–17	18–20	21–24	25–29	30–34	35–44	45–54	55–64	65+
Carisoprodol-single drug	5,053	.....	.....	307	256	553	494	287	1,030	1,873	228	26
Carisoprodol-multi-drug	19,444	0	. . .	820	1,135	2,342	2,318	2,150	5,119	4,286	752	515
Total by Age	24,497	0	. . .	1,127	1,391	2,895	2,812	2,437	6,149	6,159	980	541

NSDUH data for the years 2004 through 2007 show that in each year, more than 100,000 twelve to seventeen-year olds reported having used carisoprodol for non-medical reasons. During this same timeframe, between 956,000 and 1,056,000 eighteen to twenty-five year olds reported having used carisoprodol for non-medical reasons. As the table below shows, these age groups reported having engaged in the non-medical use of carisoprodol to a far greater extent than they report having engaged in the non-medical use of meprobamate.[35] These figures were approximately thirty-three percent (in the 12–17 age group) and forty-two percent (in the 18–25 age group) of those persons reporting non-medical use of diazepam.

TABLE 9—NSDUH—NONMEDICAL USE OF CARISOPRODOL (SOMA®) AND OTHER DRUGS IN LIFETIME, BY AGE GROUP

[Numbers in thousands (%), 2004–2007]

Age Groups	2004 #(%)	2005 #(%)	2006 #(%)	2007 #(%)
Carisoprodol (Soma®)				
Ages 12–17	138 (0.5)	118 (0.5)	111(0.4)	106 (0.4)
Ages 18–25	975 (3.0)	1,056 (3.3)	1,034 (3.2)	956 (2.9)
Ages 26 or Older	1,503 (0.8)	1,351 (0.7)	1,695 (0.9)	1,647 (0.9)
Cyclobenzaprine (Flexeril®)				
Ages 12–17	34[a] (0.1[a])	64 (0.3)	53 (0.2)	56 (0.2)
Ages 18–25	461 (1.4)	479 (1.5)	533 (1.6)	568 (1.7)
Ages 26 or Older	1,473 (0.8)	1,348 (0.7)	1,819 (1.0)	1,813 (1.0)
Diazepam (Valium®)				
Ages 12–17	380 (1.5)	351 (1.4)	320 (1.3)	314 (1.2)
Ages 18–25	2,434 (7.6)	2,650 (8.2)	2,480[a] (7.6[a])	2,252 (6.9)
Ages 26 or Older	11,794 (6.4)	11,913 (6.4)	12,024[a] (6.4[b])	10,606 (5.6)
Meprobamate Products [1]				
Ages 12–17	34 (0.1)	22 (0.1)	24 (0.1)	18 (0.1)
Ages 18–25	39 (0.1)	49 (0.2)	42 (0.1)	27 (0.1)
Ages 26 or Older	173 (0.1)	234 (0.1)	150 (0.1)	192 (0.1)

[1] Includes Equanil® meprobamate, and Miltown®. [a] Difference between year and succeeding year (*e.g.,* 2004 and 2005) estimates are statistically significant, $p \leq 0.05$. [b] Difference between year and succeeding year statistically significant, $p \leq 0.01$. Source: SAMHSA, Office of Applied Studies, National Survey on Drug Use and Health.

As found above, AERS data through June 2007 contains a total of 472 reports related to potential abuse of carisoprodol. GX 6, at 15. Of these, 48 reports identified dependence as the adverse event and 19 identified withdrawal syndrome. *Id.* As also found above, data obtained from the Florida Medical Examiners Commission for the years 2004 through 2008 identifies carisoprodol as the cause of death in between 74 and 96 deaths each year.[36] *See* Table Four above.

Scientific Literature Reports

The FDA review concluded that there are relatively few reports in the scientific literature describing fatal cases of intoxication with carisoprodol. The FDA further found that there are inconsistencies in the literature with regard to what is considered a toxic concentration level (17, 22, 28–31). As carisoprodol is frequently abused in combination with other drugs, the specific contribution of carisoprodol to a fatality may be difficult to ascertain.

[34] Where age was known. Information received from SAMHSA on June 18, 2008. Three dots (. . .) indicate that an estimate or count of less than 30 or with a relative standard error greater than 50, has been suppressed.

[35] Nearly twice as many persons reported non-medical use of carisoprodol than reported non-medical use of cyclobenzaprine, another muscle relaxant which is unscheduled. GX 6, at 17.

[36] The data for the years 2004 through 2008 show that carisoprodol was present in between 289 and 415 cases each year. GX 6, at 18.

However, several publications have attributed therapeutic levels of carisoprodol at 10–40 mg/l, toxic levels at 30–50 mg/l, and a lethal level at 110 mg/l (31–33).

Davis and Alexander (31) reviewed carisoprodol-related deaths in Jefferson County, Alabama, from January 1, 1986 to October 31, 1997. Of a total of 8,162 Medical Examiner cases, toxicology analysis found 24 cases in which carisoprodol was in the decedent's blood. Blood carisoprodol concentrations in decedents ranged from <1 mg/l to 96.8 mg/l, with a mean carisoprodol concentration of 16.4 mg/l and a standard deviation of 21.0 mg/l. In no case was carisoprodol the only drug detected, nor was it ever the sole cause of death. The authors also noted the frequent association in their series and in the DAWN data of carisoprodol with co-ingested respiratory depressants (propoxyphene, diazepam, codeine). As carisoprodol also can cause respiratory depression, the authors concluded that it was a probable contributor to the cause of death (31).

Hoiseth, *et al.* (34), investigated all forensic autopsies at the Norwegian Institute of Public Health during the period 1992–2003 and found five cases which reported the median concentrations of carisoprodol associated with intoxication. In another 93 intoxication cases, levels of carisoprodol relative to the other drugs varied. When the number of intoxications with carisoprodol each year was divided by the number of defined daily doses (DDD) sold, a fatal toxicity index (FTI) of between 5.6 and 6.9 deaths/million DDD was obtained. The carisoprodol FTI was higher than data for the schedule IV CNS depressants diazepam (5.2), oxazepam (4.9), nitrazepam (2.8), and zopiclone (1.9), but lower than those for alprazolam (16.0) and clonazepam (16.1). The total number of cases involving carisoprodol increased during the time period observed, as did sales figures for the same period. Only a small number of deaths could be attributed to use of carisoprodol alone.

In summary, multiple national and state data systems used in the United States provide substantial evidence that carisoprodol is being abused. This conclusion is corroborated by various reports published in the scientific literature. While carisoprodol is most often abused in combination with other drugs, in about 20 percent of the reports carisoprodol is the only drug of abuse. In addition, national survey data show that in excess of one million people under the age of twenty-six have acknowledged using carisoprodol for non-medical reasons. These data are consistent with DEA data indicating that carisoprodol is being diverted.

Factor 5—The Scope, Duration, and Significance of Abuse

According to the FDA, examination of the case reports and studies of abuse in the United States and other countries are useful in assessing the scope, duration, and significance of carisoprodol abuse. GX 6, at 19. Because carisoprodol has been marketed since 1959, there is a substantial body of post-marketing epidemiologic abuse-related data in the published scientific literature and from AERS. *Id.* at 19–20. Drug abuse and dependency are determined by the evaluation of a patient's drug-seeking behavior, as evidenced by the use of multiple prescribers, the increased frequency of refills, the use of increasing doses, and reports of withdrawal symptoms when a drug is suddenly withdrawn. *Id.* at 20. Withdrawal symptoms vary and include anxiety, tremor, insomnia, hallucinations, and seizures. *Id.*

Reports in the scientific literature document that carisoprodol can cause dependency (35–39) and there are cases where withdrawal symptoms have been reported (40–42). While the presence of other drugs of abuse complicates the assessment, there are reports where carisoprodol is the sole drug of abuse (35, 43) (see Factor 7 for further details of these reports).

There are other reports in addition to those discussed under Factor Four. A report from India describes sixteen cases of carisoprodol abuse, mainly among young male polydrug abusers (15). Carisoprodol was purportedly taken to attenuate opioid withdrawal, but its abuse for pleasurable effects was also described. Carisoprodol thus gained a reputation among addicts for producing psychic effects. Isaac, *et al.* (44), reported a case of abuse from Canada that was recognized through a pharmacist hotline.

Bramness, *et al.* (45), conducted a pharmacoepidemiological study on the use and abuse of carisoprodol in Norway. The study used the Norwegian Prescription Database (NorPD), which contains information on prescription drugs dispensed in Norway. An advantage to this database is that patients were followed over time. In 2004, 53,889 Norwegian women (2.4 percent) and 29,824 men (1.3 percent), age 18 or older, received carisoprodol at least once. At the time of the study, carisoprodol was approved in Norway for the treatment of acute low back pain, for short term use only (up to 1 week) at a defined daily dose (DDD) of 1400 mg (350 mg three times a day and at bedtime).

The investigation included the dispensing of 3,772,154 DDDs to 83,713 patients of 18 years of age or older. Measured parameters included the one year prevalence of use (*i.e.,* the number of individuals who had received at least one prescription of carisoprodol per 100 inhabitants) and parameters for potential abuse including high use (high users were defined as those receiving >15 DDDs during the year), high intensity use (high intensity over different lengths of time), doctor shopping, and concomitant use of potential drugs of abuse. The possible drug abuse parameters for carisoprodol were compared to five other commonly prescribed drugs.

Of those meeting the study's requirements, the following groups emerged: therapeutic users, 62 percent; pseudo-therapeutic long-term users of carisoprodol, 16 percent; ''pure'' carisoprodol abusers, 1 percent; concomitant benzodiazepine abusers, 8 percent; and concomitant opioid abusers, 14 percent. The therapeutic users received only 12 percent of the carisoprodol dispensed in 2004, while those considered primary opioid abusers received 48 percent of the total amount of dispensed. Eighty-nine percent of the patients received their carisoprodol from a single prescribing doctor, with the remainder having multiple prescribers. Eighty-two percent of the patients were defined as high users (received 15 DDDs) of carisoprodol and 14 percent of the patients received ≥75 DDDs.

Reports in the scientific literature indicate that relatively few physicians are aware of the addictive potential of the drug (39; 46; 47). The lack of medical and public awareness regarding the abuse potential of carisoprodol may contribute to the abuse of the drug.

In summary, carisoprodol's post-marketing history indicates that the drug can, and is, being abused, in both the United States and other countries. The growing evidence includes epidemiologic abuse-related data in the published scientific literature (*e.g.,* Bramness) and from AERS, as well as data from national and state data systems that track drug abuse. While recent data show that carisoprodol is most commonly abused in combination with other drugs, DAWN data show that it is abused as a single drug in 20 percent of the cases. Other data (the NSDUH survey) show that carisoprodol is being widely abused by adolescents and young adults.

The human data showing abuse are reinforced by recent animal self-administration and drug-discrimination studies indicating that carisoprodol has positive reinforcing and discriminative effects similar to other drugs currently controlled under schedule IV, including barbital, meprobamate, and chlordiazepoxide.

Factor 6—The Risk to the Public Health

The scientific literature and other data, including DAWN, NSDUH, and AERS, document the adverse health consequences of the use, misuse, and abuse of carisoprodol. According to the FDA, the risks of carisoprodol to the public health are typical of other CNS depressants that are controlled in the CSA. GX 6, at 21. These risks include CNS depression, respiratory failure, cognitive and motor impairment, addiction, dependence, and abuse. *Id.*

Because carisoprodol metabolizes to meprobamate (C–IV), carisoprodol may pose similar risks to the public health as those exhibited by meprobamate. Olsen, *et al.* (48), concluded that the meprobamate formed during carisoprodol metabolism may contribute to the effects of carisoprodol. A case report of a pediatric death due to CNS depression and respiratory failure as a consequence of a carisoprodol overdose indicates that oral ingestion of carisoprodol alone could produce significant serum levels of both carisoprodol and meprobamate (17).

Backer, *et al.* (22), reported three cases involving overdoses of carisoprodol and measured the concentration of carisoprodol and meprobamate in urine, vitreous humor, heart and femoral blood by GC/MS. In the first case, which involved a 43-year old woman, an empty bottle of 30 tablets of carisoprodol was found next to her. The prescription had been filled 3 days earlier. Only carisoprodol and meprobamate were detected, but the concentrations varied by anatomical site.

Carisoprodol has been implicated in cases of impaired driving (49–52). Logan, *et al.* (50), reported the analytical results from a Washington State Toxicology Laboratory (WSTL) review of drivers suspected of driving under the influence of drugs and further reviewed the pharmacology of the carisoprodol and meprobamate, including literature implicating these drugs in impaired driving. They found 104 cases submitted to the WSTL between January 1996 and July 1998 in which meprobamate and/or carisoprodol was detected in the blood of drivers involved in accidents or arrested for impaired driving. Analytical toxicology, patterns of drug use, driving behaviors, and symptoms observed in the drivers were considered. The symptomatology and level of driving impairment were consistent with that of other CNS depressants, most notably alcohol. Reported driving behaviors included erratic lane travel, weaving, driving slowly, swerving, stopping in traffic, and hitting parked cars and other stationary objects. Drivers stopped by the police displayed poor balance and coordination, horizontal gaze nystagmus; bloodshot eyes; unsteadiness; slurred speech; slow responses; a tendency to doze off or fall asleep; difficulty standing, walking or exiting their vehicles; and disorientation.

Many of these cases involved drivers who had also taken alcohol or other CNS active drugs, making it difficult to attribute the documented impairment solely to carisoprodol and meprobamate. However, in twenty-one cases, no other drugs were detected and similar signs and symptoms were present. In these cases, impairment was possible at any concentration of these two drugs, but the most severe impairment was noted when the combined concentration was greater than 10 mg/L, which is still within the therapeutic range. The authors speculated that the toxicology findings in these cases resulted from recent use or overuse of the drug, but they also suggested that chronic use may be a factor, particularly in those with impaired metabolisms.

Bramness, *et al.* (51), reported on 62 cases of impaired driving where carisoprodol and meprobamate were the only drugs identified in the database of the Norwegian Institute of Public Health, Division for Forensic Toxicology and Drug Abuse. The study found that impaired drivers (73 percent) had higher blood carisoprodol concentrations than drivers who were not impaired (27 percent), but found no difference in blood meprobamate concentration for all the drivers viewed together. However, among occasional users of carisoprodol, there was a difference in blood meprobamate concentration between non-impaired and impaired drivers. The risk of being judged impaired rose with increasing blood carisoprodol concentration, but not with increasing blood meprobamate concentration. The clinical effects of carisoprodol as measured by the clinical test for impairment (CTI) resembled those of benzodiazepines (C–IV). Additional effects included tachycardia, involuntary movements, hand tremor and horizontal gaze nystagmus. The authors concluded that carisoprodol probably has an impairing effect by itself at blood concentration levels greater than those observed after therapeutic doses.

In 2007, Jones, *et al.* (52), reported the concentrations of scheduled prescription drugs found in blood samples from people arrested in Sweden during 2004 [n=7052] and 2005 [n=7759] for driving under the influence. In Sweden, both carisoprodol and meprobamate are C–IV drugs, but meprobamate is no longer registered for use. Carisoprodol was found in 66 specimens (0.9% of the total specimens); the mean concentration was 3.8 mg/l (median 2.8 mg/l and highest 11.9 mg/l) and meprobamate in 63 (0.8%) (mean concentration 15.7 mg/l, median 11 mg/l, and highest 64.0 mg/l). In eight specimens, only meprobamate was found. In twenty-seven percent of the carisoprodol cases, the blood concentrations were higher than what would be expected for normal therapeutic use (2.5–10 mg/l), thus suggesting overdose or abuse of the drug. Multi-drug use was not evaluated separately.

The FDA also noted evidence in the medical literature that the use of carisoprodol in the elderly and the nursing home population should be done with great care (53, 54). As with other CNS depressants, because of recognized age-related changes in drug metabolism and excretion and increased sedation, seniors could have an increased risk of adverse events including falls and auto accidents.

The FDA further noted that the effects induced by carisoprodol are characteristic of CNS depressants, and include altered attention, coordination, reaction time, judgment, decision making and other skills necessary to safe driving. Consequently, individuals under the influence of both therapeutic and supra-therapeutic doses of carisoprodol present a public health risk that needs to be considered when carisoprodol is prescribed. Representative cases are described below.

As documented in the scientific and medical literature, carisoprodol may produce dependence and a withdrawal syndrome characterized by anxiety, insomnia, and irritability. Moreover, in some cases, muscular pain has been described upon abrupt cessation following long-term use. *See* Factor 7.

Adverse Events Report in the Scientific Literature

The FDA also discussed several adverse events reported in the scientific literature. A two-year old ingested 700 milligrams (two 350 mg tablets) of

carisoprodol and became increasingly drowsy over 60 minutes with symptoms progressing to lethargy and hypoxia (18). The patient's level of consciousness declined significantly requiring respiratory ventilation. Following activated charcoal and supportive care, the patient recovered fully within 12 hours.

Roberge, *et al.* (55), reported the case of a 52-year-old woman who presented with CNS depression and a Glasgow Coma Score of 9, secondary to ingestion of carisoprodol. She reportedly took her carisoprodol tablets in an erratic fashion (taking an estimated thirty-five extra 350 milligram tablets over a thirteen-day period) and developed stupor along with confusion and garbled speech. After administration of i.v. flumazenil (0.2 mg IV), the patient's neurologic status normalized and she required no further therapy. Carisoprodol and its metabolite meprobamate are y-aminobutyric acid receptor indirect agonists with CNS chloride ion channel conduction effects similar to the benzodiazepines, thus making flumazenil a potentially useful antidote in toxic presentations.

Siddiqi and Jennings reported the case of a near-fatal overdose involving a 40-year old male (14). The patient, who had a history of hypertension, ingested 60 carisoprodol tablets (21 grams) and an unknown quantity of chlordiazepoxide and temazepam. He developed a coma (with absent tendon and plantar reflexes), sinus tachycardia (130 bpm) with a prolonged QT interval, mild respiratory acidosis (pH 7.31; pCO2 50.1 mmHg, partially compensated with artificial ventilation), fever (100.5° F), hypertension (220/118_mmHg), and dry and warm skin. Following supportive care, he recovered completely without further sequelae.

Reeves, *et al.* (40), studied the case of a 43-year-old male who took up to 30 or more tablets per day (a dose equal to or greater than 10,500 mg/day) of carisoprodol for several weeks, to treat chronic back and shoulder pain. After the patient abruptly stopped taking carisoprodol, he developed anxiety, tremors, muscle twitching, insomnia, auditory and visual hallucinations, and bizarre behavior. The patient was treated with olanzapine and tapering doses of lorazepam and his symptoms gradually resolved. The authors suggested that this drug withdrawal syndrome was due to the accumulation of meprobamate, the active metabolite of carisoprodol.

Bailey, *et al.* (47), published a retrospective analysis of drug screening performed for patient care during a six-month period at a laboratory in California. Carisoprodol was detected in the urine specimens of nineteen patients who became the study population; demographic and clinical information was then obtained by a retrospective review of the patients' medical records. In only one case was carisoprodol and/or meprobamate the sole drug(s) detected; benzodiazepines, opiates and cannabinoids were the other drugs most frequently identified.

The most common clinical abnormality was depressed levels of consciousness which occurred in twelve cases; eight patients were lethargic, three obtunded but were responsive to pain, and one obtunded and was non-responsive to pain. The clinical history suggested that in seven cases, the drug was abused or implicated in a suicide attempt or gesture. In another seven cases, the drug was used primarily for medical purposes, and in five cases, the reason for use could not be determined. Additional findings were tachycardia (eight cases), dysarthria (seven cases), hypotension (six cases), and seizure activity (five cases, including the one case where no other drugs were identified). Approximately half of the time, the patient was hospitalized. In each case, supportive care alone led to recovery. While the authors acknowledged the potential contribution of the other drugs identified to the symptomatology found in these cases, they recommended that carisoprodol and its metabolite meprobamate be included in comprehensive drug screening as it had become an unrecognized drug of abuse in the community.

Goldberg (20) reported that manifestations of acute carisoprodol toxicity were due chiefly to stimulation and depression of the CNS. Drowsiness, dizziness, headache, diplopia, and vertigo predominated. Impaired coordination, nystagmus on lateral gaze, and an altered state of consciousness were prominent findings. Acute symptomatology was present at carisoprodol levels above 33 µg/ml, which lasted from eight to fifteen hours. Gastric lavage and supportive measures are the accepted methods of treating acute carisoprodol overdose.

Meda's Factor Six Evidence

Meda contends that scheduling carisoprodol ''will have a negative impact on patient care.'' MX 174, at 4. According to Meda, some physicians will stop writing prescriptions for the drug and use other non-scheduled muscle relaxants due to ''concerns that their prescribing may be second guessed by government regulators or law enforcement personnel.'' *Id.* According to one of Meda's Experts, he had ''personally asked a number of physicians if they would use carisoprodol if scheduled, and many indicated they would not.'' *Id.*

As support for this contention, Meda also submitted two bar charts which show the percentage decrease in the number of carisoprodol prescriptions in Indiana, Nevada, Texas, and Louisiana after the drug was scheduled in these States. MX 21. More specifically, the charts show that in Indiana and Nevada, the amount of prescriptions decreased by approximately five percent following scheduling, and that in Texas and Louisiana, the amount of prescribing decreased by approximately two to three percent and four percent respectively.[37] However, in the first quarter of 2010, the number of prescriptions in Louisiana had actually increased over the baseline level. *Id.*

Meda's evidence does not establish that scheduling carisoprodol will harm patients. As for the testimony of Meda's Expert that many physicians had told him that they would not prescribe carisoprodol and his conclusion that ''a not insubstantial number would'' stop prescribing, Meda's Expert produced no evidence to establish that his conclusion was based on a statistically valid sample. More specifically, Meda's Expert offered no evidence as to how many physicians he had asked, what their specialties were, how the questions were phrased, and how many had said they would stop prescribing the drug.

Likewise, the data showing a decrease in the amount of prescriptions following the scheduling of the drug in the above States do not support Meda's argument, because it assumes that the baseline level of prescribing reflects legitimate prescriptions. However, the evidence in this record clearly establishes that carisoprodol is being diverted; thus, to the extent the baseline level of prescribing includes illegitimate prescriptions, the decrease in prescriptions may reflect nothing more than doctors recognizing that certain patients are seeking carisoprodol for non-medical reasons, and are therefore being more cautious in evaluating their patients and declining to prescribe the drug to drug-seeking patients. The decrease may also reflect that doctors who have knowingly prescribed the drug for non-medical reasons have ceased this activity because the

[37] According to the chart, Indiana scheduled carisoprodol on July 1, 2004, and Nevada on July 14, 2004. MX 21. However, Meda's chart shows prescribing levels only through the fourth quarter of 2005, at which time the reduction in prescribing levels in both States had begun to decrease. *Id.*

scheduling of the drug creates additional consequences for prescribing it without a medical purpose. Also, even if some doctors may have chosen to prescribe non-controlled muscle relaxants instead of carisoprodol after the drug was scheduled, this alone does not establish that patients have been harmed or that they have received ''sub-optimal treatment.'' MX 174, at 5. In any event, as long as doctors follow accepted standards of medical practice in evaluating their patients and establish a legitimate medical purpose for prescribing carisoprodol to their patients, they have nothing to fear from DEA. Furthermore, doctors are expected to use their best professional judgment in determining which of various drugs they should prescribe to properly treat their patients.[38]

I thus find unavailing Meda's contention that scheduling carisoprodol will create a risk to public health. To the contrary, the record contains substantial evidence establishing that the abuse of carisoprodol poses a substantial risk to those persons who abuse the drug, as well as others. *See also* Factor Four.

Factor 7—Its Psychic or Physiological Dependence Potential

According to FDA, the term *psychic dependence* is not in current use and refers to impaired control over drug use, such as craving. This term was introduced in the late 1950's by the World Health Organization Expert Committee on Addiction-Producing Drugs, as one of the factors that, in conjunction with physical dependence, defined the addiction phenomena (Savage *et al.,* 2003). FDA further explained that *physical or physiological dependence* is a form of physiologic adaptation to the continuous presence of certain drugs in the body. GX 6, at 24.

Tolerance and *physical dependence* examine the responses to repeated administration of a drug. *Id.* at 25. An assessment of *tolerance* or *physical dependence* is needed as part of the safety assessment of a drug and is a factor considered in scheduling. *Id.*

Tolerance is the need for increasing doses of a drug to maintain a defined effect, such as analgesia, in the absence of disease progression or other external factors. *Id. Physical dependence* is a state of adaptation manifested by a drug class-specific withdrawal syndrome produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug and/or administration of an antagonist. *See* American Academy of Pain Medicine, American Pain Society and American Society of Addiction Medicine Consensus Document (2001). *Tolerance* is a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time. *Id.*

The FDA found that early animal drug dependence studies demonstrated that carisoprodol has a similar dependence liability to barbital, a schedule IV CNS depressant. *Id.* (citing FDA Reference 12). In dogs tolerant and dependent on barbital, 200 mg/kg p.o. of carisoprodol every six hours was completely effective and equivalent to 100 mg/kg of barbital in preventing the appearance of abstinence phenomena. *Id.*

Wyller, *et al.* (56), studied the occurrence of abstinence symptoms during carisoprodol withdrawal in humans. In this study, carisoprodol was gradually withdrawn over a two-week period in nine male prisoners who had been taking the drug in daily doses ranging from 700 mg to 2,100 mg for at least 9 months. Patients were assessed clinically during the withdrawal period. Most of the patients reported mental distress, such as anxiety, insomnia, and irritability. Cranial and muscular pain and vegetative symptoms were also frequently reported. Most of the symptoms observed were transient, with neither seizures nor psychotic reactions being reported.

Rohatgi, *et al.* (57), reported the treatment of a case of carisoprodol dependence involving a 46-year old male who self-treated his anxiety when his doctor stopped his narcotic prescriptions. The patient purchased carisoprodol over the internet and self-medicated. The patient was admitted to a treatment center and withdrawn from carisoprodol. Withdrawal symptoms included heart palpitations, diaphoresis, chills, stomach cramps, nausea, insomnia, restlessness, myalgias, arthralgias, tremors, diarrhea, severe psychomotor agitation, feelings of depersonalization, and anxiety with suicidal ideation. The patient's symptoms were managed with risperidone, clonazepam, mirtazapine, and fluoxetine.

The FDA also noted that several other reports found that patients who abruptly stop the intake of carisoprodol may have a withdrawal syndrome. Reeves and Parker (58) studied changes in the occurrence of somatic dysfunctions in five patients during an eight-day period following discontinuation from large doses of carisoprodol. The results showed that the number of somatic dysfunctions changed significantly during the withdrawal period. Each patient had an increase in the number of somatic dysfunctions during the first three days after cessation of carisoprodol with a return to the baseline by the eighth day. This was reflected statistically in a significant-within-subjects effect for time. The results of supplemental analyses revealed a significant component of the effect and a trend for the quadratic component to be significant. Increases in the number of somatic dysfunctions during carisoprodol discontinuation support the existence of a carisoprodol withdrawal syndrome.

Finally, FDA found that the development of dependence or tolerance is also evidenced by several published reports (35, 40, 49, 57, 59). Patients increased their doses to toxic levels and appeared to be exhibiting drug-seeking behavior. FDA further found that prolonged misuse of carisoprodol can lead to physical dependence and that patients who abruptly stop carisoprodol can develop a withdrawal syndrome that includes symptoms such as anxiety, insomnia, irritability, and worsening muscular pain (40).

Subsequent to the FDA forwarding its evaluation to DEA, doctors at the Mayo Clinic published a clinical report documenting withdrawal symptoms in a 51-year old man who was taking up to 8400 mg per day of carisoprodol, which he obtained from both his physician and an internet pharmacy, but which he had exhausted at some point before he was hospitalized.[39] GX 18, at 2. On admission, the patient ''was anxious, distractable, [and] disoriented,'' and exhibited ''[a] high frequency, postural, and kinetic tremor in [his] extremities.'' *Id.* at 1. While the patient was placed on a tapering schedule, on the third day of his hospitalization, ''the patient's tremor, agitation and confusion worsened, and he experienced visual hallucinations and myoclonic jerks in the extremities.'' *Id.* at 2.

While the doctors were able to successfully treat the patient and taper him off of the drug, they concluded that ''[t]his case demonstrates adverse effects

[38] In its brief, Meda cites an article which states that ''[d]espite concerns about the potential risk of abuse from carisoprodol because of its metabolism to meprobamate, the available literature provides no data regarding the comparative risk of abuse and addiction from skeletal muscle relaxants.'' Meda Br. at 48 (citing Meda Ex. 83, Chou, *et al., Comparative Efficacy and Safety of Skeletal Muscle Relaxants for Spasticity and Musculoskeletal Conditions: A Systematic Review,* 28 J. of Pain & Symptom Mgmt. 140, 167 (2004)). The CSA does not, however, require that the Agency (or the Secretary) conduct a comparative analysis of the abuse/addiction risk of the drugs in a therapeutic category in order to schedule a particular drug.

[39] According to the case report, the doctors were not initially aware of the quantity of carisoprodol that the patient was taking and that he purchased it online. GX 18, at 2.

of both carisoprodol toxicity and withdrawal.'' *Id.* More specifically, the authors noted that ''[t]he abrupt discontinuation of high-dose carisoprodol may result in withdrawal symptoms including anxiety, psychosis, tremors, myoclonus, ataxia, and seizures.'' *Id.* The authors also opined that ''[t]his withdrawal syndrome is likely under-recognized.'' *Id.*

Regarding the individual case reports, Dr. Jasinski opined that care should be taken in evaluating the significance of them because the subjects may have taken the drug for therapeutic reasons ''or for non-therapeutic uses unrelated to any abuse liability,'' such as to commit suicide. MX 172, at 9. Dr. Jasinski further opined that the individual case reports should be considered in light of the facts that ''all drugs produce untoward effects if taken at doses significantly above the recommended therapeutic dose,'' that a patient's having anxiety upon discontinuation of carisoprodol ''could very well be a function of the interruption of effective treatment of their discomfort or pain,'' or that the ''the untoward effect reported with carisoprodol'' could ''have been caused by other substances which the patient was'' taking concurrently. *Id.* at 9–10.

As for Dr. Jasinski's suggestion that individual case reports should be given less weight because the patient may have taken the drug for therapeutic reasons, whether a patient initially took a drug to treat a legitimate medical condition is not relevant in assessing whether the drug causes dependence. Indeed, many patients who have become addicted to controlled substances started taking them to treat a legitimate medical condition.[40]

Moreover, while it is undoubtedly true that all drugs have ''untoward effects if taken at doses significantly above the recommended therapeutic dose,'' the evidence establishes that patients engage in drug-seeking behavior and that the abrupt withdrawal of carisoprodol produces a withdrawal syndrome that includes a variety of symptoms such as anxiety, insomnia, irritability, tremors, and muscle pain. Contrary to Dr. Jasinski's contention that the anxiety experienced by these patients may have been caused by the interruption of effective treatment of their pain and may not be ''evidence of any physical dependence,'' the symptoms which have been documented upon the abrupt cessation of the drug are far more extensive than anxiety.

Furthermore, several of the case reports involved patients who had taken carisoprodol for extensive periods. The prescribing information for carisoprodol states, however, that the drug ''should only be used for short periods (up to two or three weeks) because adequate evidence of effectiveness for more prolonged use has not been established.'' MX 6, at 2. Thus, it does not seem likely that the patients' reported anxiety upon the cessation of the drug was due to ''the interruption of effective treatment of their discomfort or pain.'' MX 172, at 10.[41]

Finally, in October 2009, based on new safety information, the FDA required that Meda make several changes to the approved label. The first of these involved the insertion of a sentence into section 5.2 (entitled ''Drug Dependence, Withdrawal, and Abuse'') that ''there have been post-marketing-adverse event reports of SOMA associated abuse when used without other drugs with abuse potential.'' MX 30, at 5. Thus, this section of the label now states:

> In the postmarketing experience with SOMA, cases of dependence, withdrawal, and abuse have been reported with prolonged use. Most cases of dependence, withdrawal, and abuse occurred in patients who have had a history of addiction or who used SOMA in combination with other drugs with abuse potential. However, there have been post-marketing-adverse event reports of SOMA associated abuse when used without other drugs with abuse potential. Withdrawal symptoms have been reported following abrupt cessation after prolonged use. To reduce the chance of SOMA dependence, withdrawal, or abuse, SOMA should be used with caution in addiction-prone patients and in patients taking other CNS depressants including alcohol, and SOMA should not be used more than two to three weeks for the relief of acute musculoskeletal discomfort.
>
> Soma, and one of its metabolites, meprobamate (a controlled substance), may cause dependence.

MX 6, at 2.[42] The FDA also required that Meda change the label to include the following statement:

> SOMA is not a controlled substance * * *.
>
> Discontinuation of carisoprodol in animals or in humans after chronic administration can produce withdrawal signs, and there are published case reports of human carisoprodol dependence.
>
> *In vitro* studies demonstrate that carisoprodol elicits barbiturate-like effects. Animal behavior studies indicate that carisoprodol produces rewarding effects. Monkeys self administer carisoprodol. Drug discrimination studies using rats indicate that carisoprodol has positive reinforcing and discriminative effects similar to barbital, meprobamate, and chlordiazepoxide.

See MX 30, at 8; MX 6, at 3. While Meda initially objected to the proposed changes, it eventually agreed to them. MX 30, at 1.

I therefore conclude that substantial evidence supports a finding that carisoprodol has dependence liability similar to that of barbital, a schedule IV CNS depressant.

Factor 8—Whether the Substance Is an Immediate Precursor of a Substance Already Controlled

Carisoprodol metabolizes to meprobamate, a schedule IV controlled substance. However, the FDA found that carisoprodol is not an immediate precursor of meprobamate or any other controlled substance. GX 6, at 26.

Conclusions of Law

Under 21 U.S.C. 811(a)(1)(a), to ''add'' a drug to one of the schedules of controlled substances, the Agency must first find that carisoprodol ''has a potential for abuse.'' If such a finding is supported by the record, the Agency must then make the ''findings prescribed by subsection 812 of this title for the schedule in which such drug is to be placed.'' 21 U.S.C.811(a)(1)(B). Having considered all eight of the section 811(c) factors, I conclude that a preponderance of the evidence supports the conclusion that carisoprodol ''has a potential for abuse'' such as to warrant control and that it should be placed in schedule IV.

The Section 811(a)(1)(a) Finding—Carisoprodol Has A Potential for Abuse

A preponderance of the evidence supports the conclusion that carisoprodol has a potential for abuse, and indeed, is being widely abused.[43]

[40] As for Dr. Jasinski's contention that the individual case reports should be given less weight because the person may have taken carisoprodol to commit suicide, I need not decide whether such evidence is probative of whether a drug has dependence liability. However, as explained above, the Senate Report expressly stated that the Agency can consider such evidence ''as indicative of a drug's potential for abuse.'' S. Rep. 91–6134, reprinted in 1970 U.S.C.C.A.N., at 4602.

[41] As for the contention that in two of the case reports, ''the untoward effect reported with carisoprodol would appear to have been caused by other substances the patient had taken concurrently,'' Dr. Jasinski identified these reports only by their exhibit numbers and the publication they appeared in. *See* MX at 172, at 10 (citing MXs 110 & 161). However, neither of these exhibits was entered into evidence. I thus cannot evaluate the validity of Dr. Jasinski's contention.

[42] With the exception of the third sentence (''However, there have been post-marketing adverse reports of SOMA-associated abuse when used without other drugs with abuse potential.]''), this portion of the label repeats verbatim the 2007 label. *See* MX 25, at 5.

[43] In both its brief and its exceptions, Meda notes that ''DEA did not present any witnesses from FDA

The NSDUH data establish that a large number of persons are taking carisoprodol on their own initiative rather than on the basis of a physician's recommendation. The NSDUH data—which Meda's Expert acknowledged was generally reliable—consistently show that between 2.5 and 2.8 million persons have used carisoprodol for non-medical reasons, including approximately 1 million 18–25 year olds, and more than 100,000 12–17 year olds. As explained above, given the magnitude of the nonmedical use of carisoprodol, the Agency is not required to show that the rate of abuse is increasing in order to support a finding that the drug has a potential for abuse such as to warrant control.[44]

In addition, the evidence shows that individuals are taking carisoprodol in amounts sufficient to create a hazard to the health and safety of both themselves and others. Notwithstanding the criticism of the DAWN data, the estimates as to the number of emergency room visits related to carisoprodol are comparable to those for diazepam, a schedule IV controlled substance.

Next, data obtained from the Florida Medical Examiners Commission for the years 2004 through 2008, establish that carisoprodol (or its metabolite meprobamate) was the cause of death in between 74 and 96 cases each year. It bears noting that this is but one State's data.

Also, NPDS data for the years 2006 and 2007 show that carisoprodol (as a sole drug) has been involved in more than 3500 toxic exposures cases. Of these, between 2687 and 2821 cases were serious enough to require treatment in a health care facility, and in more than 100 cases, the patient had life-threatening symptoms or a significant residual disability.

Finally, while Meda notes that data from the FDA AERS system show that, between January 1979 and May 2001, ''only 83 reports'' have ''included the terms abuse, dependency, or withdrawal,'' and that this must be compared with the total number of carisoprodol prescriptions, these data are compiled from reports which have been voluntarily submitted by consumers and health care professionals. Thus, these data likely substantially underreport the number of such incidents.

The evidence further shows that there is significant diversion of carisoprodol from legitimate channels. First, NFLIS data show that carisoprodol has consistently ranked among the top twenty-five drugs which have been analyzed and identified by forensic laboratories following seizures which occurred during the course of criminal investigations. Moreover, because carisoprodol is controlled in only seventeen States, which comprise approximately thirty-five percent of the United States' population, and as Meda's expert recognized, the likelihood of a sample ''being analyzed is substantially affected by the prosecutor's perceptions of the available criminal charges,'' it is likely that the NFLIS data substantially understate the extent to which carisoprodol is being found during criminal investigations.

Of particular significance, the testimonies of the DEA Deputy Assistant Administrator; a Tennessee Bureau of Investigation Special Agent in Charge, who was the former Coordinator of the Tennessee Drug Diversion Task Force; and the Executive Director of the Ohio State Board of Pharmacy; provide substantial evidence that carisoprodol is being unlawfully distributed, typically with narcotics and benzodiazepines, and is being abused. These officials testified that carisoprodol is being distributed by: (1) Internet pharmacies based on prescriptions issued by doctors who never see their patients; (2) doctors, who while they meet their patients, either perform no physical exam or a cursory physical examination; and (3) street dealing. The Executive Director of the Ohio Board also testified to data obtained through the Board's prescription monitoring program showing that persons are engaging in doctor shopping to obtain large quantities of the drug. The officials also testified to the practice of drug abusers using carisoprodol as part of a cocktail which includes narcotics (such as oxycodone and hydrocodone) and benzodiazepines.

While carisoprodol is indicated for only short-term use of up to two to three weeks, prescription data for a recent five-year period show that more than 25 percent of patients used the drug for more than one month and 4.3 percent used the drug for more than 360 days. Similarly, Bramness, who studied carisoprodol use and abuse in Norway (where the drug is only approved for use of up to one week) during 2004, found that 8 percent of the patients who obtained the drug were also abusing benzodiazepines and 14 percent of the patients were also abusing opioids. Moreover, while those patients who were using carisoprodol for therapeutic purposes received only 12 percent of the carisoprodol which was dispensed, the opioid abusers received 48 percent. Of further note, 14 percent of the patients had received an amount of the drug equal to 75 daily doses or more.

While Meda cites both the Fraser study (in particular, the third arm) and its recent clinical trials, both items of evidence suffer from significant limitations and are of limited probative value. As noted above, the third arm of the Fraser study, involved only five patients (only one of whom received the drug for 54 days), and Meda's recent clinical trials involved only short term use at therapeutic levels. Accordingly, I conclude that the record as a whole establishes that carisoprodol has a potential for abuse (and is being abused at such a level) as to warrant control. *See* 21 U.S.C. 811(a)(1).

The Section 812(b) Placement Findings

The FDA recommended that carisoprodol be placed in schedule IV. Under 21 U.S.C. 812(b), the Attorney General is required to make the following findings to do so.[45] These are:

(A) The drug * * * has a low potential for abuse relative to the drugs or other substances in schedule III.

to justify their findings or * * * provide [it with] an opportunity * * * to challenges the bases for such witnesses' findings.'' Meda's Exceptions at 1. It further argues that it has been denied a meaningful hearing because it ''never had an opportunity to challenge the medical and scientific findings that formed the basis of the scheduling determination.'' *Id.* at 2. *See also* Meda. Br. at 22. (''DEA counsel did not call any HHS or FDA witness to testify and justify the scientific, medical, and legal basis underlying the HHS recommendations. No FDA or HHS witness was made available to answer questions about the numerous weaknesses in the data cited [by the FDA], or otherwise explain the FDA analysis and conclusions.'').

As explained above, many of HHS's findings were based on published articles, and Meda raises no contention that any unpublished articles cited by HHS were not provided to it. Meda does not explain why additional testimony was required to explain the contents of the articles. Moreover, Meda's Experts testified as to various issues with both the Government's data sources and the FDA's reliance on several articles. In addition, Meda does not contend that it sought (and was denied) a subpoena to require the testimony of any FDA employees who were involved in preparing the report. I thus reject Meda's contention.

[44] In its brief, Meda also cites to admittedly anecdotal evidence that an analysis by RADARS of Web site postings in Erowid, ''an online member-supported organization where individuals anonymously post [their] experiences with psychoactive substances, including prescription drugs,'' and that Skelaxin, another muscle relaxant, ''was among the ten most frequently mentioned prescription drugs [but] carisoprodol was not.'' Meda Br. 35. Contrary to Meda's understanding, whether Skelaxin is being abused more often than carisoprodol is irrelevant in assessing whether the latter has ''a potential for abuse'' and warrants control. 21 U.S.C. 811(a). It is further noted that while Meda cites the RADARS analysis as an exhibit, *see* Meda Br. 97 (citing Meda Exh. 15), the record does not contain this exhibit.

[45] While Meda challenged the Government's (and FDA's) finding that carisoprodol has a potential for abuse such as to warrant control, it did not challenge the FDA's placement findings. *See* Meda's Br. at 111–14.

(B) The drug * * * has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug * * * may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

21 U.S.C. 812(b)(4).

It is undisputed that carisoprodol has a currently accepted medical use in treatment in the United States and is FDA-approved for the relief of discomfort associated with acute, painful musculoskeletal conditions. GX 6, at 26.

The FDA further found that carisoprodol has a low potential for abuse relative to schedule III controlled substances. *Id.* FDA found that carisoprodol is a CNS (central nervous system) depressant and that it is abused primarily in combination with other drugs of abuse including opioids and benzodiazepines, cocaine, and marijuana. *Id.* Carisoprodol metabolizes into meprobamate, a schedule IV controlled substance. Based on the DAWN ED estimates, FDA calculated an abuse frequency which suggests that carisoprodol is being abused at a rate similar to that of diazepam, a schedule IV controlled substance. *See* 21 CFR 1308.14(c). *In vitro* studies demonstrate that carisoprodol has an affinity for the GABAα receptor and elicits barbiturate-like effects. Likewise, in a drug-discrimination study, carisoprodol was completely effective in preventing abstinence syndrome in dogs tolerant and dependent on barbital, a schedule IV controlled substance. In a study involving rats trained to discriminate carisoprodol, various controlled substances including meprobamate, pentobarbital (C–II/C–III), and chlordiazepoxide (C–IV), substituted fully for the discriminative stimulus effects of carisoprodol. In a further study, bemegride, a barbiturate antagonist, antagonized the discriminative stimulus effect of carisoprodol in rats trained to discriminate the drug. While Meda's Expert opined that these studies do not establish carisoprodol's abuse liability,[46] he acknowledged that they do indicate that carisoprodol may have effects similar to those of barbiturates.

In addition, several human studies establish that carisoprodol has effects similar to that of CNS depressants. Most significantly, Bramness, *et al.,* found that the clinical effects of carisoprodol resemble those of benzodiazepines, which are schedule IV controlled substances. I therefore hold that substantial evidence supports the FDA's conclusion that carisoprodol has a low potential for abuse relative to the drugs or other substances in schedule III. *See Grinspoon,* 828 F.2d at 894 (upholding Agency's reliance of on studies which suggested that MDMA was ''related in its effects to'' other schedule I and II controlled substances).

Finally, the FDA concluded that the abuse of carisoprodol may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III. GX 6, at 27. In support of its conclusion, the FDA noted that upon the withdrawal of barbital from dogs dependent on it, carisoprodol prevents the abstinence syndrome. *Id.* FDA also cited case studies which show that carisoprodol causes psychological or physical dependence and that ''carisoprodol produces a withdrawal syndrome characterized by clinical depression, anxiety, drug craving, irritability and poor concentration.'' *Id.*

The record contains substantial evidence to support the FDA's conclusion. Meda cites both the Fraser study and its recent clinical trials as evidence that carisoprodol does not cause dependence. However, the Fraser study expressly noted that ''it remains to be seen whether administering carisoprodol continuously in larger doses would induce'' a barbiturate-like withdrawal pattern upon discontinuation of the drug. Likewise, Meda's clinical trials involved administration of the drug for no more than two-weeks and at therapeutic levels. Moreover, Meda eventually agreed to change the drug label to reflect that ''cases of dependence [and] withdrawal * * * have been reported with prolonged use.'' MX 6, at 2.

A case study by Reeves found that when a 43-year-old male, who had taken large doses for several weeks, stopped taking carisoprodol, he developed anxiety, tremors, muscle twitching, insomnia, auditory and visual hallucinations and engaged in bizarre behavior. In a study of nine male prisoners who had been taking carisoprodol in doses of 700 to 2100 mg for at least nine months, Wyller found that when the drug was gradually withdrawn over a two-week period, most of the patients reported mental distress including anxiety, insomnia, and irritability; cranial and muscular pain, as well as vegetative symptoms, were also frequently reported. Rohatgi reported the case of a 46-year old male who purchased carisoprodol over the internet and self-medicated to treat his anxiety after his physician stopped his narcotic prescriptions. Upon the patient's admission to a treatment center and being withdrawn from the drug, the patient exhibited heart palpitations, diaphoresis, chills, stomach cramps, nausea, insomnia, restlessness, myalgias, arthralgias, tremors, diarrhea, severe psychomotor agitation, feelings of depersonalization, and anxiety with suicidal ideation. The FDA also cited five other published studies which evidence that persons taking carisoprodol can become physically dependent and engage in drug-seeking behavior.

Finally, a case study published by physicians at the Mayo Clinic subsequent to the FDA's report documented the presence of withdrawal symptoms in a 51-year old man who had taken up to 8400 mg per day before he exhausted his supply (which he obtained from both his physician and the internet). Upon his admission, the patient ''was anxious, distractable, [and] disoriented,'' and exhibited ''[a] high frequency, postural, and kinetic tremor in [his] extremities.'' The patient was placed on a tapering schedule, but on the third day, his ''tremor, agitation and confusion worsened, and he experienced visual hallucinations and myoclonic jerks in the extremities.'' While the doctors were able to successfully taper the patient off of the drug, they concluded that ''[t]he abrupt discontinuation of high-dose carisoprodol may result in withdrawal symptoms including anxiety, psychosis, tremors, myoclonus, ataxia, and seizures.''

In its Exceptions, Meda argues that the ALJ unfairly and unjustifiably relied on this study, which the Government introduced to rebut Dr. Jasinski's testimony. Exceptions at 2–3. Meda objects that the document was offered after the ALJ had excused the last witness, thereby depriving it ''of any opportunity to subject the document to expert scrutiny.'' *Id.* at 2. Meda also objects that the ALJ gave this report ''significant weight'' and ''incorrectly elevated [it] to that of a 'study.' '' *Id.* (citing ALJ 34, 85).

However, Dr. Jasinski acknowledged that abuse of carisoprodol over a prolonged period could lead to limited physical or psychological dependence. Tr. 706–07. While Dr. Jasinski further maintained that this was ''not the specific issue'' and that ''[t]he specific issue [is whether abuse] would lead to drug seeking or * * * to a severe withdrawal syndrome,'' *id.,* his view of

[46] As found above, the record as a whole establishes that carisoprodol has a potential for abuse and is being abused. I note Dr. Jasinski's testimony that the animal studies do not establish carisoprodol's abuse liability only to provide context to his acknowledgement that the animal studies indicate that carisoprodol may have effects similar to those of barbiturates.

the statute is mistaken. Under subsection 812(b), a finding that abuse of a drug ''may lead to severe psychological or physical dependence'' is only required if the drug is to be placed in schedule II. 21 U.S.C. 812(b)(2)(C). By contrast, to place a drug in schedule IV, the necessary finding requires only that abuse of the drug ''may lead to limited physical dependence or psychological dependence relative to the drugs * * * in schedule III.'' *Id.* 812(b)(4)(C).

Even if—given Dr. Jasinski's acknowledgment that abuse of carisoprodol may lead to limited physical or psychological dependence—the article does not constitute valid rebuttal, Meda cannot claim that its admission to the record was prejudicial. The article (which had not been published at the time the parties exchanged their pre-hearing statements) is consistent with other case studies which Dr. Jasinski had ample opportunity to criticize and was therefore cumulative. While the ALJ did mischaracterize the report as the ''Mayo Clinic data,'' ALJ at 101, it is just one of several clinical reports/case studies that supports the conclusion that prolonged abuse of carisoprodol may lead to limited physical or psychological dependence, as Dr. Jasinski acknowledged. I thus find that the abuse of carisoprodol ''may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.'' 21 U.S.C. 812(b)(4)(C). Accordingly, I further find that substantial evidence supports the FDA's recommendation that carisoprodol be placed in schedule IV.

Regulatory Requirements

Effective January 11, 2012,[47] carisoprodol will be placed in schedule IV of the Controlled Substances Act. Thereafter, any person who engages in the manufacture, distribution, dispensing, importing, exporting, as well as any person who possesses the drug will be subject to the provisions of the Act and DEA regulations, including the Act's administrative, civil, and criminal sanctions which are applicable to schedule IV controlled substances. These include the following:

Registration. Any person who manufactures, distributes, dispenses, imports, exports, engages in research or conducts instructional activities or chemical analysis with carisoprodol, must be registered to conduct such activities in accordance with 21 CFR part 1301. Any person who is currently engaged in any of the above activities must submit an application for registration by January 11, 2012 and may continue their activities until DEA has approved or denied that application.

Disposal of Stocks. Any person who elects not to obtain a schedule IV registration, or who is not entitled to such registration, must surrender all quantities of currently held carisoprodol in accordance with the procedures of 21 CFR 1307.21, on or before January 11, 2012, or may transfer all quantities of currently held carisoprodol to a person registered under the CSA and authorized to possess schedule IV controlled substances, on or before January 11, 2012. Any carisoprodol surrendered to DEA must be listed on a DEA Form 41, ''Inventory of Controlled Substances Surrendered for Destruction.'' DEA Form 41 may be obtained at *http://www.deadiversion.usdoj.gov/21cfr_reports/surrend/*, or from the nearest DEA office.

Security. Carisoprodol will be subject to the security requirements applicable to controlled substances in schedules III through V including 21 CFR 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76, and 1301.77. The requirements of 21 CFR 1301.71, 1301.72(d), 1301.74, 1301.75(b) and (c), and 1301.76 shall be applicable to carisoprodol January 11, 2012. The requirements of 21 CFR 1301.72(b) and (c), 1301.73, and 1301.77 shall be applicable to carisoprodol April 10, 2012.

Labelling and Packaging. All commercial containers of carisoprodol that are packaged on or after April 10, 2012 shall be labeled as C–IV and packaged in accordance with 21 CFR 1302.03–1302.07. Commercial container packaged before April 10, 2012 and not meeting the requirement of 21 CFR 1302.03–1302.07 may be distributed until June 11, 2012. On or after June 11, 2012 all commercial containers of carisoprodol must be labeled as C–IV and comply with 21 CFR 1302.03–1302.07.

Inventory. Pursuant to 21 CFR 1304.03, 1304.04, and 1304.11, every registrant who is required to keep records and who possesses any quantity of carisoprodol shall take an initial inventory of all stocks of carisoprodol on hand on or before January 11, 2012. Thereafter, carisoprodol shall be included in each inventory made by the registrant pursuant to 21 CFR 1304.11(c).

Records. All registrants are required to keep records pursuant to 21 CFR 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23, after January 11, 2012.

Prescriptions. All prescriptions for carisoprodol or prescriptions for products which contain carisoprodol shall comply with 21 CFR 1306.03–1306.06, 1306.21, and 1306.22–1306.27, after January 11, 2012.

Importation and Exportation. All importation and exportation of carisoprodol is subject to 21 CFR part 1312, after January 11, 2012.

Criminal Liability. Any activity with carisoprodol not authorized by, or conducted in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act, occurring on or after January 11, 2012 is unlawful.

Regulatory Analyses

Executive Orders 12866 and 13563

In accordance with 21 U.S.C. 811(a), this scheduling action is subject to formal rulemaking procedures done ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget pursuant to Section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Regulatory Flexibility Act

The Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), 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.

In considering the economic impact on small entities, the first question is whether a substantial number of small entities are affected. In this instance, the entities affected are those now selling carisoprodol-containing products that do not hold a DEA registration. DEA identified 22 firms that are manufacturing carisoprodol-containing products. 74 FR at 59111. Fifteen of these firms hold DEA registrations, leaving seven firms that sell carisoprodol and do not hold a registration. DEA has no information on the number of non-registrants engaged in the distribution or importation of carisoprodol, but there is reason to believe that the number of such firms is well in excess of the seven already identified. The Small Business

[47] I have considered the comments of the Healthcare Distribution Management Association in setting the effective dates with respect to each of the various requirements.

Administration size standard for a small wholesaler of drugs is 100 employees. It is clearly possible to operate a drug distribution firm with fewer than 100 employees. Therefore, a substantial number of small entities will be affected by this rule.

The economic impact on non-registrants now selling carisoprodol will occur in two ways: The cost of registration and the cost of meeting the security requirements in 21 CFR part 1301. There is also a potential economic impact on those firms that do not currently distribute carisoprodol but which might wish to enter the market.

The annual registration fee for a distributor, importer, or exporter is $1,147. There is some uncertainty in estimating the cost of meeting the security requirements, because most non-registrants already meet the security requirements, at least in part, for schedule III and IV substances. A conservative estimate assumes that every non-registrant will have to buy a safe to store carisoprodol. A safe with a capacity of 13.5 cubic feet should be adequate and may be purchased for approximately $1,350, which, when annualized over 15 years at 7.0 percent, results in a cost of $148 per year. Therefore, the total annual cost of compliance with this rule is $1,295.

The usual standard for a significant economic impact is 1.0 percent of revenue. For $1,295 per year to be a significant economic impact, a firm's annual revenue would have to be less than $130,000. Any firm in the drug distribution business would need annual revenue well in excess of this amount to sustain itself.

It is acknowledged that, for a small firm, there may be some inconvenience and expense in preparing the necessary forms to obtain and renew a registration. These are minor costs. There are also recordkeeping requirements, but these will impose little or no incremental cost for a firm that is already maintaining the records needed for a wholesale business. Accordingly, the costs of registration and the security requirements will not cause a significant economic impact.

If a firm chooses not to register and to drop its carisoprodol line, the cost to the firm would exceed its earnings on its carisoprodol sales. The firm may also lose some customers who do not want to buy from a distributor that does not carry carisoprodol. A competent manager will recognize this cost, and in light of the small cost of registering, would presumably choose to drop carisoprodol from the firm's product line only if the firm was earning a negligible profit from its carisoprodol sales and dropping the product would not result in the loss of significant customers. Accordingly, DEA finds that this rule will not have a significant economic impact on a substantial number of small entities.[48]

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law or impose enforcement responsibilities on any state or diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Executive Order 13175

This rule will not have tribal implications and will not impose substantial direct compliance costs on Indian tribal governments.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $136,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

[48] In the Notice of Proposed Rulemaking, DEA noted that it had no information regarding the number of persons who may distribute carisoprodol-contain products, but who do not manufacture, package, repackage, or relabel these products and sought comments from any entities that might be affected by this action. *See* 74 FR 59111. No commenter provided such information.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements. Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of the Drug Enforcement Administration pursuant to 28 CFR 0.100, 21 CFR part 1308 is amended to read as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. Section 1308.14 is amended by redesignating paragraphs (c)(5) through (c)(52) as paragraphs (c)(6) through (c)(53) and adding a new paragraph (c)(5) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(c) * * *

(5) Carisoprodol 8192

* * * * *

Dated: November 18, 2011.

Michele M. Leonhart,

Administrator.

Note: The following appendixes will not publish in the Code of Federal Regulations.

APPENDIX A

STATES IN WHICH CARISOPRODOL IS A CONTROLLED SUBSTANCE AND THEIR POPULATION

State	Population
Oklahoma	3,751,351
Hawaii	1,360,301
Kentucky	4,339,367
New Mexico	2,059,179
Oregon	3,831,074
Georgia	9,687,653
Arkansas	2,915,918
Alabama	4,779,736
West Virginia	1,852,994
Florida	18,801,310
Arizona	6,392,017
Indiana	6,483,802
Nevada	2,700,551
Louisiana	4,533,372
Texas	25,145,561
Utah	2,763,885
Washington	6,724,540

STATES IN WHICH CARISOPRODOL IS A CONTROLLED SUBSTANCE AND THEIR POPULATION—Continued

State	Population
Total	*108,122,611

Total 2010 population = 307,006,556 (source *www.uscensus2010data.com*).

*35.22% of total population of United States.

APPENDIX B

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[FR Doc. 2011–31542 Filed 12–9–11; 8:45 am]

BILLING CODE 4410–09–P

FEDERAL REGISTER

Vol. 76 Monday,
No. 238 December 12, 2011

Part III

Department of Housing and Urban Development

Announcement of Funding Award for 2011 for Request for Qualification (RFQ) for the Fellowship Placement Pilot Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5514–FA–03]

Announcement of Funding Award for 2011 for Request for Qualification (RFQ) for the Fellowship Placement Pilot Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, U.S. Department of Housing and Urban Development.

ACTION: Announcement of funding award.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER (CFDA): The CFDA number for this announcement is 14.529.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development (HUD) Reform Act of 1989, this document notifies the public of funding for the Fiscal Year (FY) 2011 Fellowship Placement Pilot Program. The purpose of this document is to announce the name and address of the award winner for the fellowship program.

FOR FURTHER INFORMATION CONTACT: Kheng Mei Tan, Policy Division, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Telephone (202) 402–4986. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone numbers, other than ''800'' TTY numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: On August 23, 2011, the Office of Policy Development and Research (PD&R), under the Assistant Secretary, announced the competition notice, ''Request for Qualification (RFQ) for the Fellowship Placement Pilot Program'' to identify a third party or a partnership of third parties to manage and administer the fellowship program. The fellowship program is designed to help local governments rebuild capacity by training and placing highly motivated early to midcareer professionals into two-year fellowships to work in a mayor's office or other offices of local government.

Funding for the fellowship program was provided through a donation of $2.5 million by the Rockefeller Foundation, a private philanthropic organization, which HUD is authorized to accept under section 7(k)(1) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(k)(1)). The donation was specifically provided to HUD to develop, manage, and implement a national fellowship program to enhance the capacity of some of the nation's most economically distressed cities. In addition, section 3(b) of the Department of Housing and Urban Development Act (42 U.S.C. 3532(b)) authorizes the Secretary of HUD to ''exercise leadership at the direction of the President in coordinating Federal activities affecting housing and urban development'' as well as to ''provide technical assistance and information * * * to aid state, county, town, village, or other local governments in developing solutions to community and metropolitan development problems.''

As described in the RFQ, HUD would make only *one* grant award of $2.5 million to either a third party, or a partnership of third parties. The grant performance for the award is 32 months. The award will be administered in the form of a cooperative agreement.

The Department reviewed, evaluated and scored the applications received based on the rating criteria described in the RFQ. As a result, HUD has accepted the application announced below, and in accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545).

Dated: November 21, 2011.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

List of Awardees for Fiscal Year (FY) 2011 Fellowship Placement Pilot Program, by Institution, Point of Contact, Address and Grant Amount

The German Marshall Fund (lead applicant), Tamar Shapiro, 1744 R Street NW., Washington, DC 20009. Grant: $2,500,000.

[FR Doc. 2011–31783 Filed 12–9–11; 8:45 am]

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